TITLE 19

CHILDREN'S CODE

Editor's note: This title was numbered as chapter 22, C.R.S. 1963. The substantive provisions of this title were repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title, see the comparative tables located in the back of the index.

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PART 1

GENERAL PROVISIONS

19-1-101. Short title.

This title shall be known and may be cited as the "Colorado Children's Code".

Source: L. 87: Entire title R&RE, p. 695, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. This section, as it existed in 1987, is the same as 19-1-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

An award of custody must serve the public as well as the best interests of the child. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

In determining custody in dependency and neglect hearing, juvenile court committed reversible error by failing to consider any purposes of this Colorado Children's Code and in relying solely on a limited number of purposes set forth in §14-10-124. L.A.G. v. People in Interest of A.A.G., 912 P.2d 1385 (Colo. 1996).

Applied in Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979).

19-1-102. Legislative declaration.

(1) The general assembly declares that the purposes of this title are:

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

(b) To preserve and strengthen family ties whenever possible, including improvement of home environment;

(c) To remove a child from the custody of his parents only when his 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; and

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

(1.5) (a) The general assembly declares that it is in the best interests of the child who has been removed from his own home to have the following guarantees:

(I) To be placed in a secure and stable environment;

(II) To not be indiscriminately moved from foster home to foster home; and

(III) To have assurance of long-term permanency planning.

(b) (Deleted by amendment, L. 92, p. 220, § 1, effective July 1, 1992.)

(1.6) The general assembly recognizes the numerous studies establishing that children undergo a critical bonding and attachment process prior to the time they reach six years of age. Such studies further disclose that a child who has not bonded with a primary adult during this critical stage will suffer significant emotional damage which frequently leads to chronic psychological problems and antisocial behavior when the child reaches adolescence and adulthood. Accordingly, the general assembly finds and declares that it is appropriate to provide for an expedited placement procedure to ensure that children under the age of six years who have been removed from their homes are placed in permanent homes as expeditiously as possible.

(1.7) The general assembly further declares that it is the intent of the general assembly to have the media and the courts refrain from causing undue hardship, discomfort, and distress to any juvenile victims of sexual assault, child abuse, incest, or any offenses listed in wrongs to children pursuant to part 4 of article 6 of title 18, C.R.S., by not disseminating or publishing the names of such victims.

(1.9) The federal "Family First Prevention Services Act" was enacted on February 9, 2018. In order to comply with the provisions of the federal "Family First Prevention Services Act", the general assembly finds that it is necessary to update current statutes to enable Colorado to provide enhanced support to children, juveniles, or youth, and their families in order to prevent foster care placements. The state department of human services shall implement the updated provisions in this title 19 utilizing prevention services and qualified residential treatment programs when the federal government approves Colorado's five-year Title IV-E prevention plan, and subject to available general fund appropriations or federal funding.

(2) To carry out these purposes, the provisions of this title shall be liberally construed to serve the welfare of children and the best interests of society.

Source: L. 87: Entire title R&RE, p. 695, § 1, effective October 1. **L. 88:** (1.5) added, p. 755, § 1, effective May 31. **L. 90:** (1.7) added, p. 1007, § 1, effective July 1. **L. 92:** (1.5) amended, p. 220, § 1, effective July 1. **L. 94:** (1.6) added, p. 2051, § 1, effective July 1. **L. 2019:** (1.9) added, (HB 19-1308), ch. 256, p. 2458, § 2, effective August 2. **L. 2020:** (1.9) amended, (SB 20-162), ch. 221, p. 1087, § 1, effective July 2; (1.9) amended, (HB 20-1402), ch. 216, p. 1047, § 32, effective June 30.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. This section, as it existed in 1987, is the same as 19-1-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (1.9) by SB 20-162 and HB 20-1402 were harmonized.

Cross references: For the "Family First Prevention Services Act", see Pub.L. 115-123.

ANNOTATION

Law reviews. For article, "Juvenile Delinquency in Colorado: The Law's Response to Society's Need", see 31 Rocky Mt. L. Rev. 1 (1958). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963). For note, "Juvenile Delinquency — Colorado's Unassumed Burden", see 36 U. Colo. L. Rev. 519 (1964). For article, "Children in Need: Observations of Practice of the Denver Juvenile Court", see 51 Den. L.J. 337 (1974). For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part II", see 14 Colo. Law. 794 (1985). For article, "Disclosure and Discovery in Dependency and Neglect Cases", see 54 Colo. Law. 44 (Jan.-Feb. 2025).

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

The provisions of this title must be read and construed together. To hold otherwise would open the door to endless confusion and a myriad of conflicting jurisdictional claims respecting the interests of children in this state. Geisler v. People in Interest of Geisler, 135 Colo. 121, 308 P.2d 1000 (1957).

The Colorado Children's Code must be liberally construed. People in Interest of M.K.A., 182 Colo. 172, 511 P.2d 477 (1973).

Provisions of the Children's Code should be liberally construed to accomplish the

purpose and to effectuate the intent of the general assembly. R.M. v. District Court, 191 Colo. 42, 550 P.2d 346 (1976).

In the best interest of child and society. When the general assembly said that "this title shall be liberally construed", it meant that it should be construed favorably to the best interests of the child and society. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973); People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Purpose of code. One of the underlying purposes of the Colorado Children's Code is to create distinction between adults and children who violate law. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

The Colorado Children's Code's sole emphasis is on rehabilitating children, assisting them in becoming responsible and productive members of society, and preventing them, while at an impressionable and vulnerable age, from becoming criminals. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989).

The overriding purpose of the Colorado Children's Code is to protect the welfare and safety of Colorado children by providing procedures through which their best interests can be served. L.G. v. People, 890 P.2d 647 (Colo. 1995); People ex rel. C.M., 116 P.3d 1278 (Colo. App. 2005); People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

To this end, dependency or neglect proceedings focus primarily on the protection and safety of children susceptible to harm from the effect of abuse and neglect, not on the custodial interests of the parent. People ex rel. C.M., 116 P.3d 1278 (Colo. App. 2005); People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

The purposes of the Colorado Children's Code are quite different from the purposes of the Criminal Code, and an amendment furthering the purposes of one cannot be deemed invalid on the ground that such legislation is contrary to the purposes of the other. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

The adoption of the Colorado Children's Code and the establishment of a juvenile court was based on a legislative conclusion that adjudication of issues arising from the conduct of young persons must focus on the protection and rehabilitation of such persons. But the Children's Code expressly recognizes the necessity of balancing the primary concern for protecting and nurturing young persons with concern for the safety of all members of society. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Consecutive commitments. Since the purposes of the Colorado Children's Code focus on the protection of society and the rehabilitation of the offender, such purposes may be fostered by the imposition of consecutive commitments. People in Interest of S.A.E., 724 P.2d 100 (Colo. App. 1986), overruled in S.G.W. v. People, 752 P.2d 86, (Colo. 1988).

State's interest relative to preventing delinquent children from becoming adult

criminals is compelling. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989).

Prosecution of juveniles under municipal ordinance does not conflict with Colorado Children's Code and, although municipalities are not prohibited from adopting same procedures as Children's Code, municipalities are not required to follow such procedures. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Colorado Children's Code does not require that juvenile proceedings in municipal courts be civil in nature as Children's Code and ordinances of municipality on juvenile proceedings do not conflict. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Intent of general assembly that the Colorado Children's Code apply only to juvenile proceedings in juvenile court, and not to municipal court proceedings involving prosecution of juveniles under municipal ordinances. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Since a person under age 18 can only be charged with an offense in the manner permitted by the Colorado Children's Code, the county court had no jurisdiction to entertain or to dispose of the merits of the proceeding involving an offense alleged against a juvenile and was without authority to go further than merely dismissing the case without prejudice for lack of jurisdiction. People in Interest of C.O., 870 P.2d 1266 (Colo. App. 1994).

Public policy. The public policy of the state is to provide for a neglected and dependent child in a manner that will best serve his welfare and the interests of society. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974); People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

The juvenile system is premised on the concept that a more informal, simple, and speedy judicial setting will best serve the needs and welfare of juvenile defendants. The designs of the juvenile system, however, must be tempered with procedural rules that recognize the children who commit serious offenses may need to be treated differently than other juveniles. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

A parent has a fundamental liberty interest in the care, custody, and management of a child. However, that parental right to due process is subject to the power of the state to act in the child's best interest. People in Interest of M.H., 855 P.2d 15 (Colo. App. 1993).

Fundamental liberty interest in the care, custody, and management of a child not extended to stepparent. Absent substantial evidence that a stepparent stands in loco parentis to the child, there is no authority to extend a similar liberty interest to either a stepparent or a family unit created by the natural or adoptive parent and a stepparent. People ex rel. of E.S., 49 P.3d 1221 (Colo. App. 2002).

The state acts as parens patriae — sovereign guardian — to safeguard the

interests of vulnerable children within the state. L.G. v. People, 890 P.2d 647 (Colo. 1995).

Termination of parental rights is drastic remedy in which a most serious interest of the parents is jeopardized. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Home care and guidance preferred. A neglected and dependent child's care and guidance should be preferably in his own home, so as to preserve and strengthen family ties. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Absent a showing of a causal relationship between such an environment and a serious threat to the emotional or physical stability of the child, public policy requires that the care and guidance of each child should remain with his parents and in his own home. People in Interest of D.L.R., 44 Colo. App. 327, 618 P.2d 687 (1980), rev'd on other grounds, 638 P.2d 39 (Colo. 1981).

As is maintenance of family ties. The general assembly has declared its preference for the maintenance of family ties whenever possible in subsection (1)(b). People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Under this code, parties are precluded from stipulating restrictions upon court's duty to protect best interests of child. In re People in Interest of A.R.S, 31 Colo. App. 268, 502 P.2d 92 (1972).

Applied in Gibson v. People, 44 Colo. 600, 99 P. 333 (1908); Cruz v. Morley, 77 Colo. 25, 234 P. 178 (1925); Johnson v. People, 170 Colo. 137, 459 P.2d 579 (1969); Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973); P.F.M. v. Dist. Court, 184 Colo. 393, 520 P.2d 742 (1974); Dept. of Insts. ex rel. S.L.G. v. Bushnell, 195 Colo. 566, 579 P.2d 1168 (1978); People in Interest of R.A.D., 196 Colo. 430, 586 P.2d 46 (1978); Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980); Villareal v. Lopez, 44 Colo. App. 555, 619 P.2d 86 (1980); People in Interest of C.A.K., 628 P.2d 136 (Colo. App. 1980); People in Interest of E.A., 638 P.2d 278 (Colo. 1981); People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982); People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982); People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982); People v. Coyle, 654 P.2d 815 (Colo. 1982); People in Interest of M.H., 661 P.2d 1173 (Colo. 1983); People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

19-1-103. Definitions.

As used in this title 19 or in the specified portion of this title 19, unless the context otherwise requires:

(1) (a) "Abuse" or "child abuse or neglect", as used in part 3 of article 3 of this title 19, means an act or omission in one of the following categories that threatens the health or welfare of a child:

(I) 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, or the circumstances indicate that such condition may not be the product of an accidental occurrence;

(II) Any case in which a child is subjected to unlawful sexual behavior as defined in section 16-22-102 (9);

(III) Any case in which a child is in need of services because the child's parent, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take. The requirements of this subsection (1)(a)(III) are subject to the provisions of section 19-3-103.

(IV) Any case in which a child is subjected to emotional abuse. As used in this subsection (1)(a)(IV), "emotional abuse" means an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development.

(V) Any act or omission described in section 19-3-102 (1)(a), (1)(b), or (1)(c);

(VI) 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 section 18-18-102 (5), is manufactured or attempted to be manufactured;

(VII) Any case in which a child is born affected by alcohol or substance exposure, except when taken as prescribed or recommended and monitored by a licensed health-care provider, and the newborn child's health or welfare is threatened by substance use;

(VIII) Any case in which a child is subjected to human trafficking of a minor for involuntary servitude, as described in section 18-3-503, or human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2).

(b) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates, including but not limited to accepted work-related practices of agricultural communities. Nothing in this subsection (1) refers to acts that could be construed to be a reasonable exercise of parental discipline or to acts reasonably necessary to subdue a child being taken into custody pursuant to section 19-2.5-209 that are performed by a peace officer, as described in section 16-2.5-101, acting in the good-faith performance of the officer's duties.

(2) "Adjudication" has the same meaning as set forth in section 19-2.5-102.

(3) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition in dependency and neglect are supported by the evidence.

(4) "Adjudicatory trial" means a trial to determine whether the allegations of a petition in delinquency are supported by the evidence.

(5) "Administrative review" means a review conducted by the department of human services that is open to the participation of the parents of the child and conducted by an administrative reviewer who is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(6) "Adoptee", as used in part 3 of article 5 of this title 19, means a person who, as a minor, was adopted pursuant to a final decree of adoption entered by a court.

(7) (a) "Adoption record", as used in part 3 of article 5 of this title 19, with the exception of section 19-5-305 (2)(b)(I) to (2)(b)(IV), means the following documents and information:

(I) The adoptee's original birth certificate and amended birth certificate;

(II) The final decree of adoption;

(III) Nonidentifying information, as defined in subsection (103) of this section;

(IV) The final order of relinquishment; and

(V) The order of termination of parental rights.

(b) "Adoption record", as used in section 19-5-305 (2)(b)(I) to (2)(b)(IV), means the following documents and information, without redaction:

(I) The adoptee's original birth certificate and amended birth certificate;

(II) The final decree of adoption;

(III) Any identifying information, such as the name of the adoptee before placement in adoption; the name and address of each birth parent as they appear in the birth records; the name, address, and contact information of the adult adoptee; and the current name, address, and contact information of each birth parent, if known, or other information that might personally identify a birth parent;

(IV) Any nonidentifying information, as defined in subsection (103) of this section;

(V) The final order of relinquishment; and

(VI) The order of termination of parental rights.

(c) "Adoption record", as used in either subsection (7)(a) or (7)(b) of this section, must not include pre-relinquishment counseling records, which must remain confidential.

(8) "Adoption triad" means the three parties involved in an adoption: The adoptee, the birth parent, and the adoptive parent.

(9) "Adoptive parent", as used in parts 3 and 4 of article 5 of this title 19, means an adult who has become a parent of a minor through the legal process of adoption.

(10) "Adult" means a person eighteen years of age or older; except that any person eighteen years of age or older who is under the continuing jurisdiction of the court, who is before the court for an alleged delinquent act committed prior to the person's eighteenth birthday, or concerning whom a petition has been filed for the person's adoption other than pursuant to this title 19 must be referred to as a juvenile.

(11) "Adult adoptee", as used in parts 3 and 4 of article 5 of this title 19, means an individual who is eighteen years of age or older and who, as a minor, was adopted pursuant to a final decree of adoption entered by a court.

(12) "Appropriate treatment plan", as used in section 19-3-508 (1)(e), means a treatment plan approved by the court that is reasonably calculated to render the particular respondent fit to provide adequate parenting to the child within a reasonable time and that relates to the child's needs.

(13) "Assessment center for children", as used in part 3 of this article 1, means a multi-disciplinary, community-based center that provides services to children and their families, including, but not limited to, detention, screening, case management, and therapeutic intervention relating to delinquency, abuse or neglect, family conflict, and truancy.

(14) "Basic identification information", as used in article 2.5 of this title 19, means the name, place and date of birth, last-known address, social security number, occupation and address of employment, last school attended, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases of any person.

(15) "Biological parent" or "birth parent", as used in part 3 of article 5 of this title 19, means a parent, by birth, of an adopted person.

(16) "Biological sibling", as used in part 3 of article 5 of this title 19, means a sibling, by birth, of an adopted person. "Biological sibling", as used in part 3 of article 5 of this title 19, for purposes of the definition of sibling group, as defined in subsection (127) of this section, means a brother, sister, or half-sibling of a child who is being placed in foster care or being placed for adoption.

(17) "Birth parents", as used in part 4 of article 5 of this title 19, means genetic, biological, or natural parents whose rights were voluntarily or involuntarily terminated by a court or

otherwise. "Birth parents" includes a man who is the parent of a child as established in accordance with the provisions of the "Uniform Parentage Act", article 4 of this title 19, prior to the termination of parental rights.

(18) Repealed.

(19) "Case management purposes" means assessments, evaluations, treatment, education, proper disposition or placement of the child, interagency coordination, and other services that are incidental to the administration of the program and in the best interests of the child.

(20) "Chief justice", as used in part 3 of article 5 of this title 19, means the chief justice of the Colorado supreme court.

(21) "Child" means a person under eighteen years of age.

(22) Repealed.

(23) (a) "Child advocacy center", as used in part 3 of article 3 of this title 19, means an independent, child-focused, and trauma-informed facility-based center that:

(I) Is in good standing with an accredited state chapter of a national association and accrediting body that provides support, advocacy, quality assurance, and national leadership for child advocacy centers, which state chapter oversees and provides guidance to child advocacy centers operating in the state; and

(II) Coordinates with representatives from law enforcement and child protective services, prosecutors, mental health professionals, medical professionals, forensic interviewers, and victim advocacy groups to ensure a safe, coordinated, trauma-informed, and multidisciplinary investigative response to a child suspected to be a victim of child abuse and the child's caregivers and to determine what services need to be provided to the child and the child's caregivers.

(b) "Child advocacy center" does not include a health-care institution or a health-care professional, as those terms are defined in section 13-64-202.

(24) "Child care center" means a child care center licensed and approved pursuant to part 9 of article 6 of title 26 or part 3 of article 5 of title 26.5. If the facility is located in another state, the department of human services or the department of early childhood, as appropriate, shall designate, upon certification, that an appropriate available space does not exist in a child care facility in this state, and the facility must be licensed or approved as required by law in that state.

(25) "Child placement agency" means an agency licensed or approved pursuant to law. If such agency is located in another state, it must be licensed or approved as required by law in that state.

(26) "Child protection team", as used in part 3 of article 3 of this title 19, means a multidisciplinary team consisting, where possible, of a physician; a representative of the juvenile

court or the district court with juvenile jurisdiction; a representative of a local law enforcement agency; a representative of the county department of human or social services; a representative of a mental health clinic; a representative of a county, district, or municipal public health agency; an attorney; a representative of a public school district; and one or more representatives of the lay community, at least one of whom must be a person who serves as a foster parent in the county. Each public agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each public agency has only one vote. In no event must an attorney member of the child protection team be appointed as guardian ad litem or counsel for youth for the child or youth or as counsel for the parents at any subsequent court proceedings. The child protection team must never be composed of fewer than three persons. When any racial, ethnic, or linguistic minority group constitutes a significant portion of the population of the jurisdiction of the child protection team, a member of each such minority group must serve as an additional lay member of the child protection team. At least one of the preceding members of the team must be chosen on the basis of representing low-income families. The role of the child protection team is advisory only.

(27) Repealed.

(28) "Commercial sexual exploitation of a child" means a crime of a sexual nature committed against a child for financial or other economic reasons.

(29) "Commit", as used in article 2.5 of this title 19, means to transfer legal custody.

(30) "Community placement" means the placement of a child for whom the department of human services or a county department has placement and care responsibility pursuant to article 2.5 or 3 of this title 19 in any licensed or certified twenty-four-hour nonsecure care and treatment facility away from the child's parent or guardian. "Community placement" includes but is not limited to placement in a foster care home, group home, residential child care facility, or residential treatment facility.

(31) "Complainant", as used in section 19-3-211, 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 of human or social services in accordance with the provisions of section 19-3-211.

(32) "Confidential intermediary", as used in part 3 of article 5 of this title 19, means a person twenty-one years of age or older who has completed a training program for confidential intermediaries that meets the standards set forth by the commission pursuant to section 19-5-303 and who is authorized to inspect confidential relinquishment and adoption records at the request of an adult adoptee, adoptive parent, biological parent, or biological sibling.

(33) "Confirmed", as used in part 3 of article 3 of this title 19, means any report made pursuant to article 3 of this title 19 that is found by a county department of human or social

services, law enforcement agency, or entity authorized to investigate institutional abuse to be supported by a preponderance of the evidence.

(34) "Consent", as used in part 3 of article 5 of this title 19, means voluntary, informed, written consent. When used in the context of confidential intermediaries, "consent" always must be preceded by an explanation that consent permits the confidential intermediary to arrange a personal contact among biological relatives. "Consent" may also mean the agreement for contact or disclosure of records by any of the parties identified in section 19-5-304 (2) as a result of an inquiry by a confidential intermediary pursuant to section 19-5-304.

(35) "Consent form", as used in section 19-5-305 (3), means a verified written statement signed by an adult adoptee or an adult adoptee's consenting birth parent or an adoptive parent of a minor adoptee, and notarized, and that authorizes the release of adoption records or identifying information, to the extent available, by a licensed child placement agency.

(36) "Contact information" means information supplied voluntarily by a birth parent on a contact preference form, including the name of the birth parent at the time of relinquishment of the adoptee; the alias, if any, used at the time of relinquishment of the adoptee; and the current name, current address, and current telephone number of the birth parent.

(37) "Contact preference form" means a written statement signed by a birth parent indicating whether the birth parent prefers future contact with an adult adoptee, an adult descendant of the adoptee, or a legal representative of the adoptee or the descendant and, if contact is preferred, whether the contact should be through a confidential intermediary or a designated employee of a child placement agency.

(38) "Continuously available", as used in section 19-3-308 (4), means the assignment of a person to be near an operable telephone not necessarily located on the premises ordinarily used for business by the county department of human or social services or to have such arrangements made through agreements with local law enforcement agencies.

(39) "Convicted" or "conviction", as used in section 19-5-105.5, means a plea of guilty accepted by the court, including a plea of guilty entered pursuant to a deferred sentence pursuant to section 18-1.3-102, a verdict of guilty by a judge or jury, or a plea of no contest accepted by the court, or having received a disposition as a juvenile or having been adjudicated a juvenile delinquent based on the commission of any act that constitutes sexual assault, as defined in subsection (124) of this section.

(40) "Cost of care" means the cost to the department of human services or the county department of human or social services for a child placed out of the home; or the cost to the department of human services or the county department of human or social services charged with the custody of the juvenile for providing room, board, clothing, education, medical care, and other normal living expenses for a child placed out of the home; or the cost to the department of human services or the county department of human or social services for a juvenile sentenced to

a placement out of the home as determined by the court. As used in this title 19, "cost of care" also includes any costs associated with maintenance of a juvenile in a home detention program, supervision of probation when the juvenile is granted probation, or supervision of parole when the juvenile is placed on parole.

(41) "Counsel" means an attorney-at-law who acts as a person's legal advisor or who represents a person in court.

(41.5) "Counsel for youth" means an attorney-at-law who provides specialized client-directed legal representation for a child or youth and who owes the same duties, including undivided loyalty, confidentiality, and competent representation, to the child or youth as is due an adult client. "Counsel for youth" does not mean defense counsel for a juvenile pursuant to article 2.5 of this title 19.

(42) "County attorney" means the office of the county attorney or city attorney representing a county or a city and county and includes the attorneys employed or retained by such county or city and county.

(43) (a) "County department", as used in this article 1; part 2, part 3, and part 7 of article 3 of this title 19; part 2 of article 5 of this title 19; and part 3 of article 7 of this title 19, means the county or district department of human or social services.

(b) "County department" means a county or a city and county department of human or social services.

(44) "County director", as used in section 19-3-211 and part 3 of article 3 of this title 19, means the county director or district director appointed pursuant to section 26-1-117.

(45) "Court", as used in part 3 of article 5 of this title 19, means any court of record with jurisdiction over the matter at issue.

(46) "Court-appointed special advocate" or "CASA volunteer" means a volunteer appointed by a court pursuant to part 2 of this article 1 to assist in advocacy for children.

(47) "Court-appointed special advocate program" or "CASA program" means a program established pursuant to part 2 of this article 1.

(48) "Criminal justice agency", as used in this section, has the same meaning as set forth in section 24-72-302 (3).

(49) "Custodial adoption", as used in part 2 of article 5 of this title 19, means an adoption of a child by any person and the person's spouse, as required pursuant to section 19-5-202 (3), who:

(a) Has been awarded custody or allocated parental responsibilities by a court of law in a dissolution of marriage, custody or allocation of parental responsibilities proceeding, or has been

awarded guardianship of the child by a court of law in a probate action, such as pursuant to part 2 of article 14 of title 15; and

(b) Has had physical custody of the child for a period of one year or more.

(50) "Custodian" means a person who has been providing shelter, food, clothing, and other care for a child in the same fashion as a parent would, whether or not by order of court.

(51) (a) (I) "Custodian of records", as used in sections 19-5-305 (2) and 19-5-305.5, means any of the following individuals or entities that have custody of records relating to the relinquishment or adoption of a child:

(A) A court;

(B) A state agency; or

(C) The legal agent or representative of any entity described in subsections (51)(a)(I)(A) and (51)(a)(I)(B) of this section.

(II) "Custodian of records", as used in sections 19-5-305 (2) and 19-5-305.5, does not include a licensed child placement agency.

(b) "Custodian of records", as used in section 19-5-109, means an entity that has custody of records relating to the relinquishment of a child, including a court, state agency, licensed child placement agency, maternity home, or the legal agent or representative of any such entity.

(52) "Delinquent act", as used in article 2.5 of this title 19, means a violation of any statute, ordinance, or order enumerated in section 19-2.5-103. If a juvenile is alleged to have committed or is found guilty of a delinquent act, the classification and degree of the offense is determined by the statute, ordinance, or order that the petition alleges was violated. "Delinquent act" does not include truancy or habitual truancy.

(53) "Department" or "state department" means the state department of human services created in section 24-1-120.

(53.5) "Dependent on the court" means a youth is under the juvenile court's jurisdiction; the youth was at any time adjudicated dependent or neglected, as described in section 19-3-102, or that the court has found sufficient evidence that the youth has been subjected to child abuse or neglect, as defined in subsection (1) of this section; and the youth is in need of oversight and supportive services as determined by the court.

(54) "Designated adoption" means an adoption in which:

(a) The birth parent or parents designate a specific applicant with whom they wish to place their child for purposes of adoption; and

(b) The anonymity requirements of section 19-1-309 are waived.

(55) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment. The placement of a juvenile in a state-owned psychiatric residential treatment facility, as defined in section 26-6-903, is not considered detention.

(55.5) "Diminished capacity" means a child or youth who lacks sufficient capacity to communicate or make considered decisions adequately in connection with the child's or youth's legal representation. Age or developmental maturity must not be the sole basis for a determination of diminished capacity.

(56) "Director", as used in article 2.5 of this title 19, is defined in section 19-2.5-102.

(57) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations.

(58) "Dispositional hearing" means a hearing to determine what order of disposition should be made concerning a child who is neglected or dependent. The hearing may be part of the proceeding that includes the adjudicatory hearing, or it may be held at a time subsequent to the adjudicatory hearing.

(59) "Diversion" has the same meaning as set forth in section 19-2.5-102.

(60) "Division of youth services" or "division" means the division of youth services, created in section 19-2.5-1501.

(61) "Donor", as used in article 4 of this title 19, means an individual who produces eggs or sperm used for an assisted reproductive procedure, whether or not for consideration. "Donor" does not include an intended parent pursuant to section 19-4-106 (1) or (5) or section 19-4.5-109 or a spouse or civil union partner who provides reproductive tissue to be used for an assisted reproductive procedure by the other spouse or civil union partner.

(61.5) "Effective communication" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended, and its related amendments and implementing regulations.

(62) "Executive director", as used in article 3.3 of this title 19 and part 3 of article 7 of this title 19, means the executive director of the department of human services.

(63) "Expungement", as used in section 19-1-306, means the designation of juvenile delinquency records whereby such records are deemed never to have existed.

(64) "Family child care home" means a family child care home licensed and approved pursuant to part 3 of article 5 of title 26.5. If the facility is located in another state, the department of early childhood shall designate, upon certification, that an appropriate available

space does not exist in a facility in this state. An out-of-state family child care home must be licensed or approved as required by law in that state.

(64.5) "Family time" means any form of contact or engagement between parents, legal custodians, guardians, siblings, and children or youth for the purposes of preserving and strengthening family ties.

(65) "Fire investigator" means a person who:

(a) Is an officer or member of a fire department, fire protection district, or firefighting agency of the state or any of its political subdivisions;

(b) Is engaged in conducting or is present for the purpose of engaging in the conduct of a fire investigation; and

(c) Is either a volunteer or is compensated for services rendered by the person.

(66) "Foster care" means the placement of a child or youth into the legal custody or legal authority of a county department of human or social services for physical placement of the child or youth in a kinship care placement; supervised independent living placement, as defined in section 19-7-302; or certified or licensed facility, or the physical placement of a juvenile committed to the custody of the state department of human services into a community placement.

(67) "Foster care home" means a foster care home certified pursuant to part 9 of article 6 of title 26.

(68) "Foster care prevention services" means mental health and substance abuse prevention and treatment services, in-home parent skill-based programs, kinship navigator programs, and other programs eligible for reimbursement under the federal "Family First Prevention Services Act" that are trauma-informed, promising, supported or well-supported, and provided to prevent foster care placement.

(69) "Governing body", as used in section 19-3-211, means the board of county commissioners of a county or the city council of a city and county.

(70) (a) "Grandparent" means a person who is the parent of a child's father or mother, who is related to the child by blood, in whole or by half, adoption, or marriage.

(b) Repealed.

(71) Repealed.

(72) "Grievance", as used in section 19-3-211, means a dispute between a complainant and a county department of human or social services concerning the conduct of county department personnel in performing their duties pursuant to article 3 of this title 19.

(73) "Group care facilities and homes" means places other than foster family care homes providing care for small groups of children. Group care facilities and homes are licensed as provided in part 9 of article 6 of title 26 or meet the requirements of section 25.5-10-214.

(74) "Guardian ad litem" means a person appointed by a court to act in the best interests of a person whom the person appointed is representing in proceedings pursuant to this title 19 and who, if appointed to represent a person in a dependency and neglect proceeding pursuant to article 3 of this title 19, must be an attorney-at-law licensed to practice in Colorado.

(75) "Guardianship of the person" means the duty and authority vested by court action to make major decisions affecting a child, including but not limited to:

(a) The authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;

(b) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;

(c) The authority to consent to the adoption of a child when the parent-child legal relationship has been terminated by judicial decree; and

(d) The rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.

(76) "Half-sibling" has the same meaning as set forth for "biological sibling" in subsection (16) of this section.

(77) "Human trafficking of a minor for involuntary servitude" means an act as described in section 18-3-503.

(78) "Human trafficking of a minor for sexual servitude" means an act as described in section 18-3-504 (2).

(79) "Identifying" means giving, sharing, or obtaining information.

(80) "Identifying information", as used in section 19-5-305 (3), means copies of any adoption records, as that term is defined in subsection (7) of this section, that are in the possession of the child placement agency. "Identifying information" also includes the name of the adoptee before placement in adoption; the name and address of each consenting birth parent as they appear in the birth records; the current name, address, and telephone number of the adult adoptee; and the current name, address, and telephone number of each consenting birth parent to the extent such information is available to the child placement agency.

(81) "Imminent placement out of the home", as used in section 19-1-116 (2), means that without intercession the child will be placed out of the home immediately.

(82) "Independent living" means a form of placement out of the home arranged and supervised by the county department of human or social services where the child is established in a living situation designed to promote and lead to the child's emancipation. Independent living must only follow some other form of placement out of the home.

(83) "Indian child" has the same meaning as set forth in section 19-1.2-103.

(84) "Indian child's tribe" has the meaning determined pursuant to section 19-1.2-108.

(85) "Indian tribe" has the same meaning as set forth in section 19-1.2-103.

(86) (a) "Institutional abuse", as used in part 3 of article 3 of this title 19, means a case of abuse, as defined in subsection (1) of this section, that occurs in a public or private facility in the state that provides child care out of the home, supervision, or maintenance. "Institutional abuse" includes an act or omission that threatens the life, health, or welfare of a child or a person who is younger than twenty-one years old who is under the continuing jurisdiction of the court pursuant to this title 19.

(b) "Institutional abuse" does not include abuse that occurs in a public, private, or parochial school system, including a preschool operated in connection with the school system; except that, to the extent the school system provides extended day services, abuse that occurs while the services are provided is institutional abuse.

(c) As used in this subsection (86), "facility" means a residential child care facility, specialized group facility, foster care home, or other facility licensed pursuant to part 9 of article 6 of title 26; a facility licensed pursuant to part 3 of article 5 of title 26.5; noncertified kinship care providers that provide care for children with an open child welfare case who are in the legal custody of a county department of human or social services; or a facility or community placement, as described in section 19-2.5-1502, for a juvenile committed to the custody of the department of human services. "Facility" does not include an adult detention or correctional facility.

(87) "Intrafamilial abuse", as used in part 3 of article 3 of this title 19, means any case of abuse, as defined in subsection (1) of this section, that occurs within a family context by a child's parent, stepparent, guardian, legal custodian, or relative; by a spousal equivalent, as defined in subsection (130) of this section; or by any other person who resides in the child's home or who is regularly in the child's home for the purpose of exercising authority over or care for the child; except that "intrafamilial abuse" does 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.

(88) "Juvenile" means a child as defined in subsection (21) of this section.

(89) "Juvenile court" or "court" means the juvenile court of the city and county of Denver or the juvenile division of the district court outside of the city and county of Denver.

(90) "Juvenile delinquent" has the same meaning as set forth in section 19-2.5-102.

(91) "Kin" may be a relative of the child, a person ascribed by the family as having a family-like relationship with the child, or a person who has a prior significant relationship with the child. These relationships take into account cultural values and continuity of significant relationships with the child.

(92) "Kinship adoption", as used in part 2 of article 5 of this title 19, means an adoption of a child by a relative of the child and such relative's spouse, as required pursuant to section 19-5-202 (3), who:

(a) Is either a grandparent, brother, sister, half-sibling, aunt, uncle, or first cousin; and

(b) Has had physical custody of the child for a period of one year or more and the child is not the subject of a pending dependency and neglect proceeding pursuant to article 3 of this title 19.

(92.5) "Language access" means services provided by a court, the state department, a county department of human or social services, a city and county, or a private-entity contractor in the person's primary language for a person with limited English proficiency.

(93) "Law enforcement officer" means a peace officer, as described in section 16-2.5-101.

(94) (a) "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. "Legal custody" may be taken from a parent only by court action.

(b) For purposes of determining the residence of a child as provided in section 22-1-102 (2)(b), guardianship is in the person to whom legal custody has been granted by the court.

(95) (a) "Legal representative", as used in sections 19-5-304 and 19-5-305, means the person designated by a court to act on behalf of any person described in section 19-5-304 (1)(b)(I) or 19-5-305 (2).

(b) For purposes of the term "legal representative", as used in sections 19-5-304 and 19-5-305 and as defined in subsection (95)(a) of this section, "legal guardian" does not include a governmental entity of any foreign country from which a child has been adopted or any representative of such governmental entity.

(95.5) "Limited English proficiency" means the limited ability to speak, read, write, or understand the English language for a person whose primary language is not English.

(96) "Local law enforcement agency", as used in part 3 of article 3 of this title 19, means a police department in incorporated municipalities or the office of the county sheriff.

(97) "Locating" means engaging in the process of searching for or seeking out.

(98) "Mental health professional" means a person licensed to practice medicine or psychology in this state or any person on the staff of a facility designated by the executive director of the department of human services for seventy-two-hour treatment and evaluation who is authorized by the facility to do mental or behavioral health hospital placement prescreenings, as defined in section 19-2.5-102, and who is under the supervision of a person licensed to practice medicine or psychology in this state.

(99) "Need to know", as used in section 19-1-303, means agencies or individuals who need access to certain information for the care, treatment, supervision, or protection of a child.

(100) (a) "Neglect", as used in part 3 of article 3 of this title 19, means acts that can reasonably be construed to fall under the definition of "child abuse or neglect" as defined in subsection (1) of this section.

(b) A child is not neglected when allowed to participate in independent activities that a reasonable and prudent parent, guardian, or legal custodian would consider safe given the child's maturity, condition, and abilities, including but not limited to activities such as:

(I) Traveling to and from school, including walking, running, bicycling, or other similar mode of travel;

(II) Traveling to and from nearby commercial or recreational facilities;

(III) Engaging in outdoor play; and

(IV) Remaining in a home or other location that a reasonable and prudent parent, guardian, or legal custodian would consider safe for the child.

(101) "Newborn child" means a child who is less than seventy-two hours old.

(102) "Noncertified kinship care" means a child is being cared for by a relative or kin who has a significant relationship with the child in circumstances when there is a safety concern by a county department of human or social services and where the relative or kin has not met the foster care certification requirements for a kinship foster care home or has chosen not to pursue that certification process.

(103) "Nonidentifying information", as used in part 4 of article 5 of this title 19, 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 that includes but is not limited to the following:

(a) The physical description of the birth parents;

(b) The educational background of the birth parents;

(c) The occupation of the birth parents;

(d) Genetic information about the birth family;

(e) Medical information about the adult adoptee's birth;

(f) Social information about the birth parents; and

(g) The placement history of the adoptee.

(104) "Nonpublic agency interstate and foreign adoption", as used in section 19-5-205.5, means an interstate or foreign adoption that is handled by a private, licensed child placement agency.

(105) (a) "Parent" means either a natural parent of a child, as may be established pursuant to article 4 of this title 19, or a parent by adoption.

(b) "Parent", as used in sections 19-1-114, 19-2.5-501, and 19-2.5-611, includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or a parent allocated parental responsibilities with respect to a child, or an adoptive parent. For the purposes of section 19-1-114, "parent" does not include a person whose parental rights have been terminated pursuant to the provisions of this title 19 or the parent of an emancipated minor.

(106) "Permanency hearing" means a hearing in which the permanency plan for a child in foster care is determined by the court.

(107) "Placement out of the home" means placement for twenty-four-hour residential care in any facility or center operated or licensed by the department of human services, but "placement out of the home" does not include any placement that is paid for totally by private money or any placement in a home for the purposes of adoption in accordance with section 19-5-205. "Placement out of the home" may be voluntary or court ordered. "Placement out of the home" includes independent living.

(108) (a) "Post-adoption record", as used in part 3 of article 5 of this title 19, means information contained in the files subsequent to the completion of an adoption proceeding.

(b) The post-adoption record may contain information concerning but not limited to:

(I) The written inquiries from persons requesting access to records;

(II) The search efforts of the confidential intermediary;

(III) The response, if any, to those search efforts by the persons sought;

(IV) Any updated medical information gathered pursuant to part 3 of article 5 of this title 19; and

(V) Any personal identifying information concerning any persons subject to part 3 of article 5 of this title 19.

(109) Repealed.

(110) "Protective supervision" means a legal status created by court order under which the child is permitted to remain in the child's home or is placed with a relative or other suitable person and supervision and assistance is provided by the court, department of human services, or other agency designated by the court.

(111) "Public adoption", as used in part 2 of article 5 of this title 19, means an adoption involving a child who is in the legal custody and guardianship of the county department of human or social services that has the right to consent to adoption for that child.

(112) "Qualified individual" means a trained professional or licensed clinician, as defined in the federal "Family First Prevention Services Act". "Qualified individual" must be approved to serve as a qualified individual according to the state plan. "Qualified individual" must not be an interested party or participant in the juvenile court proceeding and must be free of any personal or business relationship that would cause a conflict of interest in evaluating the child, juvenile, or youth and making recommendations concerning the child's, juvenile's, or youth's placement and therapeutic needs according to the federal Title IV-E state plan or any waiver in accordance with 42 U.S.C. sec. 675a.

(113) "Qualified residential treatment program" means a licensed and accredited program that has a trauma-informed treatment model that is designed to address the needs, including clinical needs, as appropriate, of children and youth with serious emotional or behavioral disorders or disturbances in accordance with the federal "Family First Prevention Services Act", 42 U.S.C. sec. 672 (k)(4), and is able to implement the treatment identified for the child or youth by the assessment of the child required in section 19-1-115 (4)(e)(I).

(114) "Reasonable efforts", as used in articles 1, 2.5, 3, and 7 of this title 19, means the exercise of diligence and care throughout the state of Colorado for children and youth who are in foster care or out-of-home placement or are at imminent risk of foster care or out-of-home placement. In determining whether it is appropriate to provide, purchase, or develop the supportive and rehabilitative services that are required to prevent unnecessary placement of a child or youth outside of a child's or youth's home or to foster the safe reunification of a child or youth with a child's or youth's family, as described in section 19-3-208, or whether it is appropriate to find and finalize an alternative permanent plan for a child or youth, and in making reasonable efforts, the child's or youth's health and safety are the paramount concern. Services provided by a county or city and county in accordance with section 19-3-208 are deemed to meet the reasonable effort standard described in this subsection (114). Nothing in this subsection (114) is construed to conflict with federal law.

(115) Repealed.

(116) "Record", as used in section 19-4-106 and section 19-4.5-108, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(117) "Register of actions" means those portions of the electronic case management system necessary to carry out a statutory purpose or the duties of a court appointment.

(118) "Repeat juvenile offender" is described in section 19-2.5-1125.

(119) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both, have been vested in another person, agency, or institution, including but not limited to the responsibility for support, the right to consent to adoption, the right to reasonable parenting time unless restricted by the court, and the right to determine the child's religious affiliation.

(120) "Responsible person", as used in part 3 of article 3 of this title 19, means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

(121) "Restorative justice" has the same meaning as set forth in section 19-2.5-102.

(122) "Reunited parties", as used in section 19-5-305, means any two persons who qualify as and meet any specified requirements for parties under the list of individuals in section 19-5-304 (1)(b)(I).

(123) "School", as used in sections 19-1-303 and 19-1-304, means a public or parochial or other nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one to twelve. "Basic academic education" has the same meaning as set forth in section 22-33-104 (2)(b).

(124) "Sexual assault", as used in sections 19-5-105, 19-5-105.5, and 19-5-105.7, means:

(a) "Sexual assault", as defined in section 18-3-402;

(b) "Sexual assault on a child", as defined in section 18-3-405;

(c) "Sexual assault on a child by one in a position of trust", as defined in section 18-3-405.3;

(d) "Sexual assault on a client by a psychotherapist", as defined in section 18-3-405.5; or

(e) "Unlawful sexual contact", as defined in section 18-3-404.

(125) "Sexual conduct", as used in section 19-3-304 (2.5), means any of the following:

(a) 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;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation; or

(d) Sexual sadomasochistic abuse.

(126) "Shelter" means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement.

(127) "Sibling group", as used in articles 3 and 5 of this title 19, means biological siblings.

(128) "Special county attorney", as used in article 3 of this title 19, means an attorney hired by a county attorney or city attorney of a city and county or hired by a county department of human or social services with the concurrence of the county attorney or city attorney of a city and county to prosecute dependency and neglect cases.

(128.5) "Special immigrant juvenile status findings" includes:

(a) Declaring the child dependent or placing the child in the custody of an individual, agency, or department as appointed by the court;

(b) Determining that reunification of the child with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found pursuant to state law. For purposes of this section, "abandonment" includes, but is not limited to, the death of one or both parents.

(c) Determining that it is not in the best interests of the child to be returned to the child's or parents' previous country of nationality or country of last habitual residence.

(129) "Special respondent", as used in article 3 of this title 19, means any person who is not a parent, guardian, or legal custodian and who is voluntarily or involuntarily joined in a dependency or neglect proceeding for the limited purposes of protective orders or inclusion in a treatment plan and for the grounds outlined in sections 19-3-502 (6) and 19-3-503 (4).

(130) "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.

(131) "Standardized behavioral or mental health disorder screening" means the behavioral or mental health disorder screening conducted using the juvenile standardized screening instruments and the procedures adopted pursuant to section 16-11.9-102.

(132) "State board", as used in part 3 of article 3 of this title 19, means the state board of human services.

(133) "State department", as used in section 19-3-211, part 3 of article 3 of this title 19, article 3.3 of this title 19, and part 3 of article 7 of this title 19, means the department of human services created in section 24-1-120.

(134) "State registrar" means the state registrar of vital statistics in the department of public health and environment.

(135) "Status offense" has the same meaning as is defined in federal law in 28 CFR 31.304, as amended.

(136) "Stepparent" means a person who is married to a parent of a child but who has not adopted the child.

(137) "Temporary holding facility" means an area used for the temporary holding of a child from the time that the child is taken into temporary custody until a detention hearing is held, if it has been determined that the child requires a staff-secure setting. Such an area must be separated by sight and sound from any area that houses adult offenders.

(138) "Temporary shelter" means the temporary placement of a child, as described in section 19-3-403.5, with kin, as defined in subsection (91) of this section; with an adult with a significant relationship with the child; or in a licensed and certified twenty-four-hour care facility.

(139) "Termination of the parent-child legal relationship", as used in articles 3 and 5 of this title 19, means the permanent elimination by court order of all parental rights and duties, including residual parental rights and responsibilities, as provided in section 19-3-608.

(140) "Third-party abuse", as used in part 3 of article 3 of this title 19, means a case in which a child is subjected to abuse, as defined in subsection (1) of this section, by any person who is not a parent; stepparent; guardian; legal custodian; spousal equivalent, as defined in subsection (130) of this section; or any other person not included in the definition of "intrafamilial abuse", as defined in subsection (87) of this section.

(141) "Trauma-informed" refers to the services to be provided to or on behalf of a child or youth under an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma in accordance with recognized principles of a trauma-informed approach and trauma-specific interventions to address trauma's consequences and facilitate healing.

(142) Repealed.

(143) "Updated medical history statement" means a written narrative statement dated and signed by a birth parent about the medical history of the birth parent or other biological relatives of the adoptee that can be voluntarily submitted by the birth parent to the state registrar for future disclosure to the birth parent's adult child who is an adult adoptee or an adult descendant of the adoptee or legal representative of such person in accordance with the provisions of section 19-5-305 (1.5).

(144) (a) "Victim", as used in this title 19 and except as provided in subsection (144)(b) of this section, has the same meaning as set forth in section 19-2.5-102.

(b) "Victim", as used in section 19-5-105.5, means any natural person against whom a crime of sexual assault or a crime in which the underlying factual basis was sexual assault is perpetrated or is alleged to have been perpetrated.

(145) "Youth" means an individual who is less than twenty-one years of age.

Source: L. 87: Entire title R&RE, p. 696, § 1, effective October 1. **L. 88:** (11.5) added, p. 748, § 1, effective March 18; (3) amended, p. 741, § 1, effective July 1; (3.5) added, p. 750, § 1, effective July 1. **L. 89:** (27) added, p. 926, § 1, effective April 23. **L. 90:** (9.5)(b) amended, p. 1011, § 3, effective July 1. **L. 91:** (12.5) added, p. 263, § 5, effective May 31. **L. 92:** (2.5) added, p. 220, § 2, effective July 1. **L. 93:** (22) amended, p. 1134, § 64, effective July 1, 1994. **L. 94:** (12.3) added, p. 910, § 5, effective April 28; (2.5), (5), (12), (20), and (23) amended, p. 2658, § 144, effective July 1. **L. 96:** Entire section R&RE, p. 68, § 1, effective March 20; (34.3) and (34.5) added, p. 1089, § 1, effective May 23; (49) amended and (51.5) added, p. 264, § 13, effective July 1; (66) amended, p. 265, § 15, effective July 1; (1)(b), (2), (12), (30), (36), (44), (45), (46), (47), (50), (52), (53), (61), (69), (82)(b), (83), (84), (88), (92), (95), (96), and (105) amended and (40.5), (94.5), and (101.5) added, p. 1684, § 12, effective January 1, 1997; (48) amended and (16.5) and (77.5) added, p. 1174, § 10, effective January 1, 1997; (112) added, p. 1783, § 12, effective January 1, 1997. **L. 97:** (1), (23), (25), and (57) amended, p. 1431, § 6, effective July 1; (8) and (37) amended and (61.5) added, p. 1167, § 14, effective July 1; (32)(a) amended, p. 150, § 2, effective July 1. **L. 98:** (51.3) added and (89) amended, p. 1417, § 2, effective July 1; (82)(b) amended, p. 1404, § 60, effective February 1, 1999. **L. 99:** (87.5) added, p. 1025, § 6, effective May 29; (34.7) and (71.5) added and (107) amended, pp. 1061, 1062, §§ 1, 2, effective June 1; (6.5), (28.5), (63.5), and (85.5) added and (28) amended, p. 1129, § 1, effective July 1; (24.5) added, p. 908, § 2, effective July 1; (112) amended, p. 624, § 21, effective August 4. **L. 2000:** (10.5), (34.6), and (94.3) added, p. 320, § 7, effective April 7; (29.5) added, p. 1723, § 6, effective June 1; (94.3) added, p. 1965, § 9, effective June 2; (14) and (32)(a) amended and (98.5) added, p. 474, § 1, effective July 1; (28.5) and (63.5) amended and (73.5) and (94.2) added, p. 1367, § 1, effective July 1. **L. 2001:** (5) and (89) amended and (83.5) added, p. 841, § 2, effective June 1; (1)(b) and (27) amended, p. 853, § 1, effective July 1. **L. 2002:** (1)(a)(II) amended, p. 568, § 1, effective May 24; (76) and (77) amended and (101.7) added, p. 574, § 4, effective May 24; (65.3), (65.5), and (65.7) added, p. 783, § 2, effective May 30; (1)(a)(II) amended, p. 1192, § 43, effective July 1; (1)(a)(II) amended, p. 1592, § 29, effective July 1. **L. 2003:** (48) amended, p. 1991, § 32, effective May 22; (1)(a) amended, p. 819, § 1, effective July 1; (44.5) and (91.5) added, p. 1266, § 54, effective July 1; (1)(b) and (72) amended, pp. 1622, 1619, §§ 36, 28, effective August 6; (29.5) repealed, p. 1401, § 5, effective January 1, 2004. **L. 2004:** (19.5) added, p. 807, § 2, effective May 21; (78.5) added, p. 430, § 3, effective July 1. **L. 2005:** (1)(a)(VII) added, p. 587, § 1, effective July 1; (6.7), (28.6), (28.7), (103.5), and (111.5) added and (9) and (13) amended, p. 991, § 3, effective July 1. **L. 2006:** (103.7) added and (106) amended, p. 256, § 1, effective March 31; (51.3) amended, p. 507, § 1,

effective April 18. **L. 2007:** (30) amended, p. 1506, § 2, effective May 31. **L. 2008:** (44) amended and (94.1) added, p. 225, § 1, effective March 31; (31.5) and (91.7) added, p. 1241, § 2, effective August 5. **L. 2010:** (76) amended, (SB 10-175), ch. 188, p. 788, § 36, effective April 29; (32) and (103) amended and (47.5) added, (SB 10-171), ch. 225, p. 981, § 2, effective May 14; (22) amended, (HB 10-1422), ch. 419, p. 2074, § 34, effective August 11. **L. 2011:** (44) amended, (HB 11-1032), ch. 296, p. 1404, § 9, effective August 10. **L. 2013:** (29.3) and (96.5) added and (112) amended, (SB 13-227), ch. 353, p. 2056, § 1, effective July 1; (44) amended, (HB 13-1254), ch. 341, p. 1982, § 3, effective August 7; (58) amended, (HB 13-1314), ch. 323, p. 1804, § 31, effective March 1, 2014. **L. 2014:** (56.5) added, (HB 14-1362), ch. 374, p. 1787, § 1, effective June 6; (28.7) amended and (35.3) added, (SB 14-051), ch. 260, p. 1047, § 2, effective July 1; IP(96.5) amended, (HB 14-1162), ch. 167, p. 594, § 9, effective July 1; (35.3) added, (HB 14-1042), ch. 261, p. 1050, § 1, effective August 6. **L. 2015:** IP(6.5)(a) and (6.5)(b) amended and (6.5)(a.5) added, (HB 15-1106), ch. 59, p. 141, § 1, effective March 30; (32) amended and (71.3) and (78.7) added, (SB 15-087), ch. 263, p. 1011, § 7, effective June 2; (35.3)(a) amended, (HB 15-1355), ch. 311, p. 1275, § 4, effective June 5. **L. 2016:** (32)(b) amended, (HB 16-1316), ch. 127, p. 363, § 2, effective August 10; (1)(a)(VIII) and (23.5) added, (HB 16-1224), ch. 101, p. 290, § 1, effective January 1, 2017. **L. 2017:** IP and (101.7) amended, (SB 17-242), ch. 263, p. 1309, § 148, effective May 25; IP and (69) amended and (113) added, (HB 17-1329), ch. 381, pp. 1972, 1962, §§ 27, 3, effective June 6; IP and (100) amended, (SB 17-177), ch. 118, p. 418, § 1, effective August 9. **L. 2018:** (34.7) amended and (34.8) and (44.7) added, (SB 18-154), ch. 161, p. 1123, § 1, effective April 25; (42.5) added, (HB 18-1104), ch. 164, p. 1134, § 4, effective April 25; (66) amended, (HB 18-1346), ch. 326, p. 1964, § 2, effective May 30; (36) amended, (HB 18-1156), ch. 378, p. 2288, § 6, effective August 8; (51.3), (65), (69), (87.5), and (99) amended, (SB 18-092), ch. 38, p. 406, § 28, effective August 8. **L. 2019:** IP(1)(a), (1)(a)(VIII), and (23.5) amended and (62.5) and (62.6) added, (SB 19-185), ch. 147, p. 1765, § 2, effective May 6; (44) and (94.1) amended and (106.5) added, (SB 19-108), ch. 294, p. 2694, § 2, effective July 1; (51.7), (87.7), (87.9), and (109.5) added, (HB 19-1308), ch. 256, p. 2458, § 3, effective August 2; (98.5) amended, (HB 19-1288), ch. 216, p. 2234, § 1, effective August 2. **L. 2020:** (1)(a)(VII) amended, (SB 20-028), ch. 186, p. 853, § 4, effective June 30; (87.9) amended, (HB 20-1402), ch. 216, p. 1048, § 33, effective June 30; (71.3) and (87.7) amended, (SB 20-162), ch. 221, p. 1087, § 2, effective July 2. **L. 2021:** (116) amended, (HB 21-1022), ch. 103, p. 417, § 2, effective May 6; (43), (62), (66), (114), and (133) amended, (HB 21-1094), ch. 340, p. 2214, § 2, effective June 25; (47) repealed, (HB 21-1315), ch. 461, p. 3113, § 17, effective July 6; (18), (115), and (142) amended, (HB 21-1248), ch. 335, p. 2167, § 3, effective September 7; entire section R&RE, (SB 21-059), ch. 136, p. 753, § 144, effective October 1. **L. 2022:** (138) amended, (HB 22-1056), ch. 383, p. 2741, § 4, effective June 7; (18), (22), (109), (115), and (142) repealed and (24), (64), (67), (73), and (86) amended, (HB 22-1295), ch. 123, p. 829, § 34, effective July 1; (7)(c) and (80) amended, (SB 22-212), ch. 421, p. 2970, § 32, effective August 10; (53.5) added, (HB 22-1245), ch. 88, p. 417, § 1, effective August 10; (61) amended, (HB 22-1153), ch. 210, p. 1388, § 2, effective August 10; (100)

amended, (HB 22-1090), ch. 52, p. 248, § 1, effective August 10; (26) amended and (41.5) and (55.5) added, (HB 22-1038), ch. 92, p. 431, § 4, effective January 9, 2023. **L. 2023:** (27) repealed, (SB 23-210), ch. 251, p. 1432, § 15, effective May 24; (64.5) added, (HB 23-1027), ch. 284, p. 1677, § 2, effective June 1; (70)(b) and (71) repealed, (HB 23-1026), ch. 243, p. 1307, § 6, effective August 7. **L. 2024:** (61.5), (92.5), and (95.5) added, (HB 24-1031), ch. 327, p. 2213, § 1, effective August 7; (128.5) added, (SB 24-119), ch. 33, p. 103, § 3, effective August 7. **L. 2025:** (55) amended, (HB 25-1172), ch. 155, p. 627, § 1, effective August 6; (83), (84), and (85) amended, (HB 25-1204), ch. 338, p. 1816, § 4, effective August 6. **L. 2026:** (86) amended, (HB 26-1259), ch. 119, p. 509, § 14, effective May 5; (23) amended, (HB 26-1142), ch. 44, p. 203, § 3, effective August 12.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section in House Bill 96-1006 and House Bill 96-1019 were harmonized. Subsection (66) was originally numbered as section 19-3-303 (4.5), and the amendments to it in House Bill 96-1006 were harmonized with subsection (66) as it appears in this section.

(3) Amendments to subsection (94.3) by House Bill 00-1119 and Senate Bill 00-133 were harmonized.

(4) Amendments to subsection (35.3) by SB 14-051 and HB 14-1042 were harmonized.

(5) Subsection (28.7)(b)(II) provided for the repeal of subsection (28.7)(b), effective January 1, 2016. (See L. 2014, p. 1047.)

(6) Subsection (18) was numbered as § 19-1-103 (16) in HB 21-1248 (see L. 2021, p. 2167). That provision was harmonized with subsection (18) of this section as it appears in SB 21-059.

(7) Subsection (43)(a) was numbered as § 19-1-103 (32)(a) in HB 21-1094 (see L. 2021, p. 2214). That provision was harmonized with subsection (43)(a) of this section as it appears in SB 21-059.

(8) Subsection (47) was repealed in HB 21-1315. Those amendments were superseded by the repeal and reenactment of this section in SB 21-059, effective October 1, 2021.

(9) Subsection (62) was numbered as § 19-1-103 (47.5) in HB 21-1094 (see L. 2021, p. 2214). That provision was harmonized with subsection (62) of this section as it appears in SB 21-059.

(10) Subsection (66) was numbered as § 19-1-103 (51.3) in HB 21-1094 (see L. 2021, p. 2214). That provision was harmonized with subsection (66) of this section as it appears in SB 21-059.

(11) Subsection (114) was numbered as § 19-1-103 (89) in HB 21-1094 (see L. 2021, p. 2214). That provision was harmonized with subsection (114) of this section as it appears in SB 21-059.

(12) Subsection (115) was numbered as § 19-1-103 (91) in HB 21-1248 (see L. 2021, p. 2167). That provision was harmonized with subsection (115) of this section as it appears in SB 21-059.

(13) Subsection (116) was numbered as § 19-1-103 (91.5) in HB 21-1022 (see L. 2021, p. 417). That provision was harmonized with subsection (116) of this section as it appears in SB 21-059.

(14) Subsection (133) was numbered as § 19-1-103 (103) in HB 21-1094 (see L. 2021, p. 2215). That provision was harmonized with subsection (133) of this section as it appears in SB 21-059.

(15) Subsection (142) was numbered as § 19-1-103 (110) in HB 21-1248 (see L. 2021, p. 2167). That provision was harmonized with subsection (142) of this section as it appears in SB 21-059.

Cross references: (1) For the legislative declaration contained in the 1999 act enacting subsection (24.5), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2001 act amending subsections (5) and (89) and enacting subsection (83.5), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2002 act enacting subsections (65.3), (65.5), and (65.7), see section 1 of chapter 217, Session Laws of Colorado 2002. For the legislative declaration contained in the 2003 act repealing subsection (29.5), see section 1 of chapter 196, Session Laws of Colorado 2003. For the legislative declaration contained in the 2004 act enacting subsection (78.5), see section 1 of chapter 140, Session Laws of Colorado 2004. For the legislative declaration contained in the 2007 act amending subsection (30), see section 1 of chapter 351, Session Laws of Colorado 2007. For the short title ("Heritage Act") and the legislative declaration in HB 15-1355, see section 1 of chapter 311, Session Laws of Colorado 2015. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 18-1156, see section 1 of chapter 378, Session Laws of Colorado 2018. For the legislative declaration in SB 19-185, see section 1 of chapter 147, Session Laws of Colorado 2019. For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023. For the legislative declaration in HB 26-1142, see section 2 of chapter 44, Session Laws of Colorado 2026.

(2) For the "Family First Prevention Services Act", see Pub.L. 115-123.

(3) For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of Colorado 2023. For the short title ("Colorado Child Advocacy Center Act") in HB 26-1142, see section 1 of chapter 44, Session Laws of Colorado 2026.

ANNOTATION

I. General Consideration.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Towards a More Practical Central Registry", see 51 Den. L.J. 509 (1974). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989). For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (Aug. 2004). For article, "Family Law and Juvenile Delinquency", see 37 Colo. Law. 61 (Oct. 2008). For comment, "People ex rel. K.C. V. K.C.: ICWA Is for All Native Children", see 100 Denv. L. Rev. 465 (2023). For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023).

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

Section not unconstitutionally vague. This section is not so vague and uncertain that it fails to meet the constitutional requirements for statutory definiteness. People in Interest of D.A.K., 198 Colo. 11, 596 P.2d 747 (1979).

Parent-child relationship constitutionally protected. The parent-child relationship finds protection in both the due process and equal protection clauses of the fourteenth amendment, and parents have a fundamental interest in maintaining this legal relationship with their natural children. Termination of the parent-child relationship divests the parent and the child of all legal rights and obligations with respect to each other. For this reason, the power of the state to sever parental ties should be exercised with extreme caution. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Proceedings under this title are not criminal or penal, but protective, and, in so far as may be, those in charge of prosecution should not make use of instrumentalities or terms that are peculiarly adapted to prosecutions for misdemeanors or crimes as such. Kahm v. People, 83 Colo. 300, 264 P. 718 (1928).

Guardian includes persons vested by court action with duty and authority to make major decisions affecting a child. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

Colorado Children's Code does not supply definition of "interested party". In

re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Legal custodian is an interested party to delinquency action. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

Child's legal custodian stands in loco parentis to child, and is one who assumes the status and obligations of a parent without the formality of an adoption proceeding. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

Termination of loco parentis status. One standing in loco parentis may at his election be relieved of that status and the attendant obligations at any time upon petition to the court. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

"Termination" of the parent-child legal relationship includes the elimination of any right of continued visitation between parent and child, including such rights provided in a court order. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Fact that state department of institutions was vested with right to control an individual incident to its legal custody of that person is not per se determinative of the question of whether the person was a member of his father's household for purposes of the "family car doctrine". Hasegawa v. Day, 684 P.2d 936 (Colo. App. 1983), rev'd on other grounds sub nom. Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992).

"Order". This section does not define "order" as that word is used in § 19-2-103 (6)(a). However, court order has been broadly defined in case law as any direction of a court not contained or included in a judgment. Hence, a directive issued by a juvenile court judge to a director of a juvenile detention center and warden of a county jail defining standards for placing a juvenile in the county jail was an order satisfying the requirements of § 19-2-103 (6)(a). C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

For case construing "child in need of supervision", see People in Interest of D.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Petition in dependency cannot be converted into adoption proceeding, and legal custody, unlike adoption, is not meant to create a permanent status. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

"Juvenile court" or "court", as defined in former subsection (17) (now subsection (70)) of this section, means juvenile court of Denver or the juvenile division of any district court outside of Denver and does not include municipal courts. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

In a dispute between parents, the factors enumerated in § 14-10-124 (1.5) may be considered in determining the best interests of the child. People in Interest of A.A.G., 902 P.2d 437 (Colo. App. 1995), aff'd in part, rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

"Physical custodian" is only responsible for meeting a child's needs, unlike a legal custodian who stands in loco parentis to a child. People v. Legler, 969 P.2d 691 (Colo. 1998).

Person not a custodian who has not been providing shelter, food, clothing, or care for the juvenile at the time of the arrest, has not seen or heard from the juvenile in over two months, and has refused to allow juvenile to return to her home. People v. Legler, 969 P.2d 691 (Colo. 1998).

Questions concerning a child's health and safety are purview of trial court, which retains ultimate decision-making authority in the case. The trial court itself must make decisions regarding visitation and may not delegate this function to third parties. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

Applied in People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979); People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979); People v. L.A., 199 Colo. 390, 609 P.2d 116 (1980); People in Interest of G.L., 631 P.2d 1118 (Colo. 1981); People v. R.V., 635 P.2d 892 (Colo. 1981); Hesseltine v. United States, 538 F. Supp. 1003 (D. Colo. 1982); People v. Mann, 646 P.2d 352 (Colo. 1982); McCall v. Dist. Court ex rel. County of Montezuma, 651 P.2d 392 (Colo. 1982); J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982); People in Interest C.A.K., 652 P.2d 603 (Colo. 1982); People in Interest of O.E.P., 654 P.2d 312 (Colo. 1982); People in Interest of C.R.B., 662 P.2d 198 (Colo. App. 1983); City & County of Denver v. Dist. Court, 675 P.2d 312 (Colo. 1984); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

II. SPECIFIC DEFINITIONS.

A. Abuse.

B. Adjudication.

C. Appropriate Treatment Plan.

D. Child.

E. Delinquent Child.

F. Dependency.

G. Emancipated Juvenile.

H. Grandparent.

I. Guardian Ad Litem.

J. Independent Living.

K. Placement Out of the Home.

A. Abuse.

The purpose behind the definition of abuse in the reporting section is to encourage persons to report any suspected child abuse. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

And it is thus much more liberal than a definition of abuse which would be used to support an adjudication that a child is neglected or dependent. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

The applicability of the definition of "abuse" is limited to the statutory provisions on reporting child abuse. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

For a finding of institutional neglect or abuse under subsection (1)(a)(III), child abuse or neglect can be found when one has failed to act as a "prudent parent" would under the circumstances. In applying the "prudent parent" standard, it is improper to consider the adult's status as a licensed child care provider under the circumstances in the

analysis. Ansel v. State Dept. of Human Servs., 2020 COA 172M, 480 P.3d 758.

Question of fact. Where, in a neglect or dependency proceeding, it is shown that a child has sustained a nonaccidental injury resulting from an instance of parent-administered corporal punishment, the reasonableness of that punishment is a question to be decided by the trier of fact. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

Where instruction on definition of abuse improper. Where it is contended that the child is dependent or neglected because of injuries resulting from the intentional infliction of corporal punishment, an instruction on the definition of "abuse" in this section is improper because it includes both unexplained and nonaccidental injury, and such an instruction would tend only to confuse the jury. People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976).

Where no evidence was presented that child suffered bruising and child could not be ruled to have become a child in need of services as a result of subject's actions of requiring the child, a resident at an institution for juvenile offenders, to remove his clothing as punishment for his disruptive actions, subject's actions cannot be described as child abuse. Wilson v. State Dept. of Human Servs., 969 P.2d 770 (Colo. App. 1998).

Where evidence showed that mother allowed the six-year-old child to go on a 26-day road trip with stepfather and allowed the stepfather to spank the child during that road trip and at home, which spankings became increasingly severe, evidence was sufficient to support jury finding that the child was dependent and neglected. People ex rel. of E.S., 49 P.3d 1221 (Colo. App. 2002).

Applied in People v. Jennings, 641 P.2d 276 (Colo. 1982).

B. Adjudication.

Definition of "adjudication" specifically requires that the juvenile has committed a delinquent act or that the juvenile has pled guilty to committing a delinquent act. Gilmore v. Concerned Parents of Pueblo, 28 P.3d 963 (Colo. App. 2000), aff'd on other grounds, 47 P.3d 311 (Colo. 2002).

C. Appropriate Treatment Plan.

The appropriateness of a treatment plan must be measured by its likelihood of success in reuniting the family and must be assessed in light of the facts existing at the time of its adoption. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986); People in Interest of R.J.A., 994 P.2d 470 (Colo. App. 1999); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002); People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

It is because it is the parent's responsibility to assure compliance with and success of a treatment plan that the appropriateness of a treatment plan is not nullified by its ultimate failure to rehabilitate a parent. People in the Interest of A.H., 736 P.2d 425 (Colo. App. 1987); People in Interest of R.J.A., 994 P.2d 470 (Colo. App. 1999); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002).

The purpose of a treatment plan is to preserve the parent-child legal relationship by assisting the parent in overcoming the problems that required intervention into the family. People ex rel. D.G., 140 P.3d 299 (Colo. App. 2006).

Sex offender evaluation and treatment is inconsistent with the purposes of the Colorado Children's Code. A juvenile court overseeing a dependency and neglect case may not require a parent to complete sex offender evaluation and treatment if the parent objects and has not been convicted of a qualifying sex offense. People in Interest of M.W., 2022 COA 72, 518 P.3d 1132.

D. Child.

Definition of "child" to include unborn child is constitutional. Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936).

It is liberally construed. The definition of a "child" as a person under 18 years of age unless the context otherwise requires manifests the intention of the general assembly that the word should be construed liberally to aid in implementing the purposes of the Colorado Children's Code. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

"Child" includes human being during pregnancy. No violence is done to the orderly process of the rational mind by letting the word "child" include a human being immediately upon conception and during the period of pregnancy, as well as one actually born. Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936).

The welfare of a child is well-served by proper care during pregnancy. The general assembly violates no constitutional principle by providing that "child" should include a human being upon conception and during pregnancy, as well as one actually born. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

Otherwise, father could evade support responsibility by leaving state. To construe "child" so as to exclude an unborn child would permit the father of an unborn child to evade his responsibility for support by leaving the state at any time prior to the birth of the child. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

The Colorado Children's Code defines a "child" as a person under 18 years of age and therefore does not include an "unborn child". When the general assembly amended the definition of child in 1967 and removed the reference to an unborn child, the intent was to change the law and no longer subject an unborn child to the provisions of the Children's Code. People ex rel. H., 74 P.3d 494 (Colo. App. 2003).

Defendant becoming 18 before trial included. The juvenile court's exclusive original jurisdiction continued regardless of the fact that at least one defendant reached his eighteenth birthday before trial. Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

Age at which acts are committed is determinative factor as to the

applicability of the Colorado Children's Code. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989).

Duty of parent to support until 21 years or emancipation not abrogated. There is no general mandate in subsection (3) of this section, as it existed prior to 1987, or § 19-7-101 (2) or § 13-22-101 which abrogates the duty of support a parent has toward his minor child until the age of 21 or emancipation. In re Weaver, 398 Colo. App. 523, 571 P.2d 307 (1977).

Applied in People ex rel. Rodello v. Dist. Court, 164 Colo. 530, 436 P.2d 672 (1968); Jaramillo v. Dist. Court, 173 Colo. 459, 480 P.2d 841 (1971).

E. Delinquent Child.

By its definition of a "delinquent child" the general assembly includes, in its first two categories, only those children who commit acts which, if they were adults, would constitute commission of either a felony or a major misdemeanor. The act of violating a child in need of supervision probation is not remotely comparable to those set forth in the statute. People in Interest of D.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

A delinquent child is defined as one under 18 but over 10, who violates a state law, excepting state traffic laws. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

Juvenile charged under municipal shoplifting ordinance not "delinquent child". A juvenile who could have been charged under the general theft statute but is only charged under a municipal shoplifting ordinance carrying no jail sentence is not a delinquent child and the juvenile court does not have sole and exclusive jurisdiction. Wigent v. Shinsato, 43 Colo. App. 83, 601 P.2d 653 (1979).

Age of no criminal responsibility for felony raised to 14. Though the Colorado Children's Code may not in so many words raise the age below which there can be no criminal responsibility as concerns a felony from 10 to 14 years, that is exactly what it did. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967).

Child may be directly prosecuted for violation of traffic law. One under 18 who violates a traffic law is not, under the definition of the Colorado Children's Code, a delinquent child, and is therefore not subject to the original exclusive jurisdiction of the juvenile court in delinquency proceedings, and may be directly prosecuted for a violation of a state traffic law. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

However, the Colorado Children's Code contains no limitation on the authority of the juvenile court to consider traffic charges when coupled with other misdemeanor or felony charges committed as a part of the same act or series of acts and thus charges were subject to the compulsory joinder statute, § 18-1-408 (2). Marquez v. County Court, 719 P.2d 737 (Colo. App. 1986).

But vehicular homicide is not a violation of traffic law as that phrase is used in the Colorado Children's Code, but is a form of homicide constituting a felony

when committed by an adult. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

County court may sentence minor to jail term for traffic offense. When a minor is convicted of a traffic offense in a county court which has jurisdiction over that minor, the Colorado Children's Code does not prohibit the court from sentencing the minor to serve a term in the county jail. Villareal v. Lopez, 44 Colo. App. 555, 619 P.2d 86 (1980).

The act of entering into a marriage contract regardless of age is not one of the statutory acts of delinquency. Spencer v. People in Interest of Spencer, 133 Colo. 196, 292 P.2d 971 (1956).

Delinquency provisions formerly excluded crimes "punishable by death or life imprisonment" which were held not to embrace offenses which have a sentence of less than life imprisonment as a minimum and a maximum of either life imprisonment or death. Jaramillo v. Dist. Court, 173 Colo. 459, 480 P.2d 841 (1971); Vigil v. People, 174 Colo. 394, 484 P.2d 105 (1971); Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

Applied in John Doe v. People, 156 Colo. 311, 398 P.2d 624 (1965); People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980).

F. Dependency.

"Abuse". The term "abuse" must be liberally construed to carry out the declared purpose of neglect and dependency proceedings. People in Interest of D.A.K., 198 Colo. 11, 596 P.2d 747 (1979).

An ordinarily reasonable parent can understand what it means to "abuse" and "mistreat" a child. Fundamental fairness does not require a statute to enumerate in all-encompassing examples, or exactly described acts, precisely how poorly a parent can treat a child before risking loss of parental rights. People in Interest of D.A.K., 198 Colo. 11, 596 P.2d 747 (1979).

The terms of subsection (1)(b) of this section, although general in nature, are sufficiently precise to permit persons of common intelligence to understand their meaning, and are not void for vagueness under the due process requirements of the Colorado Constitution. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

Purpose of adjudicatory hearing. An adjudicatory hearing on dependency or neglect is designed to determine whether the child, for whatever reason, lacks the benefit of parental guidance, concern, protection or support to which he is entitled. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Determination proceeding is civil in nature. A proceeding to determine whether a child is dependent or neglected is civil in nature. People in Interest of D.A.K., 198 Colo. 11, 596 P.2d 747 (1979).

And child is entitled to support until 18. Under the provisions concerning dependent and neglected children, there is a continuing liability upon the father of a legitimate, or illegitimate child, to provide reasonable support commensurate with the need of the child and the ability of the father until said child has attained the age of 18

years. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

Dependent child becomes ward of state. This section defines dependent and neglected children, and a child under the age of 18 years that falls within the classification of a dependent or neglected child becomes a ward of the state and the state can intervene. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

"Legal custodian" does not encompass a state agency or employee thereof to which a delinquent child has been committed. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Care is preferably in child's own home. A neglected and dependent child's care and guidance should be preferably in his own home, so as to preserve and strengthen family ties. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Absent a showing of a causal relationship between an environment and a serious threat to the emotional or physical stability of the child, public policy requires that the care and guidance of each child should remain with his parents and in his own home. People in Interest of D.L.R., 44 Colo. App. 327, 618 P.2d 687 (Colo. 1980), rev'd on other grounds, 638 P.2d 39 (Colo. 1981).

Removal only where child's welfare and safety and protection of public endangered. The court should not remove a neglected and dependent child from the custody of his parents except when his welfare and safety or the protection of the public would be endangered. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Upon determination that conditions will continue in future. To determine that the best interests and welfare of a dependent or neglected child would be served by a termination of parental rights, the trial court must find that the condition which resulted in the determination that the child is dependent and neglected will in all probability continue into the future. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Showing of prospective harm suffices. Former subsection (20) (now subsection (1)) can be satisfied upon a proper showing of prospective harm to the child. People in Interest of D.L.R., 638 P.2d 39 (Colo. 1981).

The rule of statutory construction of § 2-4-104 which states that words in the present tense include the future tense requires that former subsection (20) be interpreted to read "who lacks or will lack proper parental care." People in the Interest of D.L.R., 638 P.2d 39 (Colo. 1981).

Abuse of siblings may be considered in determining dependency and neglect. In determining the dependency and neglect of a child, evidence that his siblings have been abused may be considered by the trial court as probative of whether the nonabused child lacks proper parental care. People in Interest of B.W., 626 P.2d 742 (Colo. App. 1981).

While a parent's treatment of one child may be considered in determining whether another child is dependent or neglected, consideration of the individual needs, strengths, and weaknesses of each child and

each parent is also probative. People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

And court must evaluate disabled parent's capabilities and contributions. The court must evaluate a disabled parent's actual and potential physical capabilities, his adaptation to the disability, how other members of the family have adjusted to the disability, and the special contributions the person may make to the family. The paramount consideration in this type of proceeding is the best interests of the child. People in Interest of B.W., 626 P.2d 742 (Colo. App. 1981).

Court must find that under no reasonable circumstances can welfare of child be served by continuation of parent-child relationship. This test requires the court to explore and specifically eliminate alternative remedies. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

But termination of parental rights is not mandatory. Although the evidence may be sufficient to support a finding of neglect and dependency and may require termination of parental rights in order to serve the best interests of the child, it does not follow that the court must terminate parental rights because the evidence is sufficient to support a finding of neglect and dependency. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

Insufficient findings and conclusions. Findings and conclusions of the referee that the father failed without cause to provide reasonable support for his daughter and that the child's best interests dictated that his parental rights be terminated did not satisfy the prerequisites of subsection (20) and fell short of the required finding of a history of severe and continuous neglect, conclusion that there exists a substantial probability of future deprivation, and determination that under no reasonable circumstances could the child's welfare be served by a continuation of her relationship with her father. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Loss of physical custody pursuant to marriage dissolution may terminate custodial duties. A person who initiates a dependency or neglect action and obtains legal custody of a child need not continue to serve as legal custodian and provide support after losing physical custody of the child in a dissolution of marriage action. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

However, a person who undertakes a permanent obligation pursuant to a parental responsibility order under § 14-10-123 owes a duty of support to the child in a dissolution of marriage proceeding, and trial court has authority to enter a child support order pursuant to § 14-10-115 (1) and (17). In re Rodrick, 176 P.3d 806 (Colo. App. 2007).

Child was not "dependent child". Snyder v. Schmoyer, 106 Colo. 290, 104 P.2d 612 (1940).

Applied in Bd. of Control v. Mulertz, 60 Colo. 468, 154 P. 742 (1916); Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955); Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

G. Emancipated Juvenile.

Trial court properly applied the definition of "emancipated juvenile" in finding that the juvenile was emancipated. The trial court appropriately found that the juvenile was emancipated where the juvenile had been on his own for three months and had not been receiving financial support from his mother. People v. Lucas, 992 P.2d 619 (Colo. App. 1999).

H. Grandparent.

Exclusion from "grandparent" definition refers to all orders of termination, including those entered in dependency and neglect proceedings. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997); People in Interest of C.N., 2018 COA 165, 431 P.3d 1219.

"Great-grandmother" does not fall within the definition of "grandparent", therefore, great-grandmother lacked standing to seek visitation under § 19-1-117. In re M.D.E., 2013 COA 13, 297 P.3d 1058.

I. Guardian Ad Litem.

Law reviews. For casenote, "A Colorado Child's Best Interests: Examining the Gabriesheski Decision and Future Policy Implications", see 85 U. Colo. L. Rev. 537 (2014).

Guardian ad litem may make recommendations to trial court by presenting opinions based upon an independent investigation or by advocating a specific result based upon the evidence. People in Interest of J.E.B., 854 P.2d 1372 (Colo. App. 1993); People in the Matter of A.L.B., 994 P.2d 476 (Colo. App. 1999).

J. Independent Living.

Placement with a natural parent does not qualify as "independent living" within the meaning of subsection (65). People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

K. Placement Out of the Home.

A natural parent does not constitute a "facility or center operated or licensed by the department of human services" for purposes of subsection (85). People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

19-1-103.5. Other definitions. (Repealed)

Source: L. 96: Entire section added, p. 82, § 2, effective July 1. **L. 97:** Entire section repealed, p. 1031, § 67, effective August 6.

19-1-104. Jurisdiction.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings:

(a) Concerning any child committing a delinquent act, as defined in section 19-2.5-102;

(b) Concerning any child who is neglected or dependent, as set forth in section 19-3-102;

(c) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the juvenile court's jurisdiction under provisions of this section, and may also enter findings and orders as described in section 14-10-123 (1.5) and section 15-14-204 (2.5);

(d) To terminate the legal parent-child relationship;

(e) For the issuance of orders of support under article 6 of this title;

(f) To determine the parentage of a child and to make an order of support in connection therewith;

(g) For the adoption of a person of any age;

(h) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law;

(i) For the treatment or commitment pursuant to article 23 of title 17 and part 2 of article 10 of title 25.5 of a child who has a behavioral or mental health disorder or an intellectual and developmental disability and who comes within the court's jurisdiction under other provisions of this section;

(j) Under the interstate compact on juveniles, part 7 of article 60 of title 24, C.R.S.;

(k) To make a determination concerning a petition filed pursuant to the "School Attendance Law of 1963", article 33 of title 22, C.R.S., and to enforce any lawful order of court made thereunder;

(l) To make a determination concerning a petition for review of need for placement in accordance with the provisions of section 19-1-115 (8);

(m) To decide the appeal of any child found to be in contempt of a municipal court located within the jurisdiction of the juvenile court, if confinement of the child is ordered by the municipal court;

(n) Concerning any youth who is voluntarily participating in the foster youth in transition program established in section 19-7-303.

(1.5) A juvenile court exercising jurisdiction pursuant to subsection (1)(a), (1)(b), (1)(c), (1)(f), or (1)(g) of this section may enter special immigrant juvenile status findings, as defined in section 19-1-103, establishing eligibility for classification as a special immigrant juvenile under federal law.

(2) Except as otherwise provided by law, the juvenile court shall have jurisdiction in proceedings concerning any adult who abuses, ill-treats, neglects, or abandons a child who comes within the court's jurisdiction under other provisions of this section.

(3) (a) Upon hearing after prior notice to the child's parent, guardian, or legal custodian, the court may issue temporary orders providing for legal custody, protection, support, medical evaluation or medical treatment, surgical treatment, psychological evaluation or psychological treatment, or dental treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his case.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), the court may, on the basis of a report that a child's welfare may be endangered, and if the court believes that a medical evaluation or emergency medical or surgical treatment is reasonably necessary, issue ex parte emergency orders. Where the need for a medical evaluation or medical or surgical emergency orders arises and the court is not in regular session, the judge or magistrate may give oral or telephone authorization for the necessary medical evaluation or emergency medical, surgical, or hospital care, which authorization shall have the same force and effect as if written, the same to be followed by a written order to enter on the first regular court day thereafter. Such written order shall make specific findings of fact that such emergency existed. Prior to the entry of any emergency order, reasonable effort shall be made to notify the parents, guardian, or other legal custodian for the purpose of gaining consent for such care; except that, if such consent cannot be secured and the child's welfare so requires, the court may authorize needed medical evaluation or emergency medical, surgical, or hospital care. Such ex parte emergency orders shall expire twenty-four hours after issuance; except that, at any time during such twenty-four-hour period, the parents, guardian, or other legal custodian may apply for a hearing to set aside the ex parte emergency order.

(4) Nothing in this section shall deprive the district court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a cause in the district court; except that:

(a) If a petition involving the same child is pending in juvenile court or if continuing jurisdiction has been previously acquired by the juvenile court, the district court shall certify the question of legal custody to the juvenile court; and

(b) The district court at any time may request the juvenile court to make recommendations pertaining to guardianship or legal custody.

(5) Where a custody award or an order allocating parental responsibilities with respect to a child has been made in a district court in a dissolution of marriage action or another proceeding and the jurisdiction of the district court in the case is continuing, the juvenile court may take jurisdiction in a case involving the same child if the child comes within the jurisdiction of the

juvenile court. The juvenile court shall provide notice in compliance with the Colorado rules of civil procedure; except that service must be effected not less than seven business days prior to the hearing. The notice must be written in clear language stating that the hearing concerns the allocation of parental responsibilities. When creating or modifying an existing order, the juvenile court shall proceed as set forth in subsection (6) of this section for a dependency and neglect proceeding pursuant to article 3 of this title 19, or as set forth in subsection (8) of this section for a juvenile delinquency case pursuant to article 2.5 of this title 19.

(6) (a) When a district court in this state does not have continuing jurisdiction over a child custody proceeding concerning the child, or a juvenile court in this state maintains jurisdiction pursuant to subsection (5) of this section and the "Uniform Child-custody Jurisdiction and Enforcement Act", article 13 of title 14, the juvenile court has jurisdiction to enter a permanent order allocating parental responsibilities and addressing parenting time and child support matters upon the petition of a party if:

(I) All parents, legal guardians, and legal custodians have an adjudication pursuant to section 19-3-505 (7) or continued adjudication pursuant to section 19-3-505 (5) entered by a court; or

(II) At least one parent, legal guardian, or legal custodian has an adjudication pursuant to section 19-3-505 (7) or continued adjudication pursuant to section 19-3-505 (5) and other parents, legal guardians, or legal custodians who do not have an adjudication or continued adjudication consent to jurisdiction.

(b) The parent or person other than a parent with whom the child resides the majority of the time pursuant to the juvenile court's order shall file a certified copy of the order in the district court in the county where the child is permanently resident. Such order must be treated in the district court as any other decree issued in a proceeding concerning the allocation of parental responsibilities.

(7) Upon motion of the city or county attorney, guardian ad litem, counsel for youth, or respondent parent counsel, the district or the juvenile court has jurisdiction to enter a civil protection order pursuant to article 14 of title 13 in actions brought pursuant to article 3 of this title 19 or part 3 of article 7 of this title 19. The court shall use the standardized forms developed by the judicial department pursuant to section 13-1-136 and shall follow the standards and procedures for the issuance of civil protection orders set forth in article 14 of title 13, including but not limited to personal service upon the restrained person. Once issued, the clerk of the issuing court shall enter the civil protection order into the computerized central registry of protection orders created pursuant to section 18-6-803.7. If the person who is the subject of the civil protection order has not been personally served pursuant to section 13-14-107 (3), a peace officer responding to a call for assistance shall serve a copy of the civil protection order on the person who is subject to the order. If the civil protection order is made permanent pursuant to the provisions of section 13-14-106, the civil protection order remains in effect upon termination of the juvenile court action. The clerk of the court issuing the order shall file a certified copy of the

permanent civil protection order into an existing case in the district court, if applicable, or with the county court in the county where the protected party resides. Civil protection orders issued by the district or the juvenile court pursuant to article 14 of title 13 have the same force and effect as protection orders issued pursuant to article 14 of title 13 by a court with concurrent jurisdiction.

(8) (a) Upon submission of a stipulated agreement of all parties, parents, guardians, and other legal custodians, if the juvenile court finds that it is in the best interests of the juvenile, the juvenile court may enter an order allocating parental responsibilities and addressing parenting time and child support matters when:

(I) The juvenile court has maintained jurisdiction in a case involving an adjudicated juvenile, a juvenile with a deferred adjudication, or a juvenile on a management plan developed pursuant to section 19-2.5-704 (3);

(II) A child custody action, a dependency and neglect action, or an action for allocation of parental responsibilities concerning the same juvenile is not pending in a district court of this state, and the court complies, as applicable, with the requirements of the "Uniform Child-custody Jurisdiction and Enforcement Act", as set forth in article 13 of title 14; and

(III) All parties, parents, guardians, and other legal custodians involved are in agreement, or after notice is given to all parents, guardians, and other legal custodians and a response or objection is not filed.

(b) The parent or person other than a parent with whom the juvenile resides the majority of the time pursuant to a juvenile court order shall file a certified copy of the order in the district court in the county where the juvenile is a permanent resident. The district court shall treat the order as with any other decree issued in a proceeding concerning the allocation of parental responsibilities.

Source: L. 87: Entire title R&RE, p. 698, § 1, effective October 1. **L. 91:** (3)(b) amended, p. 360, § 24, effective April 9. **L. 92:** (3) amended, p. 173, § 1, effective April 16. **L. 97:** (6) added, p. 516, § 3, effective July 1. **L. 98:** (1)(a) amended, p. 820, § 21, effective August 5; (5) and (6) amended, p. 1405, § 61, effective February 1, 1999. **L. 2001:** (1)(k) amended, p. 870, § 2, effective June 1. **L. 2006:** (1)(i) amended, p. 1399, § 51, effective August 7. **L. 2008:** (1)(l) amended, p. 1891, § 59, effective August 5. **L. 2017:** (7) added, (HB 17-1111), ch. 96, p. 290, § 1, effective April 4; (1)(i) amended, (SB 17-242), ch. 263, p. 1309, § 149, effective May 25; (5) amended and (8) added, (HB 17-1110), ch. 137, p. 458, § 1, effective August 9. **L. 2019:** IP(1) and (1)(c) amended and (1.5) added, (HB 19-1042), ch. 55, p. 194, § 6, effective March 28. **L. 2020:** (1)(i) amended, (HB 20-1402), ch. 216, p. 1048, § 34, effective June 30. **L. 2021:** (1)(n) added and (7) amended, (HB 21-1094), ch. 340, p. 2215, § 3, effective June 25; (1)(a), (5), and (8)(a)(I) amended, (SB 21-059), ch. 136, p. 725, § 60, effective October 1. **L. 2023:** (6)

amended, (HB 23-1172), ch. 67, p. 237, § 1, effective August 7. **L. 2024:** (1.5) amended, (SB 24-119), ch. 33, p. 103, § 4, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-1-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: (1) For the jurisdiction of the juvenile court of Denver, see § 13-8-103; for the exemption from criminal responsibility for insufficient age, see § 18-1-801.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ANNOTATION

I. General Consideration.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Denver Juvenile Court", see 5 Den. B. Ass'n Rec. 1 (May, 1928). For article, "The State as Parens Patriae: Juvenile Versus the Divorce Courts on Questions Pertaining to Custody", see 21 Rocky Mt. L. Rev. 375 (1949). For article, "Workmen's Compensation, Attorneys and Family Law", see 31 Dicta 1 (1954). For note, "Jurisdiction of Custody Matters in Colorado", see 28 Rocky Mt. L. Rev. 393 (1956). For note, "Compulsory Medical Care for Infants", see 28 Rocky Mt. L. Rev. 235 (1956). For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "Juvenile Delinquency in Colorado: The Law's Response to Society's Need", see 31 Rocky Mt. L. Rev. 1 (1958). For article, "One Year Review of Domestic Relations", see 35 Dicta 36 (1958). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For note, "Enforcement of Support Duties in Colorado", see 33 Rocky Mt. L. Rev. 70 (1960). For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For note, "Juvenile Delinquency — Colorado's Unassumed Burden", see 36 U. Colo. L. Rev. 519 (1964). For article, "One Year Review of Domestic Relations", see 41 Den. L. Ctr. J. 97 (1964). For note, "In re Gault and the Colorado Children's Code", see 44 Den. L.J. 644 (1967). For note, "Delinquency Jurisdiction in Colorado: Garcia and the Children's Code", see 40 U. Colo. L. Rev. 80 (1967). For article, "Colorado Felony Sentencing", see 11 Colo. Law. 1478 (1982). For article, "Toward an Integrated Theory of Delinquency Responsibility", see 60 Den. L.J. 485 (1983). For note, "The Expanding Scope of Prosecutorial Discretion in

Charging Juveniles as Adults: A Critical Look at People v. Thorpe", see 54 U. Colo. L. Rev. 617 (1983). For article, "The Expanded Jurisdiction of the Probate Court Under In re J.C.T.", see 37 Colo. Law. 83 (Nov. 2008). For article, "At the Intersection: Handling Dependency and Neglect and Juvenile Delinquency Issues in Family Law Cases", see 51 Colo. Law. 28 (Feb. 2022).

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

The juvenile court is a statutory court with no jurisdiction beyond that expressly given by statute. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Geisler v. People in Interest of Geisler, 135 Colo. 121, 308 P.2d 1000 (1957); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960); Martinez v. Lopez, 153 Colo. 425, 386 P.2d 595 (1963); People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972); Pueblo County Comm'rs v. Dist. Court, 708 P.2d 466 (Colo. 1985).

Purpose is to secure uniform administration. Jurisdiction vested in the court of the county where the child resides provides uniform administration of the law and uniform protection of all children in the county. Geisler v. People in Interest of Geisler, 135 Colo. 121, 308 P.2d 1000 (1957).

The juvenile court being a creature of statute is limited by the provisions of the statute creating it and defining its jurisdiction. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

This code intends to grant broad jurisdiction to the juvenile court. Jaramillo v. District Court, 173 Colo. 459, 480 P.2d 841 (1971).

The identification of those authorized to invoke the court's jurisdiction operates to exclude all persons not mentioned. Where this section specifically identifies the officers or persons who may invoke the jurisdiction of a court in a proceeding which is purely statutory, it is necessary and essential that the persons thus named shall institute the proceedings. Avery v. County Court, 126 Colo. 421, 250 P.2d 122 (1952).

General rule. Jurisdiction attaches only in proceedings brought, not in behalf of any person, but solely where children are found delinquent or have been so circumstanced, neglected, or imposed upon as to require the state to take over their custody or act otherwise for their protection. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Carrera v. Kelley, 131 Colo. 421, 283 P.2d 162 (1955); Geisler v. People in Interest of Geisler, 135 Colo. 121, 308 P.2d 1000 (1957); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960); Martinez v. Lopez, 153 Colo. 425, 386 P.2d 595 (1963).

The Colorado Children's Code grants a juvenile court exclusive original subject matter jurisdiction over proceedings concerning any child who is alleged to be dependent or neglected. A court that has already obtained subject matter jurisdiction is not divested of its subject matter jurisdiction by a later failure to follow

statutory requirements. People in Interest of J.W., 2017 CO 105, 406 P.3d 853; People in Interest of T.W., 2022 COA 88M, 519 P.3d 1071.

The status of being a neglected or dependent child triggers juvenile court jurisdiction over a child so circumstanced in Colorado. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of J.W., 2017 CO 105, 406 P.3d 853.

In addition to subject matter jurisdiction, the juvenile court must also consider whether it has personal jurisdiction over the child, and thus the legal authority to enter permanent allocation of parental rights (APR) orders. People in Interest of T.W., 2022 COA 88M, 519 P.3d 1071.

An order of adjudication or the court's determination that the child's factual status is dependent or neglected is a necessary step that grants a juvenile court continuing personal jurisdiction over the child. Although the juvenile court retains broad subject matter jurisdiction over cases concerning a child who is alleged to be dependent or neglected, absent an adjudication or a determination that the child's factual status is dependent or neglected, the juvenile court has not maintained jurisdiction over the child under subsection (6). People in Interest of T.W., 2022 COA 88M, 519 P.3d 1071.

Juvenile court lacked continuing personal jurisdiction over the child and therefore legal authority to enter permanent orders allocating parental responsibilities where no order of adjudication was entered by the court and the parents admitted that the child was dependent or neglected for purposes of continuing the adjudication only and therefore never made an admission, express or implied, that the child had been or should be adjudicated dependent or neglected. People in Interest of T.W., 2022 COA 88M, 519 P.3d 1071.

Juvenile court maintained personal jurisdiction over the child and therefore legal authority to enter permanent orders allocating parental responsibilities where mother admitted child's status as dependent or neglected then requested deferred entry of the order of adjudication and continuance of the hearing, mother never sought to withdraw her admission, and the department's motion to terminate mother's parental rights erroneously stated that the child had been adjudicated neglected or dependent but the mother and the guardian ad litem did not deny or object to that erroneous assertion. Where a parent admits that the child is neglected or dependent under the applicable statutes, the court's acceptance of the admission provides the statutorily required jurisdictional basis for further proceedings. People ex rel. N.D.V., 224 P.3d 410 (Colo. App. 2009).

The court's failure to enter a written adjudication order confirming the children's status as dependent or neglected prior to terminating the parent-child legal relationship did not divest the court of jurisdiction where mother admitted that the children were dependent or neglected, mother's admission was accepted by the court as knowingly and voluntarily made,

and mother never sought to withdraw her admission or otherwise offer the court any basis to conclude that the children were not dependent nor neglected. The court's acceptance of mother's admission established the status of the children as dependent or neglected and the court's continued jurisdiction over the children. People in Interest of J.W., 2017 CO 105, 406 P.3d 853.

Allocation of juvenile and district court jurisdiction in criminal proceedings. Once an indictment charging a class 1 felony is filed, the jurisdiction of the district court is expressly fixed under subsection (4)(b)(I), and that jurisdiction is not lost simply because the juvenile defendant is convicted of a lesser offense. People v. Davenport, 43 Colo. App. 41, 602 P.2d 871 (1979).

Charges involving a minor should be resolved in adult court when the requirements of the direct filing statute are satisfied as to any charge. People v. Dalton, 70 P.3d 517 (Colo. App. 2002).

Juvenile court lacks exclusive jurisdiction where juvenile charged with municipal ordinance violation. A juvenile who could have been charged under the general theft statute but is only charged under a municipal shoplifting ordinance carrying no jail sentence is not a delinquent child and the juvenile court does not have sole and exclusive jurisdiction. Wigent v. Shinsato, 43 Colo. App. 83, 601 P.2d 653 (1979).

Juveniles to have same rights as adults in trials for municipal ordinance violations. The juvenile court's assumption of jurisdiction carries with it the same trial duties as to juveniles who have violated municipal ordinances, as a municipal court has to adults who violated the same ordinances. People v. Hight, 198 Colo. 299, 599 P.2d 885 (1979).

The Colorado Children's Code confers on Colorado courts jurisdiction over any child physically present in the state. People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Colorado domicile of a child is not a prerequisite to jurisdiction of Colorado courts over that child. People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Certification of the issue of custody to the juvenile court pursuant to former subsection (5)(a) (now subsection (4)(a)) is mandatory. In re Eckman, 645 P.2d 866 (Colo. App. 1982).

Juvenile court has power and duty to make such determinations as it deems appropriate regarding custody and care of a child adjudicated to be within its exclusive jurisdiction. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

But department of welfare does not. Given the broad power of the juvenile court to make determinations as to the custody and care of a child under its jurisdiction, it would be inconsistent and contrary to the intent of the general assembly to also find such a power in the Denver department of welfare. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

Juvenile court may delegate responsibility for placement of child. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

And department of welfare is agent of court subject to court's further authority. The court is vested with the ultimate responsibility in the placement of a child for adoption, and thus, whatever authority the welfare department may have concerning custody and/or placement arises as a result of a delegation of that authority by the court. In essence, therefore, the department acts as the agent of the court, assisting in the fulfillment of the court's responsibility. The grant to the welfare department of custody and authority to place for adoption is thus subject to revocation, limitation, or control by the court delegating such authority. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

In evaluating the child's best interests, the probate court did not exceed its jurisdiction by directing the GAL to find a permanent guardian or by considering the potential for a future adoption. Nothing in this section deprives the district court of the authority to appoint a guardian for a child. In re J.C.T., 176 P.3d 726 (Colo. 2007).

No automatic repeal by § 16-11-309. The general assembly did not automatically intend to repeal the special provision for discretionary sentencing of juveniles, this section, by the enactment of the general mandatory sentencing statute, § 16-11-309. People v. Dist. Court, 196 Colo. 249, 585 P.2d 913 (1978).

Testimony as to age is prima facie case for jurisdiction. The defendants, by their own testimony that they were 17 years old, made a prima facie case as to their juvenility, and it became incumbent upon the prosecutor to either prove that the defendants were 18 or older or to ask that the case be remanded to the juvenile court for transfer proceeding under the Colorado Children's Code. Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

Waiver of juvenile court's jurisdiction, after a transfer hearing, will not be set aside unless the findings upon which the waiver was based were erroneous. People in Interest of G.A.T., 183 Colo. 111, 515 P.2d 104 (1973).

Jurisdiction to order placement of juvenile in private facilities. Courts have the jurisdiction to enter custodial orders placing a juvenile in private facilities and directing that the appropriate county department of social services pay the cost of such private treatment. Heim v. Dist. Court, 195 Colo. 107, 575 P.2d 850 (1978).

While subsection (1) generally provides exclusive jurisdiction in the juvenile court over the actions enumerated therein, the clause "except as otherwise provided by law," is an express limitation on such jurisdiction. In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990).

Applied in People v. Dist. Court, 191 Colo. 298, 552 P.2d 297 (1976); People v. Maynes, 193 Colo. 111, 562 P.2d 756 (1977); Ford v. Ford, 194 Colo. 134, 571 P.2d 717 (1977); People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978);

People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980); People v. Lee, 630 P.2d 583 (Colo. 1981); May v. People, 636 P.2d 672 (Colo. 1981); People in Interest of D.L.R., 638 P.2d 39 (Colo. 1981); People v. M.A.W., 651 P.2d 433 (Colo. App. 1982); City & County of Denver v. Dist. Court, 675 P.2d 312 (Colo. 1984); People v. Cunningham, 678 P.2d 1058 (Colo. App. 1983); Rocha v. People, 713 P.2d 350 (Colo. 1986).

II. PARTICULAR PROCEEDINGS.

A. Delinquency.

B. Dependency.

C. Paternity.

D. Adoption.

E. Other Proceedings.

A. Delinquency.

Child may be prosecuted directly for traffic violation. One under 18 who violates a traffic law is not a delinquent child, and is therefore not subject to the original exclusive jurisdiction of the juvenile court in delinquency proceedings, and may be directly prosecuted for a violation of a state traffic law. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

However, the Colorado Children's Code contains no limitation on the authority of the juvenile court to consider traffic charges when coupled with other misdemeanor or felony charges committed as a part of the same act or series of acts and thus charges are subject to the compulsory joinder statute, § 18-1-408 (2). Marquez v. County Court, 719 P.2d 737 (Colo. App. 1986).

County court may sentence minor to jail term for traffic offense. When a minor is convicted of a traffic offense in a county court which has jurisdiction over that minor, the Colorado Children's Code does not prohibit the court from sentencing the minor to serve a term in the county jail. Villareal v. Lopez, 44 Colo. App. 555, 619 P.2d 86 (1980).

B. Dependency.

The remedy in case of an abandoned and neglected child rests exclusively in a juvenile court as provided in this section. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Juvenile courts are authorized to determine the question of dependency, and, if found, to determine who is responsible therefor, and to enforce their findings by judgment and execution. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957); Martinez v. Lopez, 153 Colo. 425, 386 P.2d 595 (1963).

Jurisdiction proper where child abandoned to care of relatives. The assertion that the court lacked jurisdiction over a child because the child was not dependent and neglected is without merit where the child has been abandoned to the care of a grandfather and aunt. People in Interest of F.M., 44 Colo. App. 142, 609 P.2d 1123 (1980).

In a dependency and neglect proceeding, an allocation of parental rights (APR) order is a final and appealable order under subsection (6). An appeal must be filed within twenty-one days of the APR order to be considered timely.

People in Interest of M.R.M., 2021 COA 22, 484 P.3d 807.

A juvenile court has no jurisdiction in contests about custody of children, whether it is between parents or other individuals. In re People in Interest of McChesney, 103 Colo. 115, 83 P.2d 772 (1938); Arnett v. Northern, 118 Colo. 307, 194 P.2d 909 (1948); Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956); Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

This section does not grant a juvenile court that has personal jurisdiction over the parents of dependent or neglected children and subject matter jurisdiction over cases concerning dependent or neglected children with power over those parents regarding their nondependent children such that it can order the parents to take the nondependent siblings to compulsory therapeutic visitation, especially in light of parents' fundamental constitutional right to make decisions about their children. In re People in Interest of S.A., 2022 CO 27, 511 P.3d 597.

Determination of neglect and dependency can be sought only where immediate needs and welfare of child are in peril, and consequently, they represent situations where the doctrine of parens patriae would be applicable. Such being the case, the trial court properly assumes preliminary jurisdiction over children brought into the state by their mother, but whose custody had been previously awarded to the father by a court in another state, which jurisdiction will become absolute if a valid showing is made by the state of a dependency and neglect situation as defined in the Colorado Children's Code. In re People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Such a dispute is one for determination by a divorce proceeding by which proper jurisdiction of the person and subject matter could be had and all parties properly protected. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

But district court jurisdiction suspended when state brings dependency proceeding. A district court's jurisdiction to dispose of the custody of a child as between the parties to a divorce proceeding and as ancillary to that proceeding, is suspended by the institution of and during the pendency of a direct proceeding in dependency by the state in the interest of the child in a county court under this section. People ex rel. Lucke v. County Court, 109 Colo. 447, 126 P.2d 334 (1942).

The jurisdiction of a divorce court is exercised as between a husband and wife; that of a juvenile court in dependency proceedings, as between the state in the interest of the child, and the parents of the child. The two courts may have simultaneous, though not concurrent, jurisdiction concerning the custody of a child. But where both courts make orders concerning such custody, the operation of the order of the divorce court is suspended during the period, and only during the period, that the order of the juvenile court remains in force. Ross v. Ross, 89 Colo.

536, 5 P.2d 246 (1931); Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

District court exceeded its statutory jurisdiction by ordering that defendant not have custody of her children as a condition of probation for the crime of criminally negligent child abuse resulting in death. Subsection (1) grants the juvenile court exclusive jurisdiction to determine the legal custody of any child who is dependent or neglected. People v. Forsythe, 43 P.3d 652 (Colo. App. 2001).

Once a petition for custody under § 14-10-123 is certified to be determined as part of a pending dependency and neglect action pursuant to this section, dissolution of marriage statutes cease to apply. Instead, provisions of the Colorado Children's Code govern, in view of the differing policies behind the respective statutes. People in Interest of D.C., 851 P.2d 291 (Colo. App. 1993); People in Interest of A.A.G., 902 P.2d 437 (Colo. App. 1995), aff'd in part, rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

Juvenile court acting under subsection (6) may enter child support order, which order must follow the provisions of article 6 of this title and the child support guidelines set forth in § 14-10-115. Where delinquency court granted stipulation allocating parental responsibilities to mother, in determining support, court was required to follow the provisions of article 6, including § 19-6-106, which in turn requires compliance with the child support guidelines. Court erred in failing to address the factors set forth in § 14-10-115. People in Interest of E.Q., 2020 COA 118, 472 P.3d 1115.

Since defendant disobeyed the permanent protection order rather than challenging the constitutionality of the order on appeal, defendant cannot collaterally raise the constitutional issues during an appeal of a contempt judgment. People in Interest of K.P., 2022 COA 60, 517 P.3d 70.

District court on habeas corpus has no jurisdiction over abandonment. A district court in habeas corpus proceedings has jurisdiction to determine whether a child is being unlawfully restrained by the grandparents. Such determination cannot in any manner affect the outcome of any adoption proceedings. An adjudication in the habeas corpus proceedings cannot be considered as an adjudication of abandonment as defined in the adoption provisions or as used in the dependent and neglected children provisions, as the question of abandonment is not an issue and the district court has no jurisdiction over abandonment. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

In view of the state's strong interest in providing for the welfare of children within its borders, the presence of an allegedly dependent or neglected child within Colorado will generally provide an adequate jurisdictional basis to adjudicate the dependency status of the child within Colorado. E.P. v. Dist. Court, 696 P.2d 254 (Colo. 1985).

The trial court properly assumes preliminary jurisdiction over children

brought into the state by their mother, but whose custody had been previously awarded to the father by a court in another state, which jurisdiction will become absolute if a valid showing is made by the state of a dependency and neglect situation as defined in the Colorado Children's Code. People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

An action in dependency may not be used as a means of making a child available for adoption in a stepparent adoption proceeding. Such tactic is inappropriate and contrary to the statutory language as well as the legislative intent of the Colorado Children's Code. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Judgment reversed for lack of jurisdiction. Cullen v. People ex rel. Baer, 152 Colo. 531, 383 P.2d 316 (1963).

Statute as basis of jurisdiction. Johnson v. People, 170 Colo. 137, 459 P.2d 579 (1969).

Applied in Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947); People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

C. Paternity.

This section confers jurisdiction on the juvenile court to determine parentage. Dikeou v. People, 95 Colo. 537, 38 P.2d 772 (1934); In re Morrow's Estate, 100 Colo. 424, 68 P.2d 36 (1937).

When a court declares a child dependent or neglected in a case filed under article 3, a court presiding over a separate parentage proceeding under article 4 loses jurisdiction to determine that child's parentage. All matters pertaining to the child's status must be addressed in the open dependency and neglect case. People in Interest of D.C.C., 2018 COA 98, 486 P.3d 1183.

The courts should primarily be more concerned about the welfare of the child than in the residential status of the parties to the proceeding. No unreasonable impediment should be allowed which would prevent an expectant mother from pursuing the father of the unborn child and invoking the aid of a court having proper jurisdiction at the residence or domicile of the neglectful father if in this state. Campbell v. Gilliam, 127 Colo. 471, 257 P.2d 965 (1953).

The juvenile court has jurisdiction to determine the parentage of children yet unborn. Cederquist v. Archuleta, 127 Colo. 41, 253 P.2d 431 (1953); People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

D. Adoption.

Department's authority in adoption. Inasmuch as the general assembly has granted the court exclusive jurisdiction over adoptions, has expressly authorized adoptive placement, and has given the court the final and sole responsibility of approving or disapproving adoptions, it would be totally inconsistent to conclude that the welfare department or licensed placement agencies are the sole entities authorized to place a child for adoption following termination of parental rights. People in Interest of

M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Court's adoption authority not limited by former § 19-3-111 (2)(b). Subsection (1)(h) expressly provides that the court has exclusive jurisdiction in matters relating to the adoption of any person. No limitation on that authority arises by virtue of former § 19-3-111 (2)(b). People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

District court had jurisdiction to rule on nullification of adoption where issues regarding legal custody and adoption of child were incidental to determination of issues presented in dissolution proceeding and no petition was filed in juvenile court. In re Dickson, 983 P.2d 44 (Colo. App. 1998).

Limit on jurisdiction for interstate adoptions. The Interstate Compact on Placement of Children limits the jurisdiction of the juvenile court for interstate adoptions as an exception "otherwise provided by law". Denver Dept. of Soc. Servs. v. Dist. Court, 742 P.2d 339 (Colo. 1987).

Under article V of such compact, the sending agency retains jurisdiction until the child is adopted, and the mere filing of an adoption petition is not sufficient to divest the sending agency of jurisdiction. Denver Dept. of Soc. Servs. v. Dist. Court, 742 P.2d 339 (Colo. 1987).

E. Other Proceedings.

General rule whereby Colorado courts must respect custodial decrees of other states is subject to two exceptions: (1) When the domicile of the child subject to a foreign decree changes to Colorado and there is a showing of a change in circumstances after the foreign decree; and (2) when conditions necessitate Colorado's intervention for the protection of any child found within its borders, through the doctrine of parens patriae. Thus, the requirement that a child need only be physically present within the state of Colorado does no violence to the rules governing interstate recognition of custodial decrees. People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Court without power to proceed if prescribed residence lacking. Where a statute makes the residence of a petitioner within a particular county a condition upon which the jurisdiction of a court can be invoked, a court is wholly without power or authority to proceed in a statutory action unless the petitioner is a resident of such county within which the action is brought. Avery v. County Court, 126 Colo. 421, 250 P.2d 122 (1952).

Jurisdiction not divested when children move from county. The paternity action having been properly commenced in Denver as the statute provided, jurisdiction attached, and the court is not divested of it thereafter by reason of the fact that the children move out of the county. Del Campo v. People in Interest of Del Campo, 172 Colo. 277, 472 P.2d 130 (1970).

A prima facie case of sufficient residency, and also of dependency, established. Campbell v. Gilliam, 127 Colo. 471, 257 P.2d 965 (1953).

A parent may make necessary arrangements for the care of a child without order of court, guardianship or otherwise. It is not the law that before a child can be placed by a parent in temporary custody of a relative permission must be first obtained from the court. Diernfeld v. People in Interest of Diernfeld, 137 Colo. 238, 323 P.2d 628 (1958).

Attainment of majority while minor's appeal from adjudication as "child in need of supervision" is pending renders appeal moot in light of the Colorado Children's Code attempt to eliminate collateral legal consequences of adjudication. People v. T.B., 183 Colo. 310, 516 P.2d 642 (1973).

Jurisdiction to order department of welfare to return child to group care facility. The juvenile court did not exceed its jurisdiction, or lack jurisdiction, to order the Denver department of welfare to return a child who was adjudicated in need of supervision to a group care facility. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

The provisions of the Parental Notification Act supersede subsection (3) with regard to the provision of notice to parents about abortions. Planned Parenthood of Rocky Mtns. Servs. Corp. v. Owens, 287 F.3d 910 (10th Cir. 2002).

As a result, the Parental Notification Act must be held unconstitutional because it lacks a health exception to the parental notification requirement. Planned Parenthood of Rocky Mtns. Servs. Corp. v. Owens, 287 F.3d 910 (10th Cir. 2002).

Removal of extraordinary life-sustaining devices. A juvenile court has jurisdiction in a shelter hearing to order the removal of all extraordinary life-sustaining devices from a child in the temporary custody of the department of social services if in the doctor's opinion the legal standard of cerebral death has been met. Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979).

Juvenile may not be compelled to undergo psychological evaluation under subsection (3), for purposes of a transfer hearing, because of his fifth amendment right against self-incrimination. People in Interest of A.D.G., 895 P.2d 1067 (Colo. App. 1994).

Juvenile's refusal to undergo psychological evaluation may not be used against him in a transfer hearing because it would impermissibly penalize his exercise of the fifth amendment right. People in Interest of A.D.G., 895 P.2d 1067 (Colo. App. 1994).

Applied in In re U.M. v. Dist. Court, 631 P.2d 165 (Colo. 1981).

19-1-105. Right to counsel and jury trial.

(1) All hearings, including adjudicatory hearings, shall be heard by a judge or magistrate without a jury, except as otherwise provided by this title.

(2) The right to counsel is provided in this title 19. Nothing in this title 19 prevents the court from appointing counsel in addition to a guardian ad litem for a child if it deems representation by counsel necessary to protect the interests of the child.

(3) In proceedings pursuant to the "School Attendance Law of 1963", article 33 of title 22, the court may appoint a guardian ad litem for the child, unless the child is already represented by counsel. If the court finds that it is in the best interest and welfare of the child, the court may appoint both counsel and a guardian ad litem. The court shall make information regarding the truancy process available to the child's parent or guardian ad litem.

Source: L. 87: Entire title R&RE, p. 700, § 1, effective October 1. **L. 91:** (1) amended, p. 360, § 25, effective April 9. **L. 2003:** (2) amended, p. 1320, § 1, effective August 6. **L. 2022:** (2) amended and (3) added, (HB 22-1038), ch. 92, p. 432, § 5, effective January 9, 2023.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 and 19-1-107 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For note, "In re Gault and the Colorado Children's Code", see 44 Den. L.J. 644 (1967). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For comment, "Lassiter v. Department of Social Services: Due Process Takes an Ad Hoc Turn — What's a Parent to Do?", see 59 Den. L.J. 591 (1982). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "Final Draft of Proposed GAL Standards of Practice", see 22 Colo. Law. 1907 (1993). For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023). For article, "Safeguarding Children's Voices in Child Protective Proceedings", see 102 Denv. L. Rev. 41 (2024).

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

State's interest in juvenile proceedings stems from its role as parens patriae, and that interest is of significance both in the context of delinquency cases, and in neglect and dependency matters. McCall v. District Court ex rel. County of Montezuma, 651 P.2d 392 (Colo. 1982).

Trial by jury in the adjudicative stage of a juvenile proceeding is not required by the due process clause of the fourteenth amendment. People in Interest of T.A.W., 38 Colo. App. 175, 556 P.2d 1225 (1976).

And six-member jury is sufficient. Due process of law does not mandate that a juvenile be tried by a 12-member jury in connection with an adjudicatory hearing under the Colorado Children's Code even though the code limits the jury to six members. A six-member jury satisfies due process requirements. People in Interest of T.A.W., 38 Colo. App. 175, 556 P.2d 1225 (1976).

Jury demand right extended to all parties of record to delinquency proceeding. The general assembly's selection of "any interested party" stands out as a purposeful choice to extend the right of jury demand to all parties of record to the delinquency proceeding. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

And juvenile has no veto power over state's demand. There is no indication of an intent to bestow on the juvenile a veto power over the state's jury demand through a statutory right of jury waiver. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

The putative father has a statutory right to a jury trial in determining the issue of paternity. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972).

There is no right to a jury trial in a support hearing such as set forth in article 7. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972).

Substantial compliance required. Proceedings in dependency or neglect affect important rights, so there must be substantial compliance with statutory requirements for conduct of those proceedings. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); C.S. v. People, 83 P.3d 627 (Colo. 2004).

Substantial compliance must appear of record. These proceedings are statutory and as they affect substantial rights there must be a substantial compliance with the provisions of the legislative enactment. Such a compliance must appear of record. It cannot be ignored. Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955).

Any person proceeded against in court is entitled to counsel of his or her own choosing, and the selection of such counsel cannot be dictated by those who instigate the action. Selby v. Jacobucci, 142 Colo. 52, 349 P.2d 567 (1960).

In a proceeding following a complaint filed by parents of an allegedly delinquent

minor 17 years of age, who had selected her own counsel to represent her, an order of the trial court incorporating the parents' request that such counsel be prohibited from appearing or representing such minor was in excess of its jurisdiction. Selby v. Jacobucci, 142 Colo. 52, 349 P.2d 567 (1960).

Parent has a statutory right to counsel at a statutorily prescribed proceeding for review of out-of-home placements of children. People in Interest of J.B., 702 P.2d 753 (Colo. App. 1985).

In determining whether an indigent parent has the right to appointed counsel in a termination proceeding resulting from a dependency and neglect adjudication, a court is to consider whether (1) the parent's interest is an extremely important one; (2) the state shares with the parent an interest in a correct decision, has a relatively weak pecuniary interest, and, in some but not all cases, has a possibly stronger interest in informal procedures; and (3) the complexity of the proceeding and the incapacity of the uncounselled parent could be, but would not always be, great enough to make the risk of an erroneous deprivation of the parent's rights insupportably high. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

These factors should be considered to resolve parent's due process argument in a stepparent adoption proceeding. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

These factors should also be considered to resolve parent's due process argument in adoption proceedings when parent is incarcerated out of state and has no ability to participate in the proceedings. In re R.L.S., 2019 COA 112, 451 P.3d 1249.

The decision whether due process calls for the appointment of counsel for indigent parents in stepparent adoption proceedings must be answered in the first instance by the trial court, subject to appellate review. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

Due process requires the appointment of counsel only where the parent's interests are at their strongest, where the state's interests are at their weakest, and where the risks of error are at their peak, and because risk of error was low, state's interest in achieving permanency for children was high, and hearing was not characterized by troublesome points of law, either substantive or procedural, parent's fundamental right to assistance of counsel was not implicated and court was not required to give parent a detailed advisement regarding her decision to appear pro se. C.S. v. People, 83 P.3d 627 (Colo. 2004).

In a direct appeal from a judgment terminating parental rights, an appellate court may consider a claim of ineffective assistance of counsel based on counsel's performance at an adjudicatory hearing only when the party claiming ineffective assistance did not have a full and fair opportunity to assert such a claim immediately after his or her child was adjudicated dependent and neglected. People in Interest of A.R., 2020 CO 10, 456 P.3d 1266.

Court must follow the prejudice test in Strickland v. Washington, 466 U.S. 668, (1984), for ineffective assistance of

counsel claims in termination of parental rights proceedings. To establish prejudice from counsel's deficient performance in a dependency and neglect proceeding, a party must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. People in Interest of A.R., 2020 CO 10, 456 P.3d 1266; People in Interest of A.L.W, 2020 CO 11, 456 P.3d 1284.

Standing to appear of party entrusted with care of child. The Colorado Children's Code has not changed the basic law of the state that a grandparent to whom the child has been entrusted for care has status to appear and protest the actions of the court relative to the child. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

Guardian includes persons vested by court with duty and authority to make major decisions affecting a child. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

"Legal custodian" does not encompass a state agency or employee thereof to which a delinquent child has been committed. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Legal custodian would be an interested party to a delinquency action. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

State is a party of record to a delinquency proceeding. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

Juvenile witness protected against self-incrimination. The fifth amendment, applicable to the states by operation of the fourteenth amendment, protects a child against self-incrimination under juvenile delinquency laws. The privilege of declining to testify is not a matter which lies within the exclusive discretion of a juvenile witness. The judge makes the decision based upon his understanding of the circumstances of the case. People v. Ledesma, 171 Colo. 407, 468 P.2d 27 (1970).

Respondents in a proceeding to terminate parental rights, having made a prior demand, were entitled to a jury trial at the adjudicatory hearing on remand. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Error for trial judge to refuse a jury trial and fail to notify defendants or parents or friends present, that a trial by jury might be had if they wished it. Kahm v. People, 83 Colo. 300, 264 P. 718 (1928).

Procedure of jury trial before referee improper. The trial court exceeded its jurisdiction in prescribing instead of a jury trial, and in lieu of a trial before a master or referee, a procedure whereby the parties were to have a "jury trial in all respects" but conducted by the referee, where it was agreed that the referee and the court would be bound by the jury verdict, although the jury was described as being "an advisory one". Maniatis v. Karakitsios, 161 Colo. 378, 422 P.2d 52 (1967).

Statute as basis for jurisdiction. People v. Flanigan, 191 Colo. 43, 536 P.2d 41 (1975).

Applied in Rose v. People, 111 Colo. 220, 139 P.2d 261 (1943); In re People in Interest

of M.M., 184 Colo. 298, 520 P.2d 128 (1974); People in Interest of R.A.D., 196 Colo. 430, 586 P.2d 46 (1978); Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979); People in Interest of V.A.E.Y.H.D., 199 Colo. 148, 605 P.2d 916 (Colo. 1980); People in Interest of E.A., 638 P.2d 278 (Colo. 1981); People in Interest of R.M.S., 651 P.2d 377 (Colo. 1982).

19-1-106. Hearings - procedure - record.

(1) The Colorado rules of juvenile procedure shall apply in all proceedings under this title.

(2) Hearings may be conducted in an informal manner. The general public shall not be excluded unless the court determines that it is in the best interest of the child or of the community to exclude the general public, and, in such event, the court shall admit only such persons as have an interest in the case or the work of the court, including persons whom the district attorney, the county or city attorney, the child, or the parents, guardian, or other custodian of the child wish to be present.

(3) A verbatim record shall be taken of all proceedings.

(4) When more than one child is named in a petition alleging neglect or dependency, the hearings may be consolidated; except that separate hearings may be held with respect to disposition.

(5) Children's cases shall be heard separately from adults' cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

Source: L. 87: Entire title R&RE, p. 700, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Juvenile Delinquency Proceedings: The Due Process Model", see 40 U. Colo. L. Rev. 315 (1968).

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

Juvenile proceedings are governed by the procedural rules contained in the

Colorado Children's Code. People ex rel. M.C.L., 671 P.2d 1339 (Colo. App. 1983).

Hearing may be informally conducted, and the court may take into consideration all factors which he normally takes into account when sentencing. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

And court is not bound by strict rules of evidence in a hearing to determine whether probation should be revoked. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Thus, there is a presumption that all incompetent or hearsay evidence is disregarded by a court in reaching its conclusions, so a judgment will not be reversed on appeal because of the admission of such evidence. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

However, the Colorado Children's Code does not dispense with rules of evidence which directly bear upon substantive proof although the Children's Code does permit hearings to be conducted in an informal manner. Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

Arguments to the court are not matters of evidence, have no probative value, and are designed only to sway the court's findings and conclusions. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

In delinquency cases a verbatim record of the proceedings and evidence shall be maintained unless expressly waived. John Doe v. People, 156 Colo. 311, 398 P.2d 624 (1965).

Lack of transcript and evidence required reversal. Where an order was entered declaring a child neglected and dependent, severing parental rights, and holding the child's grandfather in contempt of court for failure to deliver the child, but the court reporter certified that there had been no transcript made of any of the hearings prior to the one on the contempt violation, and since there was no evidence or showing that the home environment which the grandfather might provide for the child would be unsatisfactory the judgment and orders of the trial court were reversed. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

The prosecutor may establish the same facts by the same witnesses and by the same real and documentary evidence that may have been used in earlier proceeding in the juvenile court. When oral testimony is offered for its intrinsic value with relation to the issue to be tried, rather than to establish what was said or done in proceedings before the juvenile court, former § 19-1-109 (2) does not prevent the giving of testimony because the same witness was previously called upon to give evidence relating to the same transaction in juvenile court proceedings. Gallegos v. People, 145 Colo. 53, 358 P.2d 1028 (1960), rev'd on other grounds, 370 U.S. 49 (1962).

Defendant's constitutional right to confrontation and cross-examination paramount to juvenile's interests. Where both juveniles admittedly participated in the

crimes which were charged against the defendant, both juveniles were seeking leniency and had already obtained the dismissal of serious felony counts which would have mandated imprisonment, the dispositional hearing was purposely set for a time subsequent to the defendant's trial, and no testimony tied the defendant to the crime other than that of the juvenile witnesses, the defendant's constitutional right to confrontation and cross-examination was paramount to the interests afforded a juvenile under former § 19-1-109 (2). People v. Pate, 625 P.2d 369 (Colo. 1981).

Court may conduct in camera interview with a child to determine child's best interests and how to allocate parental responsibilities within a dependency and neglect proceeding. Unless waived by the parties, a record of the interview must be made. The record must be made available to parents, upon request, in situations in which a parent needs (1) to determine whether the court's findings, insofar as they relied on facts from the interview, are supported by the record, or (2) an opportunity to contest information supplied by the child during the interview and relied on by the court. People in Interest of H.K.W., 2017 COA 70, 417 P.3d 875.

Appellate court may vacate a juvenile court's decision in a dependency and neglect proceeding on the ground of ineffective assistance of counsel without remanding for further fact-finding when either (1) the record is sufficiently developed to allow the appellate court to decide the question of counsel's ineffectiveness or (2) the record establishes presumptive prejudice under the standard set forth in United States v. Cronic, 466 U.S. 648 (1984). People in Interest of A.R., 2020 CO 10, 456 P.3d 1266; People in Interest of A.L.W, 2020 CO 11, 456 P.3d 1284.

Applied in Lindsey v. People ex rel. Rush, 66 Colo. 343, 181 P. 531 (1919); People v. Hinchman, 196 Colo. 526, 589 P.2d 917 (1978); People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980); People v. Thorpe, 641 P.2d 935 (Colo. 1982); People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-1-107. Social study and other reports.

(1) Unless waived by the court, an agency designated by the court shall make a social study and report in writing in all children's cases; except that:

(a) Repealed.

(b) Adoption reports shall be as provided in article 5 of this title.

(2) For the purpose of determining proper disposition of a child, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence; but the court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or

prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the court may order the person who prepared the report or other material to appear if it finds that the interest of the child so requires.

(2.5) For purposes of determining the appropriate treatment plan in connection with the disposition of a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the report shall include a list of services available to families that are specific to the needs of the child and the child's family and that are available in the community where the family resides. The report shall establish a priority of the services if multiple services are recommended. The services may include, but are not limited to, transportation services, family time services, psychological counseling, drug screening and treatment programs, marriage and family counseling, parenting classes, housing and day care assistance, and homemaker services.

(3) In a case where placement out of the home is recommended, the social study required by subsection (1) of this section must include the cost of the recommended placement and an evaluation for placement containing the information required by section 19-1-115 (8)(e). The department of education and the department of human services shall jointly develop placement criteria, and, in the case of matters involving juvenile delinquency, the criteria must be in accordance with the criteria for the placement of juveniles specified in section 19-2.5-1404. Such criteria must be used by the agency designated by the court to determine its recommendation about the need for placement.

(4) The court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in subsection (2) of this section.

Source: L. 87: Entire title R&RE, p. 701, § 1, effective October 1. **L. 93:** (3) amended, p. 1546, § 1, effective July 1; (3) amended, p. 1134, § 65, effective July 1, 1994. **L. 94:** (2.5) added, p. 2051, § 2, effective July 1. **L. 97:** (3) amended, p. 1441, § 17, effective July 1. **L. 2005:** (3) amended, p. 766, § 29, effective June 1. **L. 2008:** (3) amended, p. 1891, § 60, effective August 5. **L. 2015:** IP(1) and (3) amended and (1)(a) repealed, (SB 15-099), ch. 99, p. 290, § 3, effective August 5. **L. 2021:** (3) amended, (SB 21-059), ch. 136, p. 726, § 61, effective October 1. **L. 2023:** (2.5) amended, (HB 23-1027), ch. 284, p. 1680, § 6, effective June 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-1-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (3) in Senate Bill 93-134 and House Bill 93-1317 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (3), see section 1 of chapter 230, Session Laws of Colorado 1993. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Referee/Commissioner Duties and Procedures in Denver Metro Domestic Matters", see 11 Colo. Law 951 (1982). For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (Aug. 2004).

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

Colorado Children's Code expressly contemplates participation of interested parties in juvenile cases. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

But does not supply definition of "interested party". In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

The Colorado Children's Code expressly contemplates the active participation of interested parties at the dispositional hearing. The Children's Code does not, however, delineate who is entitled to participate as an interested party. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

While the Colorado Children's Code does not expressly define those persons who may become "parties" to proceedings, it does contemplate the participation of interested third parties. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Includes persons furnishing child support pursuant to juvenile court order. Since the juvenile court has the power to compel legally responsible persons to support a child, it necessarily follows that a person furnishing support to a child in accordance with an order of the juvenile court has the right to intervene in a child in need of supervision proceeding as an interested party for the purpose of recovering the cost of that support. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

And persons able to aid court in its determination. Among those who can be considered interested parties are individuals who, because of their relationship with or particular knowledge concerning the child, can materially aid the court in its determination of what in fact is in the child's best interest. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

State is an "interested party". The state of Colorado, through its representative, the district attorney, is an "interested party" at the dispositional stage of a delinquency proceeding, as the same factors which establish the state's status as an interested party at the adjudicatory stage of the delinquency proceeding are equally applicable to the dispositional stage. People in Interest of R.M.S., 651 P.2d 377 (Colo. 1982).

State's interest in juvenile proceedings stems from its role as parens patriae, and that interest is of significance both in the context of delinquency cases, and neglect and dependency matters. McCall v. Dist. Court ex rel. County of Montezuma, 651 P.2d 392 (Colo. 1982).

Those having custodial experience with child have sufficient interest, knowledge, and concern relative to the child to bring them within the classification of "interested parties" and thus they are entitled, upon application, to intervene as a matter of right in the dispositional hearing. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Common-law hearsay objections as to admissibility of social study are not applicable. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Nonexpert or hearsay content affects weight, not admissibility. Where this section authorizes consideration of social reports, fact that they may contain hearsay or are prepared by nonexperts becomes matter concerning their weight and probative value and not their admissibility. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972); People in Interest of R.D.H., 944 P.2d 660 (Colo. App. 1997).

And admission of reports with cross-examination did not deny due process. Where parents obtained attendance of authors of social reports admitted in proceeding to adjudge child to be dependent and neglected and to terminate parental rights, and where parents cross-examined each author, admission of such reports did not deny due process to parents. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Admission of reports not unconstitutional. The admission of reports into evidence pursuant to subsection (2) violates neither constitutional confrontation requirements nor due process of law, where the reports are made available to all interested parties sufficiently in advance of the termination hearing to permit the parties to compel the attendance of the persons who wrote the reports or prepared the materials therein and to subject them to examination under oath. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

Opportunity to request cross-examination denied. Where it appeared the court in proceeding to terminate parental rights considered the contents of a letter in the nature of a social study as provided for by this section, but the respondents were not apprised of its existence, the respondents were not provided with an opportunity to request the cross-examination of the persons responsible for the study. People in Interest

of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

C.R.C.P. 24 has no application in a proceeding under the Colorado Children's Code, as the code itself expressly contemplates the active participation of interested parties. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

19-1-108. Magistrates - qualifications - duties.

(1) The juvenile court may appoint one or more magistrates to hear any case or matter under the court's jurisdiction, except where a jury trial has been requested pursuant to section 19-2.5-610 and in transfer hearings held pursuant to section 19-2.5-802. Magistrates shall serve at the pleasure of the court, unless otherwise provided by law.

(2) Every magistrate appointed pursuant to this section shall be licensed to practice law in Colorado; except that county judges who are not lawyers may be appointed to serve as magistrates, as authorized by section 13-6-105 (3), C.R.S., to hear detention and bond matters.

(3) (a) Repealed.

(a.5) Magistrates shall conduct hearings in the manner provided for the hearing of cases by the court. During the initial advisement of the rights of any party, the magistrate shall inform the party that, except as set forth in this subsection (3), the party has the right to a hearing before the judge in the first instance and the party may waive that right but that, by waiving that right, the party is bound by the findings and recommendations of the magistrate, subject to a request for review as set forth in subsection (5.5) of this section. The right to require a hearing before a judge does not apply to hearings at which a child is advised of his or her rights pursuant to section 19-2.5-605; detention hearings held pursuant to sections 19-2.5-303, 19-2.5-304, and 19-2.5-305; preliminary hearings held pursuant to section 19-2.5-609; temporary custody hearings held pursuant to section 19-3-403; proceedings held pursuant to article 4 of this title 19; and support proceedings held pursuant to article 6 of this title 19. In proceedings held pursuant to article 4 or 6 of this title 19, contested final orders regarding allocation of parental responsibilities may be heard by the magistrate only with the consent of all parties.

(b) In proceedings pursuant to article 2.5 of this title 19, the right to require a hearing before a judge is deemed waived unless a request is made by any party that the hearing be held before a judge at the time the matter is set for hearing.

(c) In proceedings under article 3 of this title, the right to require a hearing before a judge is waived unless:

(I) A request is made by a party or the people of the state of Colorado that the hearing be held before the judge at the time the matter is set for hearing, if counsel for the party is present at the time the matter is set; or

(II) A request is made by a party or the people of the state of Colorado in writing within seven days after receipt of notice of the setting if the matter is set for hearing outside of the presence of counsel for a represented party or if the matter is set on notice.

(4) At the conclusion of a hearing, the magistrate shall:

(a) Advise the parties before him of his findings and ruling;

(b) Advise the parties of their right to review by the judge of his findings and ruling;

(c) Prepare findings and a written order that shall become the order of the court, absent a petition for review being filed as provided in subsection (5.5) of this section; and

(d) Advise the parties that they have a right to object to an order allowing the review of any decree for placement of a child to be conducted as an administrative review by the department of human services and that if any party objects to administrative review, the court shall conduct the review.

(5) Repealed.

(5.5) A request for review must be filed within fourteen days for proceedings under articles 2.5, 4, and 6 of this title or within seven days for proceedings under article 3 of this title after the parties have received notice of the magistrate's ruling and must clearly set forth the grounds relied upon. Such review is solely upon the record of the hearing before the magistrate and is reviewable upon the grounds set forth in rule 59 of the Colorado rules of civil procedure. A petition for review is a prerequisite before an appeal may be filed with the Colorado court of appeals or Colorado supreme court. The judge may, on his or her own motion, remand a case to another magistrate after action is taken on a petition for review.

(6) A magistrate may issue a lawful warrant taking a child into custody pursuant to section 19-2.5-204 and may issue search warrants as provided in sections 19-1-112 and 19-2.5-205.

Source: L. 87: Entire title R&RE, p. 701, § 1, effective October 1. **L. 88:** (3) amended, p. 741, § 2, effective July 1. **L. 91:** Entire section amended, p. 361, § 26, effective April 9. **L. 92:** (4)(d) added, p. 221, § 3, effective July 1. **L. 94:** (4)(d) amended, p. 2658, § 145, effective July 1. **L. 97:** (3) and (5) amended, p. 517, § 4, effective July 1. **L. 99:** (1) and (6) amended, p. 1375, § 11, effective July 1; (5) amended, p. 1086, § 4, effective July 1. **L. 2000:** (3)(c) amended, p. 35, § 1, effective July 1. **L. 2003:** (3)(b) amended, p. 1901, § 1, effective July 1. **L. 2006:** (3)(a) and (5) amended, p. 451, § 2, effective April 18; (3)(a.5) and (5.5) added, p. 452, §§ 3, 4, effective July 1, 2007. **L. 2007:** (3)(a.5) amended, p. 1652, § 9, effective May 31; (3)(a.5) amended, p. 2029, § 35, effective June 1; (4)(c) amended, p. 2029, § 36, effective July 1. **L. 2016:** IP(3)(c), (3)(c)(II), and (5.5) amended, (HB 16-1057), ch. 31, p. 70, § 1, effective July 1. **L. 2019:** (3)(a.5) amended, (SB 19-108), ch. 294, p. 2727, § 21, effective July 1. **L. 2021:** (1), (3)(a.5), (3)(b), and (6)

amended, (SB 21-059), ch. 136, p. 726, § 62, effective October 1. **L. 2022:** (5.5) amended, (SB 22-212), ch. 421, p. 2970, § 33, effective August 10.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(a)(II) provided for the repeal of subsection (3)(a), effective July 1, 2007. (See L. 2006, p. 451.)

(3) Amendments to subsection (3)(a.5) by House Bill 07-1349 and House Bill 07-1367 were harmonized.

(4) Subsection (5)(b) provided for the repeal of subsection (5), effective July 1, 2007. (See L. 2006, p. 451.)

ANNOTATION

Law reviews. For note, "In re Gault and the Colorado Children's Code", see 44 Den. L. J. 644 (1967).

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

Natural parents have a constitutionally protected liberty interest in the companionship, care, custody, and management of their children. B.B. v. People in Interest of T.S.B., 785 P.2d 132 (Colo. 1990); In re R.G.B., 98 P.3d 958 (Colo. App. 2004).

To protect this interest, a court must provide parents with fundamentally fair procedures if termination of parental rights is sought. In re Petition of R.H.N., 710 P.2d 482 (Colo. 1985); In re R.G.B., 98 P.3d 958 (Colo. App. 2004).

Where an error of the trial court is considered fundamental or involves a miscarriage of justice, the appellate court may consider the issue for the first time on appeal. In re R.G.B., 98 P.3d 958 (Colo. App. 2004).

Two-stage proceeding before referee and court satisfies due process. Where, in a juvenile case, the procedure involves a two-stage fact-finding process with the first stage conducted by agreement of the parties before a referee with final judgment reserved for the court, it is not violative of the standards of due process and fair treatment. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

Actions of court and referee constitute one proceeding. There are not two separate proceedings, one before the referee and a second before the court, but rather one proceeding to pass on the question of

possible delinquency. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

This section does not outline two separate proceedings, one before the referee and a second before the court; instead it prescribes a single, two-step proceeding in which the question of dependency or neglect is decided. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

And second hearing is not double jeopardy. A second hearing before the judge on motions of the people in juvenile proceedings, and the modification of the referee's findings, do not place the child twice in jeopardy. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

When parties agree to hearing before referee, they also agree to statutory procedures outlined for such hearings in this section. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

The referee is a hearing officer who acts with limited authority under the supervision and direction of a judge and who has no independent power to enter orders or decrees. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The procedural powers of a juvenile court after reviewing a juvenile magistrate's findings are governed not only by relevant provisions of the Colorado Children's Code but also by the Colorado Rules for Magistrates (C.R.M.). People in Interest of R.A., 937 P.2d 731 (Colo. 1997).

Requirement in subsection (3)(a) that a magistrate inform the parties of their right to a hearing before a judge in the first instance is mandatory. In re R.G.B., 98 P.3d 958 (Colo. App. 2004); In re A.P.H., 98 P.3d 955 (Colo. App. 2004).

Waiver of initial advisement of rights in § 19-3-202 (1) includes waiver of advisement of right to be heard by a judge in subsection (3)(a) of this section. People ex rel. T.E.M., 124 P.3d 905 (Colo. App. 2005).

Subsection (3)(a) does not require parent to be advised at any time other than the initial appearance. Accordingly, a parent's waiver of right to formal advisement is effective throughout the dependency and neglect proceedings. People ex rel. T.E.M., 124 P.3d 905 (Colo. App. 2005).

Acts of referee dependent on waiver by parties and court confirmation. The essential ingredients to give judicial effect to a referee's findings and recommendations are: (a) A waiver, on the part of all parties, of a request for hearing before a judge, which may be affirmatively stated or may result from a lapse of five days without request; and (b) confirmation of the findings and recommendations by the court. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

Only if no request for review is filed, and if they are confirmed by judicial order, do the findings and recommendations of the referee become the decree of the court. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Final judgment results only after court acts. The findings and recommendations of the referee do not have the effect of a final judgment until adopted or modified by the court. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

Final responsibility for disposition lies with trial judge. Since the referee's recommendations do not automatically become the order of the court, and since the court may, even upon its own motion, order a rehearing, the final responsibility for the disposition of the case lies in every instance with the trial judge regardless of whether the parties request review. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

This responsibility may neither be assumed by, nor delegated to, a referee. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The court must draw its own conclusions from the testimony and must independently ascertain how the best interests of the child and of society may most appropriately be served in the case before him. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The parties have the right to demand that a judge hear the matter in the first instance, and the referee must so advise them. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Failure of magistrate to advise party of the right to a hearing before a judge or to secure a waiver of that right does not divest magistrate of subject matter jurisdiction. In re A.P.H., 98 P.3d 955 (Colo. App. 2004).

Magistrate's failure to advise party of this right, however, requires reversal of the order modifying the parties' parental responsibilities. In re A.P.H., 98 P.3d 955 (Colo. App. 2004).

Referee to transmit papers, findings, and recommendations to judge. At the conclusion of any hearing conducted by a referee, he must promptly transmit to the judge all papers relating to the case along with his findings of fact and recommendations as to the disposition of the case. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Jury trial held before referee was improper. The trial court exceeded its jurisdiction in prescribing, instead of a jury trial and in lieu of a trial before a master or referee, a procedure whereby the parties were to have a "jury trial in all respects" but conducted by the referee, where it was agreed that the referee and the court would be bound by the jury verdict, although the jury was described as being "an advisory one". Maniatis v. Karakitsios, 161 Colo. 378, 422 P.2d 52 (1967).

C.R.C.P. 53(e)(2) inapplicable in dependency proceeding. C.R.C.P. 53(e)(2), which provides that in an action tried without a jury the court shall accept a master's or referee's findings of fact unless clearly erroneous, is inapplicable in a dependency proceeding because that is a statutory proceeding in which the statute supersedes the conflicting rule. People in

Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Grandmother required to file petition for district court review of magistrate's denial of motion to intervene before seeking appellate review in paternity action where grandmother sought to intervene for visitation rights. This section is properly applied, not C.R.M. 7, if parents have waived the right to a hearing by a judge. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

Period for filing requests for review. For purposes of subsection (5) the "conclusion of the [juvenile] hearing" does not occur until the juvenile commissioner signs the written findings and recommendations, and transmits them to the juvenile judge by filing in the office of the clerk. The five-day period within which to file a request for review does not commence running until the filing date. People ex rel. M.C.L., 671 P.2d 1339 (Colo. App. 1983).

A request for review of the commissioner's findings, filed within five days after the commissioner's written findings and recommendations are filed in the district court, is timely. C.T.R. v. R.C.S., 672 P.2d 548 (Colo. App. 1983).

And such review shall be before the district court. The statute calls for an initial decision by the commissioner, with the right of appeal to the judge. There is nothing in the statute providing for new trial or rehearing directed to the commissioner. M.E.G. v. R.B.D., 676 P.2d 1250 (Colo. App. 1983).

Under subsection (5), the district court reviews only the record of the hearing before the magistrate and its review is similar to an appellate review of the magistrate's decision. The review of the trial court's decision by an appellate court, therefore, is similar to a second level of appellate review. People ex rel. J.G., 97 P.3d 300 (Colo. App. 2004).

Magistrate has jurisdiction over juvenile's Crim. P. 32(d) motion to withdraw previously entered guilty plea until the proceedings have culminated in a final order or judgment. Juvenile sought to withdraw guilty plea based on ineffective assistance of counsel in delinquency action subject to deferred adjudication prior to the imposition of sentence. A magistrate is not prohibited from reviewing prior rulings, decrees, or other decisions in a case the magistrate is properly appointed to hear until there is a final appealable order or judgment. A guilty plea, prior to sentencing and entry of a judgment or conviction, does not constitute a final judgment or order. People in Interest of J.D., 2020 CO 48, 464 P.3d 785.

A party must present an issue to the district court in a petition for review before that issue may be raised in the court of appeals. A party seeking review of a magistrate's decision must raise a particular issue in the district court so that the district court may have an opportunity to correct any error that may have been made by the magistrate. If a party does not raise an issue before the district court in a petition for review, but raises the issue on appeal for the first time, such party seeks to have the

court of appeals correct an error that could have been corrected by the district court in a petition for review. People ex rel. K.L-P., 148 P.3d 402 (Colo. App. 2006).

Because paternity actions are proceedings under article 4 of this title 19, a petition for review of a magistrate's ruling is a prerequisite before an appeal may be filed with the court of appeals or supreme court. The court of appeals and supreme court lack jurisdiction to review a magistrate's order if a district court did not review it. People in Interest of J.H., 2021 COA 94, 497 P.3d 20.

A juvenile must petition the district court for review of a magistrate's order revoking probation before the juvenile may pursue review by the court of appeals. People in Interest of A.P.H., 2020 COA 159, 478 P.3d 1284.

Appeal of magistrate's dispositional order in accordance with subsection (5.5) is not a jurisdictional prerequisite to appealing the district court's adjudicatory order to the court of appeals or the supreme court. The parties did not appeal the magistrate's dispositional order. The adjudicatory order became final and appealable upon entry of the disposition. People in Interest of R.J., 2019 COA 109, 451 P.3d 1232.

Reinstatement of magistrate's delinquency judgment by appellate court does not violate double jeopardy if the district court acting pursuant to subsection (5) erroneously reversed the judgment. People ex rel. J.G., 97 P.3d 300 (Colo. App. 2004).

Interpreting the filing requirement of subsection (5) liberally to account for the best interests of the child and avoiding a construction of the statute that would call into question its constitutional validity, district court was determined to be authorized to retain jurisdiction to consider a late-filed petition when the delay was excusable neglect and the department failed to raise the timing issue. C.S. v. People, 83 P.3d 627 (Colo. 2004); People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

For the purpose of evaluating a court's discretionary decision whether to accept an untimely petition for review of a magistrate's order pursuant to former subsection (5), "excusable neglect" shall be defined as a situation where the failure to act results from circumstances that would cause a reasonably careful person to neglect a duty. People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

District court's determination that counsel's misunderstanding of the law did not constitute good cause amounted to a finding that juvenile had not shown "excusable neglect". People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

Allegations of "inexcusable neglect" should be resolved by the district court in the course of determining whether there is good cause to consider juvenile's petition for review, even though there was no excusable neglect to justify its late filing.

People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

Because a district court's review of a magistrate's order is effectively appellate in nature, the factors identified in Estep v. People, 753 P.2d 1241 (Colo. 1988), and People v. Baker, 104 P.3d 893 (Colo. 2005), are equally important when a juvenile's ability to obtain appellate review of a judgment of delinquency entered by a magistrate is foreclosed by counsel's failure to file a timely petition for district court review pursuant to former subsection (5) and should be considered as part of a determination whether there is good cause to permit the late filing of a petition for review. Only after a determination is made that counsel's acts or omissions were inexcusable should the court turn to the Estep-Baker analysis of whether other factors "weigh heavily" in favor of permitting the late filing. People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of subsection (5)).

Magistrate may not synthesize conflicting testimony. Where the magistrate apparently combined portions of two very different versions of the facts into a third version unsupported by the record, the magistrate's findings could not be upheld. Although the magistrate may believe all or part of the testimony of any witness, he or she may not create a version which is not supported by the testimony of any witness. People in Interest of R.A., 937 P.2d 731 (Colo. 1997).

Failure of commissioner to prepare a detailed written order as promised concerning child's placement in residential care facility excuses any delay by the school district in requesting review under either the "Exceptional Children's Educational Act" or the "Colorado Children's Code" because the time for filing for review would not begin to run until the written order was received. People v. Adams County Sch. Dist. No. 50, 732 P.2d 1222 (Colo. App. 1986).

Commissioner's statement at restitution hearing as to the amount of damages to be paid did not constitute sufficient findings to satisfy statutory requirement that findings be prepared at the conclusion of such hearing. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Mittimus order signed by commissioner two months prior to restitution hearing failed to satisfy statutory requirement that a written order be prepared. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

District court did not provide a sufficient record to support its affirmation of the commissioner's order where commissioner failed to make sufficient findings at the conclusion of restitution hearing. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

A court may consider a late petition for review, in accordance with subsection (5.5), if the court finds the delay is the result of a party's counsel's medical condition or need for medical care that constitutes excusable neglect. A party must show that the counsel's medical condition or need for care was so disabling as to prevent

counsel from filing the petition or a request for an extension of time. People in Interest of L.B-H-P., 2021 COA 5, 482 P.3d 527.

Subsection (5.5) does not provide for district court review of magistrate's orders in proceedings under article 5 of this title. In a kinship adoption case, appeal is made directly to the appellate courts. In re C.A.B.L., 221 P.3d 433 (Colo. App. 2009).

Magistrate's finding under subsection (a)(3.5) that a juvenile is competent to proceed is reviewable by the juvenile court under subsection (5.5). People in Interest of A.T.C., 2023 CO 19, 528 P.3d 168.

Applied in People in Interest of J.F.C., 660 P.2d 7 (Colo. App. 1982); In re Petition of Taylor, 134 P.3d 559 (Colo. App. 2006).

19-1-109. Appeals - child welfare appeals workgroup - created.

(1) An appeal as provided in the introductory portion to section 13-4-102 (1), C.R.S., may be taken from any order, decree, or judgment. Appellate procedure shall be as provided by the Colorado appellate rules. Initials shall appear on the record on appeal in place of the name of the child and respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.

(2) (a) The people of the state of Colorado shall have the same right to appeal questions of law in delinquency cases as exists in criminal cases.

(b) An order terminating or refusing to terminate the legal relationship between a parent or parents and one or more of the children of such parent or parents on a petition, or between a child and one or both parents of the child, shall be a final and appealable order.

(c) An order decreeing a child to be neglected or dependent shall be a final and appealable order after the entry of the disposition pursuant to section 19-3-508. Any appeal shall not affect the jurisdiction of the trial court to enter such further dispositional orders as the court believes to be in the best interests of the child.

(3) Repealed.

Source: L. 87: Entire title R&RE, p. 702, § 1, effective October 1. **L. 97:** (2) amended and (3) added, p. 1433, § 7, effective July 1. **L. 2000:** (3) amended, p. 1546, § 3, effective August 2. **L. 2022:** (3) amended, (HB 22-1113), ch. 56, p. 261, § 2, effective August 10. **L. 2026:** (3) repealed, (HB 26-1295), ch. 121, p. 515, § 2, effective August 12.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1113, see section 1 of chapter 56, Session Laws of Colorado 2022.

ANNOTATION

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

Judgments in dependency proceedings may be reviewed by the supreme court as in appeal proceedings. Selk v. Ramsey, 110 Colo. 223, 132 P.2d 454 (1942).

Juvenile delinquency cases may be appealed to the supreme court after trial. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

But an interlocutory appeal is not available to either the state or the respondent in a delinquency proceeding under the Colorado Children's Code. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

Neither the state nor the respondent can prosecute interlocutory appeals in delinquency proceedings. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

And C.A.R. 4.1 does not apply. C.A.R. 4.1 cannot be stretched to permit an interlocutory appeal in a delinquency proceeding without doing violence to the distinction carefully drawn by the supreme court between a criminal proceeding and a proceeding in delinquency. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

C.A.R. 4.1, which authorizes certain interlocutory appeals in criminal cases, has no application to delinquency proceedings. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

Statute does not describe the order or judgment terminating the parent-child legal relationship as interlocutory, therefore, intent of the general assembly is to require immediate appeal of any order terminating parental rights. People ex rel. A.E., 994 P.2d 465 (Colo. App. 1999).

Application of C.A.R. 1(a)(1). Delinquency proceedings are no less subject to the finality requirements of C.A.R. 1(a)(1) than any other type of proceeding. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

Issue of notice and pleading in juvenile proceeding of constitutional proportions. Even if an allegation in a mother's motion for a new trial after the termination of her parental rights in her child was inadequate to

raise the issue of adequacy of notice and pleading in a juvenile proceeding, it is of constitutional proportions, and the court of appeals is obliged to address the issue on its merits. People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980).

Majority renders minor's appeal moot. Attainment of majority while minor's appeal from adjudication as child in need of supervision is pending renders the appeal moot in light of the Colorado Children's Code attempt to eliminate collateral legal consequences of adjudication. People v. T.B., 183 Colo. 310, 516 P.2d 642 (1973).

An order denying termination of the parent-child legal relationship does not "completely determine the rights of the parties involved" and is interlocutory in nature; therefore, such an order is not final and appealable. People in the interest of D.B., 855 P.2d 27 (Colo. App. 1993) (decided under law in effect prior to the 1997 amendment).

An order terminating a parent-child legal relationship is final and appealable thereby furnishing the right of immediate appeal to a parent, even when order relates to only one parent. People ex rel. A.E., 994 P.2d 465 (Colo. App. 1999).

Juvenile court's order denying a tribe's request to transfer jurisdiction to a tribal court is a final, appealable order based on the collateral order doctrine. People in Interest of L.R.B., 2019 COA 85, 487 P.3d 1058 (decided prior to 2019 amendment to § 19-1-126).

The juvenile court's finding that a juvenile cannot be restored to competency is a final appealable order. People ex rel. C.Y., 2012 COA 31, 275 P.3d 762.

A party has a right to appeal both the adjudicatory order and the initial disposition order. An initial dispositional order, by itself, however, is not a final, appealable order. People in Interest of H.T., 2019 COA 72, 486 P.3d 1188.

A parent may appeal an initial dispositional order simultaneously with an appeal of an adjudicatory order. This interpretation is consistent with the core goals of the Colorado Children's Code. People in Interest of M.W., 2022 COA 72, 518 P.3d 1132.

Fact finder's "no adjudication" finding with respect to one party is not a proper basis for a motion notwithstanding the verdict and not a final appealable order under C.A.R. 3.4(a) or subsection (2)(c) of this section. Statute provides that an order decreeing a child neglected or dependent is a final and appealable order. Father's dismissal from the petition based on a jury verdict that the child was not dependent and neglected with respect to him is not subject to direct appeal under C.A.R. 3.4. People in Interest of S.M-L, 2016 COA 173, 459 P.3d 572, aff'd sub nom. People in Interest of R.S., 2018 CO 31, 416 P.3d 905.

C.A.R. 2 permits an appellate court to expedite decisions and order proceedings in accordance with its direction even though C.A.R. 3.4 does not extend to permanent custody orders entered in dependency or neglect proceedings. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

Application of C.A.R. 3.4(b). Based on the "unique circumstances exception", court of appeals has the authority to extend the deadline for filing the notice of appeal in a dependency and neglect case. The "no extensions" provision in C.A.R. 3.4(b) does not preclude application of the unique circumstances exception, because it is an exception to procedural rules limiting a court's authority to grant exceptions. Here, the trial court must bear some responsibility for the late filing because of an ambiguous ruling and subsequent written orders. People ex rel. A.J.H., 134 P.3d 528 (Colo. App. 2006).

Mother cannot wait until appeal of termination order to challenge counsel's performance at the earlier adjudicatory proceeding. Claim of ineffective assistance of counsel at adjudicatory hearing was untimely because mother was or should have been aware of facts giving rise to claim at or shortly after adjudicatory hearing, but made no effort to file a timely appeal from adjudication order, nor could mother allege any factual or legal impediments to pursuing a timely appeal. People in Interest of A.R., 2020 CO 10, 456 P.3d 1266.

Subsection (2)(c) is not meant to delay permanent placement decisions while appeals of dependency and neglect orders are litigated. Subsection (2)(c) provides the trial court with continuing jurisdiction to enter further permanent custody orders under § 19-3-702 if it furthers the child's best interests, even if those orders are entered after the order adjudicating the child dependent or neglected is appealed. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

Party may appeal adjudicatory order after entry of disposition, even though magistrate's dispositional order has not been appealed. Under the plain language of subsection (2)(c), an adjudicatory order is final and appealable upon entry of the disposition. The parties did not appeal the dispositional order, and appeal of the magistrate's dispositional order to the district court is not a jurisdictional prerequisite to appealing the adjudicatory order to the court of appeals or the supreme court. People in Interest of R.J., 2019 COA 109, 451 P.3d 1232.

Matter is moot where guardian ad litem (GAL) failed to offer facts in supplemental brief demonstrating a current basis to terminate mother's parental rights. Although the GAL argued on appeal that the court improperly failed to terminate mother's rights, the child has been returned to the mother and all parties believed that the child should remain in the mother's custody. A matter is moot when the relief sought, if granted, would have no practical legal effect on the existing controversy. People ex rel. L.O.L., 197 P.3d 291 (Colo. App. 2008).

Appellate court may review an otherwise moot issue, however, when it is capable of repetition and yet will evade review. The issue of whether the trial court rendered its decision using the wrong burden of proof is an issue that is capable of repetition and yet may evade review and thus may be addressed on its merits. People

ex rel. L.O.L., 197 P.3d 291 (Colo. App. 2008).

Applied in People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979).

19-1-110. Previous orders and decrees - force and effect.

All orders and decrees in proceedings concerning dependency and neglect, delinquency, relinquishment, adoption, paternity, or contributing to dependency or delinquency entered by the court prior to October 1, 1987, shall remain in full force and effect until modified or terminated by the court, as provided in this title.

Source: L. 87: Entire title R&RE, p. 702, § 1, effective October 1; entire section amended, p. 1827, § 1, effective August 27.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

Action founded on repealed statute continued in full force. A properly filed action founded on a statute later repealed by the Colorado Children's Code continues in full force and effect for the purpose of sustaining liability, penalty, or forfeiture. People in Interest of M.K.A., 182 Colo. 172, 511 P.2d 477 (1973).

Based on savings clause. It is the legislative intent based upon the savings clause of the Colorado Children's Code and the general savings clause that a properly filed cause of action founded on the then existing statute, though that statute is later repealed, continues in full force and effect for the purpose of sustaining liability, penalty, or forfeiture. People in Interest of M.K.A., 182 Colo. 172, 511 P.2d 477 (1973).

19-1-111. Appointment of guardian ad litem.

(1) The court shall appoint a guardian ad litem for every child under twelve years of age in all dependency and neglect cases pursuant to this title 19.

(2) The court may appoint a guardian ad litem in the following cases:

(a) For a child in a delinquency proceeding where:

(I) No parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent appears at the first or any subsequent hearing in the case;

(II) The court finds that a conflict of interest exists between the child and parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent; or

(III) The court makes specific findings that the appointment of a guardian ad litem is necessary to serve the best interests of the child and such specific findings are included in the court's order of appointment.

(b) For a child in proceedings under the "School Attendance Law of 1963", article 33 of title 22, C.R.S., when the court finds that the appointment is necessary due to exceptional and extraordinary circumstances;

(c) For a parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, stepparent, or spousal equivalent in dependency or neglect proceedings who has been determined to have a behavioral or mental health disorder or an intellectual and developmental disability by a court of competent jurisdiction; except that, if a conservator has been appointed, the conservator shall serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, the conservator shall be informed that a guardian ad litem has been appointed.

(d) For an underage party seeking a marriage license, as provided in section 14-2-108 (2).

(e) For a youth who is twelve years of age or older in a dependency and neglect case when the court determines a guardian ad litem is necessary due to the youth's diminished capacity. The court shall not consider age or developmental maturity as the sole basis for a determination of diminished capacity. The court shall not deem a guardian ad litem appointed pursuant to this subsection (2)(e) to be a substitute for a counsel for youth appointed pursuant to this section.

(2.5) A court shall not deem a guardian ad litem who is appointed by the court for a juvenile in a delinquency proceeding pursuant to subsection (2) of this section to be a substitute for defense counsel for the juvenile.

(3) The guardian ad litem for the child shall have the right to participate in all proceedings as a party, except in delinquency cases.

(4) (a) Except as provided in paragraphs (b) and (c) of this subsection (4), the appointment of a guardian ad litem pursuant to this section shall continue until such time as the court's jurisdiction is terminated.

(b) The appointment of the guardian ad litem terminates in a delinquency proceeding:

(I) At the time sentence is imposed, unless the court continues the appointment because the child is sentenced to residential or community out-of-home placement as a condition of probation; or

(II) When the child reaches eighteen years of age, unless the court continues the appointment because the court determines the appointment is necessary because of the youth's diminished capacity.

(c) The court may terminate the appointment of a guardian ad litem in a delinquency proceeding on its own motion or on the motion of the guardian ad litem when the appointment is no longer necessary due to any of the following reasons:

(I) The child's parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent appears at a hearing in the case;

(II) The conflict of interest described in subparagraph (II) of paragraph (a) of subsection (2) of this section no longer exists; or

(III) The appointment no longer serves the best interests of the child.

(5) The guardian ad litem shall cooperate with any CASA volunteer appointed pursuant to section 19-1-206.

(6) Any person appointed to serve as a guardian ad litem pursuant to this section shall comply with any chief justice directive concerning the court appointment of guardians ad litem and other representatives and of counsel for youth and indigent persons in titles 14, 15, 22, and 27 and this title 19, and any subsequent chief justice directive or other practice standards established by rule or directive of the chief justice pursuant to section 13-91-105 concerning the duties or responsibilities of guardians ad litem in legal matters affecting children.

Source: L. 87: Entire title R&RE, p. 702, § 1, effective October 1. **L. 92:** (1) amended, p. 221, § 4, effective July 1. **L. 96:** (5) added, p. 1089, § 2, effective May 23. **L. 98:** (2)(a)(I), (2)(a)(II), and (2)(c) amended, p. 1405, § 62, effective February 1, 1999. **L. 2000:** (6) added, p. 1774, § 4, effective July 1. **L. 2006:** (2)(c) amended, p. 1400, § 52, effective August 7. **L. 2009:** (2)(a)(III), (2)(b), and (4) amended, (SB 09-268), ch. 207, p. 942, § 3, effective May 1. **L. 2014:** (2.5) added, (HB 14-1032), ch. 247, p. 954, § 5, effective November 1. **L. 2015:** (6) amended, (SB 15-264), ch. 259, p. 952, § 41, effective August 5. **L. 2017:** (2)(c) amended, (SB 17-242), ch. 263, p. 1309, § 150, effective May 25. **L. 2019:** (2)(d) added, (HB 19-1316), ch. 380, p. 3422, § 6, effective August 2. **L. 2022:** (1), IP(4)(b), (4)(b)(II), and (6) amended and (2)(e) added, (HB 22-1038), ch. 92, p. 433, § 6, effective January 9, 2023.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "Final Draft of Proposed GAL Standards of Practice", see 22 Colo. Law. 1907 (1993). For Supreme Court directive, see "Colorado Supreme Court Issues a Directive on GALs in Cases Under CRS Title 19", 25 Colo. Law. 17 (Mar. 1996). For article, "The Role of the Guardian ad Litem in Juvenile Delinquency Court", see 27 Colo. Law. 53 (Feb. 1998). For article, "The Guardian ad Litem in Juvenile Delinquency Court", see 27 Colo. Law. 83 (Mar. 1998). For article, "The Updated Role of the Guardian ad Litem in Juvenile Delinquency Cases", see 31 Colo. Law. 79 (May 2002). For article, "Ethical Issues for Guardians ad Litem Representing Children in Dependency and Neglect Cases", see 31 Colo. Law. 43 (Oct. 2002). For article, "Report-Writing Tips for Guardians ad Litem in Dependency and Neglect Cases", see 31 Colo. Law. 87 (Oct. 2002). For casenote, "A Colorado Child's Best Interests: Examining the Gabriesheski Decision and Future Policy Implications", see 85 U. Colo. L. Rev. 537 (2014). For article, "Defense Counsel's Duties in Juvenile Delinquency Cases: Should a Guardian ad Litem be Appointed?", see 47 Colo. Law. 48 (Nov. 2018). For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023).

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

This section does not limit a court's discretionary power to appoint a guardian ad litem (GAL) to only those parents determined to be mentally ill or developmentally disabled. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Duties of parent's GAL and attorney in termination proceedings discussed in People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

In dependency and neglect proceeding, GAL appointed for respondent parent with intellectual disability does not have a statutory right to participate in

proceedings or to make recommendations to the court. GAL's role is different when representing an adult than when representing a child. The role is assistive: to facilitate communication between the parent and parent's counsel and to help parent participate in the proceeding. People in Interest of T.M.S., 2019 COA 136, 454 P.3d 375.

GAL improperly participated when she purported to represent parent's best interests while advocating terminating parental rights, against parent's legal interest and over parent's objection. People in Interest of T.M.S., 2019 COA 136, 454 P.3d 375.

Period of appointment of GAL. A GAL appointed with respect to a motion to terminate the parent-child relationship serves until entry of a final decree of adoption or until the juvenile court jurisdiction is terminated. People in Interest of M.C.P., 768 P.2d 1253 (Colo. App. 1988).

Father did not waive his right to the appointment of a GAL when he did not appear in court. Because father was in custody out of state, unrepresented, and indigent, he could not appear in court. Nothing prohibits such an appointment should a parent fail to appear. In re R.L.S., 2019 COA 112, 451 P.3d 1249.

Court erred in appointing GAL to assist parent and then allowing GAL to testify against parent in closing arguments, violating parent's right to fundamentally fair procedures in termination proceeding. GAL had no right to present closing argument or to make recommendations based on independent observations not in evidence. People in Interest of T.M.S., 2019 COA 136, 454 P.3d 375.

19-1-111.5. Court-appointed special advocate.

The court may appoint a CASA volunteer pursuant to the provisions of part 2 of this article if the court finds that the appointment would be in the best interests of the child. The court may direct the manner in which a CASA volunteer and any guardian ad litem appointed in a case shall collaborate.

Source: L. 96: Entire section added, p. 1089, § 3, effective May 23.

ANNOTATION

Law reviews. For article, "CASA — A Powerful Voice for a Child", see 36 Colo. Law. 97 (Oct. 2007).

19-1-112. Search warrants for the protection of children.

(1) A search warrant may be issued by the juvenile court to search any place for the recovery of any child within the jurisdiction of the court believed to be a delinquent child or a neglected or dependent child.

(2) Such warrant shall be issued only on the conditions that the application for the warrant shall:

(a) Be in writing and supported by affidavit sworn to or affirmed before the court;

(b) Name or describe with particularity the child sought;

(c) State that the child is believed to be a delinquent child or a neglected or dependent child and the reasons upon which such belief is based;

(d) State the address or legal description of the place to be searched;

(e) State the reasons why it is necessary to proceed pursuant to this section.

(3) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(4) The search warrant shall be directed to any officer authorized by law to execute it in the county wherein the place to be searched is located.

(5) The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.

(6) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the court may so direct.

(7) A copy of the warrant, the application therefor, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

(8) If the child is found, the child may be taken into custody pursuant to section 19-2.5-209 or 19-3-401.

(9) The warrant shall be returned to the issuing court.

Source: L. 87: Entire title R&RE, p. 703, § 1, effective October 1. **L. 2021:** (8) amended, (SB 21-059), ch. 136, p. 727, § 63, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Caseworkers who did not obtain a warrant under this section but instead obtained only an order to investigate under § 19-3-308 (3)(b) were not authorized to enter a home without consent, making their entry illegal under the fourth amendment. People v. Dyer, 2019 COA 161, 457 P.3d 783.

Exclusionary rule therefore required suppression of all evidence obtained by exploiting the illegal entries into the home. People v. Dyer, 2019 COA 161, 457 P.3d 783.

19-1-113. Emergency protection orders.

(1) The juvenile court is authorized to issue an ex parte written or verbal emergency protection order for the protection of a child pursuant to this section. A judge or magistrate shall be available in the juvenile court in each judicial district to issue by telephone emergency protection orders at all times when the juvenile court is otherwise closed for judicial business.

(2) Any person who has the responsibility of supervising a child placed out of the home by court order may seek an emergency protection order, through a P.O.S.T.-certified peace officer, when such person asserts reasonable grounds to believe that the child is in immediate and present danger based on an allegation that the child is absent without permission from the court-ordered placement.

(3) An emergency protection order may include, but need not be limited to:

(a) Restraining a person from threatening, molesting, or injuring the child;

(b) Restraining a person from interfering with the supervision of the child;

(c) Restraining a person from having contact with the child or the child's court-ordered residence;

(d) Restraining a person from harboring a child who is absent without permission from a court-ordered placement.

(4) An emergency protection order shall expire not later than the close of judicial business on the next day of judicial business following the day of issue, unless otherwise continued by the court. With respect to any continuing order, on two days' notice to the person who obtained the

emergency protection order or on such shorter notice to that person as the court may prescribe, the responding person may appear and move for its dissolution or modification. The motion to dissolve or modify the emergency protection order shall be set for hearing at the earliest possible time and shall take precedence over all matters except any emergency protection orders issued earlier, and the court shall determine such motion as expeditiously as the ends of justice require.

(5) (a) An emergency protection order may be issued only if the issuing judge or magistrate finds that an imminent danger exists to the welfare of a child based on an allegation that the child is absent without permission from the court-ordered placement. A verbal order shall be reduced to writing and signed by the peace officer through whom the emergency order was sought and shall include a statement of the grounds for the order asserted through the P.O.S.T.-certified peace officer. An order initially written shall meet the same requirement as an order issued verbally.

(b) The emergency protection order shall be served upon the respondent with a copy given to the person who sought the order and filed with the juvenile court as soon as practicable after issuance. If any person named as a respondent in an order issued pursuant to this section has not been served personally with the order but has received actual notice of the existence and substance of the order from any sheriff, deputy sheriff, or police officer, any act in violation of the order may be deemed by the juvenile court a violation of the order and as such may be sufficient to subject the respondent to the order to any penalty for such violation. If the law enforcement agency having jurisdiction to enforce the emergency protection order has cause to believe that a violation of the order has occurred, it shall enforce the order.

(6) The issuance of an emergency protection order shall not be considered evidence of any wrongdoing.

(7) A law enforcement officer who acts in good faith and without malice shall not be held civilly or criminally liable for acts performed pursuant to this section.

Source: L. 87: Entire title R&RE, p. 704, § 1, effective October 1. **L. 91:** (1) and (5)(a) amended, p. 362, § 27, effective April 9. **L. 2003:** (2) and (5)(a) amended, p. 1632, § 79, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-110.1 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-1-114. Order of protection.

(1) The court may make an order of protection in assistance of, or as a condition of, any decree authorized by this title. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, stepparent, spousal equivalent, or any other person who is party to a proceeding brought under this title.

(2) The order of protection may require any such person:

(a) To stay away from a child or a child's residence;

(b) To comply with a family time schedule;

(c) To abstain from offensive conduct against a child, the child's parent or parents, the child's guardian or legal custodian, or any other person to whom legal custody of or parental responsibilities with respect to a child has been given;

(d) To give proper attention to the care of the home;

(e) To cooperate in good faith with an agency:

(I) Which has been given legal custody of a child;

(II) Which is providing protective supervision of a child by court order; or

(III) To which the child has been referred by the court;

(f) To refrain from acts of commission or omission that tend to make a home an improper place for a child;

(g) To perform any legal obligation of support; or

(h) To pay for damages recoverable under the provisions of section 13-21-107, C.R.S.

(3) (a) When such an order of protection is made applicable to a parent or guardian, it may specifically require his or her active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (5) of this section.

(b) The court may, when the court determines that it is in the best interests of the child, make an order of protection that is applicable to a parent or guardian of a child and the person with whom the child resides, if other than the child's parent or guardian, subject to article 2.5 of this title 19. The order must require the parent or guardian and the person with whom the child resides, if other than the parent or guardian, to be present at any juvenile proceeding concerning the child.

(4) After notice and opportunity for a hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the court finds that the best interests of the child and the public will be served thereby.

(5) (a) A person failing to comply with an order of protection without good cause may be found in contempt of court.

(b) The court shall issue a bench warrant for any parent or guardian or person with whom the child resides, if other than the parent or guardian, who, without good cause, fails to appear at any proceeding.

(c) For purposes of this subsection (5), good cause for failing to appear shall include, but shall not be limited to, a situation where a parent or guardian:

(I) Does not have physical custody of the child and resides outside of Colorado;

(II) Has physical custody of the child, but resides outside of Colorado and appearing in court will result in undue hardship to such parent or guardian; or

(III) Resides in Colorado, but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent or guardian.

(d) The general assembly hereby declares that every parent or guardian whose child is the subject of a juvenile proceeding under this article should attend any such proceeding as often as is practicable.

(6) Repealed.

(7) Nothing in this section shall be construed to create a right for any juvenile to have his or her parent or guardian present at any proceeding at which such juvenile is present.

Source: L. 87: Entire title R&RE, p. 705, § 1, effective October 1. **L. 93, 1st Ex. Sess.:** (3) and (5) amended and (6) and (7) added, p. 29, § 1, effective September 13. **L. 96:** (6) repealed, p. 85, § 11, effective March 20. **L. 98:** (1) and (2)(c) amended, p. 1406, § 63, effective February 1, 1999. **L. 2021:** (3)(b) amended, (SB 21-059), ch. 136, p. 727, § 64, effective October 1. **L. 2023:** (2)(a) and (2)(b) amended, (HB 23-1027), ch. 284, p. 1680, § 7, effective June 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

ANNOTATION

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

The language in subsection (1), "the parent, guardian, or any other person who is party to a proceeding brought under § 19-1-104(1)(a), (1)(b), or (1)(c)", contemplates no limitation except that the person subject to the order be a party to the action. People in Interest of C.S.M., 194 Colo. 76, 570 P.2d 229 (1977); People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

The joining of the district attorney and law enforcement officers as parties to case and issuing said parties protective orders does not exceed the court's jurisdiction. The requirement that the court order an appropriate treatment plan implicitly authorizes the court to issue such orders as are reasonably necessary to implement that mandate. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

Where no protection was provided for disclosure of plans for future criminal conduct or past criminal conduct not related to the treatment plans and communications between therapists and children and between the therapists and parents who had not engaged in sexually abusive conduct were not protected, protective orders were properly confined to reasonably necessary relief. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-1-115. Legal custody - guardianship - placement out of the home - petition for review for need of placement - rules.

(1) (a) Except as otherwise provided by law, in awarding legal custody of a child pursuant to this title 19, the court may, if in the best interests of the child, give preference to the child's grandparent who is appropriate, capable, willing, and available to care for the child, if the court finds that there is no suitable natural or adoptive parent available, with due diligence having been exercised in attempting to locate any such natural or adoptive parent. Any individual, agency, or institution vested by the court with legal custody of a child has the rights and duties defined in section 19-1-103.

(b) Any individual, agency, or institution vested by the court with the guardianship of the person of a child has the rights and duties defined in section 19-1-103; except that a guardian of the person may not consent to the adoption of a child unless the court has expressly given that authority.

(2) (a) If legal custody or guardianship of the person is vested in an agency or institution, the court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(b) An individual, agency, or institution vested by the court with legal custody or guardianship of the person of a child shall give the court any information concerning the child which the court at any time may require.

(3) (a) Any agency vested by the court with legal custody of a child shall have the right, subject to the approval of the court, to determine where and with whom the child shall live, but this paragraph (a) shall not apply to placement of children committed to the department of human services. In determining where and with whom a child shall live, if in the best interests of the child, preference may be given to the child's grandparent who is appropriate, capable, willing, and available to care for the child.

(b) No individual or agency vested by the court with legal custody of a child or with which a child is placed pursuant to subsection (8) of this section shall remove the child from the state for more than thirty days without court approval. When granting such approval, if appropriate, the court shall enter an order that the individual or agency comply with the requirements of the "Interstate Compact on Placement of Children" set forth in part 18 of article 60 of title 24, C.R.S.

(4) (a) A decree vesting legal custody of a child in an individual, institution, or agency or providing for placement of a child pursuant to section 19-2.5-1102 or 19-3-403 or subsection (8) of this section must be for a determinate period. The court shall review the decree no later than three months after it is entered, except a decree vesting legal custody of a child with the department of human services.

(b) The individual, institution, or agency vested with the legal custody of a child may petition the court for renewal of the decree. The court, after notice and hearing, may renew the decree for such additional determinate period as the court may determine if it finds such renewal to be in the best interests of the child and of the community. The findings of the court and the reasons therefor shall be entered with the order renewing or denying renewal of the decree.

(c) 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 subsection (4)(a) of this section. In the event that an administrative review is ordered, all counsel of record must be notified and may appear at said review. Periodic reviews must include the determinations and projections required in section 19-3-702.5.

(d) (I) When a decree is entered vesting legal custody of a child or youth or providing for placement of a child or youth with an agency in which public money is expended and a county department that delivers child welfare services determines that a referral is appropriate in

accordance with rules promulgated by the state board of human services, a delegate child support enforcement unit may charge the parent of the child or youth a fee to cover the costs of providing for residential care of the child or youth. When custody of the child or youth is given to the county department, the fee for residential care must be in accordance with the fee requirements provided by rule of the state board of human services, and the fee applies, to the extent unpaid, to the entire period of placement. When a child or youth is committed to the state department of human services, the fee for care and treatment must be in accordance with the fee requirements provided by rule of the state board of human services, and the fee applies, to the extent unpaid, to the entire period of placement.

(II) For an adoptive family who receives an approved Title IV-E adoption assistance subsidy pursuant to the federal "Social Security Act", 42 U.S.C. sec. 673 et seq., or an approved payment in subsidization of adoption pursuant to article 7 of title 26, the cost of care, as defined in section 19-1-103, must not exceed the amount of the adoption assistance payment.

(III) Repealed.

(e) When a child, juvenile, or youth has been committed to the division of youth services and the court no longer has ongoing jurisdiction, the administrative review division shall review the placement of that child, juvenile, or youth in a qualified residential treatment program within sixty days after placement. When the child, juvenile, or youth has not been committed to the division of youth services and the court has ongoing jurisdiction, within sixty days after a placement of that child, juvenile, or youth in a qualified residential treatment program, or within thirty days after a placement when the qualified individual does not support the qualified residential treatment program level of care or the child, juvenile, youth, guardian ad litem, or any party objects to the placement, a juvenile court shall review that placement. In both instances, the juvenile court or the administrative review division of the state department shall:

(I) Consider the assessment, determination, and documentation made by the qualified individual;

(II) Determine whether the needs of the child, juvenile, or youth can be met through placement with a parent, legal guardian, legal custodian, kin caregiver, or in a foster care home, or whether placement of the child, juvenile, or youth in a qualified residential treatment program provides the most effective and appropriate level of care for the child, juvenile, or youth in the least restrictive environment, and whether that placement is consistent with the short- and long-term goals, including mental, behavioral, and physical health goals, for the child, juvenile, or youth as specified in the permanency plan for the child, juvenile, or youth or as outlined in the family services plan or division of youth services plan; and

(III) Approve or disapprove of the placement.

(f) As long as a child, juvenile, or youth remains in a qualified residential treatment program, the county department or the division of youth services shall submit evidence:

(I) Demonstrating that ongoing assessment of the strengths and needs of the child, juvenile, or youth continues to support the determination that the needs of the child, juvenile, or youth cannot be met through placement with a parent, legal guardian, legal custodian, kin caregiver, or in a foster family home; that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child, juvenile, or youth in the least restrictive environment; and that the placement is consistent with the short- and long-term goals for the child, juvenile, or youth as specified in the permanency plan for the child, juvenile, or youth, or as outlined in the family services plan;

(II) Documenting the specific treatment or service needs that will be met for the child, juvenile, or youth in the placement and the length of time the child, juvenile, or youth is expected to need treatment or services; and

(III) Documenting the efforts made by the county department to prepare the child, juvenile, or youth to return home or to be placed with a fit and willing kin caregiver, a legal guardian, legal custodian, or an adoptive parent, or in a foster family.

(g) The evidence required pursuant to subsection (4)(f) of this section must be submitted at each subsequent review and each subsequent permanency hearing held concerning the child, juvenile, or youth. The evidence must not be submitted less frequently than every ninety days during the duration of the placement of the child, juvenile, or youth in the qualified residential treatment program. The evidence must be submitted to the court or to the administrative review division of the state department of human services if parties consent to the latter. The court shall review the evidence submitted pursuant to subsection (4)(f) of this section at each subsequent permanency and status review hearing at least every ninety days during the duration of the placement of the child, juvenile, or youth in the qualified residential treatment program. If the parties consent to a review by the administrative review division, attorneys of record must be notified and may appear at the review. The administrative review division shall review the evidence submitted pursuant to subsection (4)(f) of this section at least every ninety days during the duration of the placement of the child, juvenile, or youth in the qualified residential treatment program.

(h) In making a decision as to proper placement in a qualified residential treatment program, the court or the administrative review division shall consider the assessment provided by the qualified individual and the most recent assessment, as described in subsection (4)(e) of this section, and shall give great weight to the recommendation in the assessment when making a qualified residential treatment program placement decision. An assessment prepared by the qualified individual must identify whether a qualified residential treatment program is the most effective, appropriate, and least restrictive placement for the child or youth. The assessment must also identify child- or youth-specific short- and long-term goals for the child or youth and the family. If the court or administrative review division deviates from the qualified individual's assessment and recommendation, the court or the administrative review division shall make

specific findings of fact regarding the most effective, appropriate, and least restrictive placement for the child or youth and whether the placement is consistent with child- or youth-specific short- and long-term goals for the child or youth and the family. When making such findings of fact, the court or administrative review division shall consider all relevant information, including:

(I) Whether the protocol for the qualified residential treatment program assessment was followed;

(II) The strengths and specific treatment or service needs of the child or youth and the family;

(III) The expected length of stay; and

(IV) The placement preference of the child or youth and the family.

(4.5) The department of human services shall implement the provisions of subsections (4)(e) and (4)(f) of this section when the federal government approves Colorado's five-year Title IV-E prevention plan, at which time the department of human services may submit a budget request to the joint budget committee for necessary funding to implement the plan.

(5) No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court if he so requests.

(6) Any time the court enters an order awarding legal custody of a child or youth to the department of human services or to a county department pursuant to the provisions of this title 19, even temporarily, the order must contain specific findings, if warranted by the evidence, as follows:

(a) That continuation of the child in the home would be contrary to the child's best interests;

(b) That there has been compliance with reasonable efforts requirements regarding removal of the child from the home, as follows:

(I) That reasonable efforts have been made to prevent or eliminate the need for removal of the child from the home; or

(II) That an emergency situation exists which requires the immediate temporary removal of the child from the home and it is reasonable that preventive efforts not be made due to the emergency situation; or

(III) That reasonable efforts to prevent the child's removal from the home are not required because of the existence of a circumstance described in subsection (7) of this section;

(c) That reasonable efforts have been made or will be made to reunite the child and the family or that efforts to reunite the child and the family have failed or that reasonable efforts to reunite the child and the family are not required pursuant to subsection (7) of this section; and

(d) That procedural safeguards with respect to parental rights have been applied in connection with the removal of the child or youth from the home, a change in the child's or youth's placement out of the home, and any determination affecting family time.

(6.5) Any time the court enters an order continuing a child or youth in a placement out of the home pursuant to this title 19, the order must contain specific findings, if warranted by the evidence, as follows:

(a) The continuation of the child in out-of-home placement is in the best interests of the child;

(b) That reasonable efforts have been made to reunite the child and the family or that reasonable efforts to reunite the child and the family are not required pursuant to subsection (7) of this section; and

(c) That procedural safeguards with respect to parental rights have been applied in connection with the continuation of the child or youth in out-of-home placement, a change in the child's or youth's placement out of the home, and any determination affecting family time.

(6.7) Any time the court enters an order related to out-of-home placement pursuant to subsections (6)(a) to (6)(c) or subsection (6.5)(b) of this section; subsection (8)(f) of this section; section 19-2.5-305 (3)(a)(XI)(A) and (3)(a)(XI)(B); section 19-2.5-1116 (1)(a), (1)(b), and (3)(a)(III); or sections 19-3-702 (3)(b) and 19-3-702.5 (1)(b), the order is effective as of the date the findings were made by the court, notwithstanding the date that a written order may be signed by the court. Written orders entered pursuant to subsections (6)(a) to (6)(c) or subsection (6.5)(b) of this section; subsection (8)(f) of this section; section 19-2.5-305 (3)(a)(XI)(A) and (3)(a)(XI)(B); section 19-2.5-1116 (1)(a), (1)(b), and (3)(a)(III); or sections 19-3-702 (3)(b) and 19-3-702.5 (1)(b) must state "the effective date of this order is" and must not use the words "nunc pro tunc".

(7) 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:

(a) When the court finds that the parent has subjected the child to aggravated circumstances as described in sections 19-3-604 (1) and (2); or

(b) When 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 staff member of a hospital or community clinic emergency center, as defined in section 19-3-304.5 (9), pursuant to the provisions of section 19-3-304.5; or

(c) When the court finds that the parent has been convicted of any of the following crimes:

(I) Murder of another child of the parent;

(II) Voluntary manslaughter of another child of the parent;

(III) Aiding, abetting, or attempting the commission of or conspiring or soliciting to commit the crimes in subparagraphs (I) and (II) of this paragraph (c); or

(IV) A felony assault that resulted in serious bodily injury to the child or to another child of the parent.

(8) (a) Whenever it appears necessary that the placement of a child out of the home will be for longer than ninety days, the placement is voluntary and not court-ordered, and the placement involves the direct expenditure of funds appropriated by the general assembly to the department of human services, a petition for review of need for placement shall be filed by the department or agency with which the child has been placed before the expiration of ninety days in the placement. A decree providing for voluntary placement of a child with an agency in which public money is expended must be renewable in circumstances when there is documentation that the child has an emotional, a physical, or an intellectual disability that necessitates care and treatment for a longer duration than ninety days as provided pursuant to this subsection (8)(a). The court shall not transfer or require relinquishment of legal custody of, or otherwise terminate the parental rights with respect to, a child who has an emotional, a physical, or an intellectual disability and who was voluntarily placed out of the home for the purposes of obtaining special treatment or care solely because the parent or legal guardian is unable to provide the treatment or care. Whenever a child fifteen years of age or older consents to placement in a mental health facility pursuant to section 27-65-104, the review pursuant to section 27-65-104 (4) must be conducted in lieu of and must fulfill the requirements for review under this subsection (8)(a).

(b) (I) The petition and all subsequent court documents in any proceedings brought under paragraph (a) of this subsection (8) shall be titled "The People of the State of Colorado, in the Interest of _____, a child (or children) and Concerning _____, Respondent." The petition shall be verified, and the statements in the petition may be made upon information and belief.

(II) The petition shall set forth plainly the facts that bring the child within the court's jurisdiction, specifying that the child is subject to immediate placement out of the home or has been in voluntary placement out of the home and it appears that continuation of the placement is necessary for a time exceeding ninety days and continuation of the placement is necessary and is in the best interest of the child, the family, and the community. The petition shall also state the name, age, and residence of the child and the names and residences of his or her parents, guardian, or other legal custodian or of his or her nearest known relative if no parent, guardian, or other legal custodian is known.

(III) All petitions filed pursuant to this subsection (8) 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), Colorado Revised Statutes, may be conducted as an administrative

review by the department of human services. If you are a party to the action, you have a right to object to an administrative review, and, if you object, the review shall be conducted by the court."

(c) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons must be substantially in the form specified in section 19-3-502 and be dealt with in the manner provided in section 19-3-503 and must set forth the constitutional and legal rights of the child, the child's parents or guardian, and any other respondent, including the right to have an attorney present at the hearing on the petition. The petitioner shall send the summons to the child and the child's parents, guardian, or legal custodian by certified mail. The court shall give notice of the hearing to the director of the facility or agency in which the child is placed and any person who has physical custody of the child and any attorney or guardian ad litem or counsel for youth of record. Nothing in this subsection (8) requires the presence of any person before the court unless the court so directs.

(d) The court shall appoint a guardian ad litem for a child under twelve years of age, or counsel for youth if the youth is twelve years of age or older, to protect the interest of any child or youth who is the subject of a petition for review of placement, unless the court makes specific findings that no useful purpose would be served by such appointment. The court may appoint both a guardian ad litem and a counsel for youth if a youth is twelve years of age or older and the appointment of a guardian ad litem is necessary because the youth has diminished capacity.

(e) For purposes of determining proper placement of the child, the petition for review of placement or social study shall be accompanied by an evaluation for placement prepared by the department or agency that recommends placement or with which the child has been placed. The evaluation for placement shall include an assessment of the child's physical and mental health, developmental status, family and social history, and educational status. The petition shall also be accompanied by recommended placements for the child and the monthly cost of each and a treatment plan that contains, at a minimum, the goals to be achieved by the placement; the services to be provided; the intensity, duration, and provider of the services; identification of the services that can be provided only in a residential setting; and the recommended duration of the placement. The petition or social study shall also be accompanied by the required fee to be charged to the parents pursuant to paragraph (d) of subsection (4) of this section. In addition, if a change in legal custody is recommended, the evaluation for placement shall include other alternatives that have been explored and the reason for their rejection, and the evaluation for placement shall contain an explanation of any particular placements that were considered and rejected and the reason for their rejection.

(f) The petition for review of need for placement shall request the court to determine, by a preponderance of the evidence, whether placement or continued placement is necessary and in the best interest of the child, the family, and the community and whether reasonable efforts have been made to return the child to a safe home or whether the child should be permanently

removed from his or her home. If the court makes such findings, it shall enter a decree ordering the child's placement out of the home in the facility or setting that most appropriately meets the needs of the child, the family, and the community. In making its decision as to proper placement, the court shall utilize the evaluation for placement prepared pursuant to section 19-1-107 or the evaluation for placement required by paragraph (e) of this subsection (8) that shall state the cost of recommended placement. If the evaluation for placement recommends placement in a facility located in Colorado that can provide appropriate treatment and that will accept the child, then the court shall not place the child in a facility outside this state. If the court deviates from the recommendations of the evaluation for placement in a manner that results in a difference in the cost of the disposition ordered by the court and the cost of the disposition recommended in the evaluation, the court shall make specific findings of fact relating to its decision, including the monthly cost of the placement, if ordered. A copy of such findings shall be sent to the chief justice of the Colorado supreme court, who shall report annually to the joint budget committee and the health and human services committees of the house of representatives and senate of the general assembly, or any successor committees, on such orders. If the court commits the child to the department of human services, it shall not make a specific placement, nor shall the provisions of this paragraph (f) relating to specific findings of fact be applicable. If the court makes a finding that continued placement is not necessary and is not in the best interest of the child, the family, and the community, the court shall dismiss the petition for review of need for placement and shall order that the child be returned home. The court may require a continued hearing of the petition for review of need for placement for a period not to exceed fourteen days if it finds that the materials submitted are insufficient to make a finding as provided in this paragraph (f).

(g) A petition for review of need for placement shall not be handled as an informal adjustment in accordance with the provisions of section 19-3-501 (2).

Source: L. 87: Entire title R&RE, p. 706, § 1, effective October 1. **L. 89:** (4)(c) amended, p. 930, § 1, effective April 23. **L. 90:** (4)(d) amended, p. 1014, § 2, effective July 1. **L. 91:** (1)(a) and (3)(a) amended, p. 264, § 6, effective May 31. **L. 92:** (3)(b) and (4) amended and (6) added, p. 221, § 5, effective July 1. **L. 93:** (4)(c) and (6) amended, p. 388, § 1, effective April 19; (4)(d) amended, p. 1546, § 2, effective July 1. **L. 94:** (3)(a), (4)(a), (4)(c), and (4)(d) amended, p. 2659, § 146, effective July 1. **L. 98:** (1) amended, p. 820, § 22, effective August 5. **L. 2001:** (6) amended and (7) added, p. 842, § 3, effective June 1. **L. 2003:** (7)(b) amended, p. 769, § 2, effective March 25; (1)(a) amended, p. 2629, § 12, effective June 5; IP(6) and (6)(b)(II) amended and (6.5) added, p. 2486, § 1, effective July 1. **L. 2004:** (6.7) added, p. 357, § 1, effective July 1. **L. 2007:** (4)(d) amended and (8) added, p. 1506, § 4, effective May 31. **L. 2008:** (3)(b), (4)(a), and (6.7) amended, p. 1891, § 61, effective August 5. **L. 2009:** (4)(a) amended, (SB 09-292), ch. 369, p. 1949, § 34, effective August 5. **L. 2010:** (8)(a) amended, (SB 10-175), ch. 188, p. 788, § 37, effective April 29. **L. 2018:** (7)(b) amended, (SB 18-050), ch. 20, p. 270, § 2, effective March 7; (4)(d)(I) amended, (SB 18-092), ch. 38, p. 407, § 29, effective August 8. **L. 2019:** (6.7)

amended, (SB 19-108), ch. 294, p. 2728, § 22, effective July 1; (4)(c) and (6.7) amended, (HB 19-1219), ch. 237, p. 2355, § 4, effective August 2; (4)(d)(II) amended, (SB 19-178), ch. 180, p. 2048, § 2, effective August 2; (4)(e), (4)(f), and (4.5) added, (HB 19-1308), ch. 256, p. 2459, § 4, effective August 2. **L. 2020:** IP(4)(e), (4)(e)(II), and (4)(f) amended and (4)(g) and (4)(h) added, (SB 20-162), ch. 221, p. 1088, § 3, effective July 2. **L. 2021:** (4)(d)(III) added and IP(4)(e) and IP(4)(h) amended, (SB 21-278), ch. 344, pp. 2244, 2240, §§ 6, 1, effective June 25; (1), (4)(a), (4)(d)(II), and (6.7) amended, (SB 21-059), ch. 136, p. 727, § 65, effective October 1. **L. 2022:** (8)(a) amended, (HB 22-1256), ch. 451, p. 3229, § 28, effective August 10; (8)(c) and (8)(d) amended, (HB 22-1038), ch. 92, p. 433, § 7, effective January 9, 2023. **L. 2023:** IP(6), (6)(d), IP(6.5), and (6.5)(c) amended, (HB 23-1027), ch. 284, p. 1681, § 8, effective June 1. **L. 2024:** (4)(d)(I) amended, (SB 24-202), ch. 222, p. 1387, § 1, effective May 22. **L. 2026:** (4)(d)(III) repealed, (HB 26-1295), ch. 121, p. 516, § 3, effective August 12.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-3-115 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (6.7) by SB 19-108 and HB 19-1219 were harmonized.

Cross references: (1) For the legislative declaration contained in the 2001 act amending subsection (6) and enacting subsection (7), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2007 act amending subsection (4)(d) and enacting subsection (8), see section 1 of chapter 351, Session Laws of Colorado 2007. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

(2) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

ANNOTATION

Law reviews. For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989). For article, "Parental Financial Liability for Juvenile Delinquents", see 37 Colo. Law. 49 (Nov. 2008).

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

This section concerns guardianship of a child taken into custody and found to be dependent. Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Guardianship creates legal obligation to care for child. Strangers are under no legal obligations to care for a child although they would be if awarded custody or decreed legal guardians after the child has been declared dependent and neglected. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

Legal custody cannot be imposed on unwilling person not child's parent. While a public agency can be forced to accept legal custody of a child and assume the responsibilities enunciated in this section, legal custody of a child, with its attendant duties, may not be imposed upon an unwilling person who is not the child's parent. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

One standing in loco parentis may at his election be relieved of that status and the attendant obligations at any time upon petition to the court. People in Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

Lack of notice to guardian denied due process. The lack of notice to guardians of the pendency of the petition to dismiss the guardianship was a denial of due process sufficient to deprive the juvenile court of jurisdiction and render its order of dismissal void, and the full hearing accorded guardians in habeas corpus proceedings did not cure the infirmity which resulted from the failure of the juvenile court to give the guardians notice of the petition. Woodson v. Ingram, 173 Colo. 65, 477 P.2d 455 (1970).

Parent awarded custody acts as representative of state. Upon adjudication of dependency, the child may be committed to a state institution. If it is assigned to a parent, the parent acts not as such, but as a representative of the state, and is subject to visitation or inspection. The court may require reports as to the care and training of the child, as well as of ability to care for it; and the court may impose conditions for the care of the child. In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951); Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Placing child in foster care rather than with grandparents out of state is permissible when purpose of the placement is to strengthen family ties and secure potential relative placement within the state. People ex rel. E.C., 47 P.3d 707 (Colo. App. 2002).

Custodial order not disturbed unless for good cause shown. Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Loss of physical custody pursuant to marriage dissolution may terminate custodial duties. A person who initiates a dependency or neglect action and obtains legal custody of a child need not continue to serve as legal custodian and provide support after losing physical custody of the child in a dissolution of marriage action. People in

Interest of P.D., 41 Colo. App. 109, 580 P.2d 836 (1978).

Fact that state department of institutions was vested with right to control an individual incident to its legal custody of that person is not per se determinative of the question of whether the person was a member of his father's household for purposes of the "family car doctrine". Hasegawa v. Day, 684 P.2d 936 (Colo. App. 1983), overruled in Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992).

Court had statutory duty to conduct periodic reviews of child's case and, therefore, had jurisdiction to enter order refusing to exercise continuing jurisdiction over case. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987).

Responsibility for costs of private placement may remain with the local social services department, even where legal custody is not granted to the department if the court finds the placement necessary to protect the best interests of the child. People in Interest of J.H., 770 P.2d 1355 (Colo. App. 1989).

This section imposes an obligation on the parents to contribute towards the costs of their child's residential placement, computed according to their ability to pay, in accordance with fee requirements established by rule. M.S. v. People, 812 P.2d 632 (Colo. 1991).

The broad language of subsection (4)(d) applies to a juvenile adjudicated delinquent who was placed with an agency in which public moneys were expended. The obligation of his or her parents to reimburse the county for the cost of that care is mandatory. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

Subsection (4)(d) of this section and § 19-2-114 can be harmonized, however, to provide the court flexibility in allocating costs. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

Section 19-2-114 gives the court flexibility in allocating the cost of a juvenile's care. If appropriate, the court may order that the juvenile, in addition to his or her parents, also make reasonable payments, after considering the factors enumerated in the statute and making allowances for any restitution ordered to the victim or victims of a crime. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

The language of subsection (4)(d) of this section and § 26-5-102 conflicts with § 14-7-102 since those sections speak in terms of the parents ability to pay while § 14-7-102 imposes absolute liability without regard for the parents financial condition. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Subsection (4)(d) of this section and § 26-5-102 are specific provisions concerning dependency and neglect adjudications and, with regard to the parental support obligation, control over § 14-7-102. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Once child has been adjudicated dependent or neglected and placed pursuant to this section, the responsibility to reimburse state for costs for residential care is governed by subsection (4)(d), not

§ 14-7-102. People ex rel. B.S.M., 251 P.3d 511 (Colo. App. 2010).

No violation of due process rights of parents under subsection (4)(d) where parents were provided with notice and an opportunity to be heard as to the cost of their child's residential care. People ex rel. N.D.S., 5 P.3d 382 (Colo. App. 2000).

Where parents were the victims of their child's criminal acts, neither the Colorado Children's Code nor the Colorado Crime Victim Compensation Act implicitly or explicitly obviates the parents' duty of support under subsection (4)(d). People ex rel. N.D.S., 5 P.3d 382 (Colo. App. 2000).

Absent exceptional circumstances, former stepparent does not have an obligation to reimburse the state for costs incurred on behalf of his former stepchild. People ex rel. B.S.M., 251 P.3d 511 (Colo. App. 2010).

This section concerns only temporary awards. Findings under subsection (6.5) are not required for permanent custody orders. People in Interest of M.D., 2014 COA 121, 338 P.3d 1120.

Mother's failure to bring any perceived deficiency in department's efforts to rehabilitate and reunite the family to the juvenile court's attention results in a waiver of her right to raise the reasonable efforts issue on appeal. People ex rel. T.M.W., 208 P.3d 272 (Colo. App. 2009).

Applied in People in Interest of A.L.B., 683 P.2d 813 (Colo. App. 1984); People in Interest of M.A.G., 732 P.2d 649 (Colo. App. 1986); People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

19-1-115.3. Missing children and youth from out-of-home placement - required reporting to law enforcement.

If a child or youth for whom the department of human services or a county department of human or social services has legal custody pursuant to the provisions of this title 19 is determined by the agency to be missing, the agency having legal custody of the child or youth shall report the disappearance immediately, and in no case later than twenty-four hours after learning of the disappearance, to the National Center for Missing and Exploited Children and to law enforcement. Law enforcement authorities shall notify the Colorado bureau of investigation and enter any relevant information into the Colorado crime information center database pursuant to section 16-2.7-103. The reporting requirements set forth for foster parents and out-of-home placement facilities in section 19-2.5-1508 apply.

Source: L. 2015: Entire section added, (HB 15-1078), ch. 41, p. 101, § 1, effective January 1, 2016. **L. 2021:** Entire section amended, (SB 21-059), ch. 136, p. 728, § 66, effective October 1. **L. 2022:** Entire section amended, (SB 22-095), ch. 70, p. 365, § 4, effective April 7.

19-1-115.5. Placement of children out of home - legislative declaration.

(1) (a) (I) The general assembly hereby finds that the number of children in out-of-home placement has increased significantly. The general assembly further finds that the facility in which a child is placed out of home is often not located in the same school district as the child's school district of residence. Nevertheless, the general assembly finds that, pursuant to the "Public School Finance Act of 2025", article 54 of title 22, children in foster home placement are considered residents of the school district in which the foster home is located. Accordingly, the school district in which the child is placed must accommodate the child and provide the child with the necessary educational services that serve the child's best interests while absorbing the costs associated with such services within the constraints of the school district's existing budget. The general assembly finds that in many circumstances it is not possible to meet the best interests of the child in out-of-home placement and the needs of other children enrolled in the school district within the confines of the district's budget.

(II) The general assembly determines that the number of children in out-of-home placement and the severity of their attendant needs are increasing. The ability to meet the needs of the children in out-of-home placement is frequently restricted by the limited resources available to a school district. Furthermore, the general assembly finds that there is a disproportionately larger number of children in out-of-home placement in some school districts than in others, thereby directly impacting the ability of certain school districts to effectively manage and finance the provision of quality educational services to all students in those districts.

(b) The general assembly therefore determines that it would serve the best interests of all children enrolled in a school district if the number of children placed in out-of-home placement facilities by county departments of human or social services in each of the various school districts is monitored so that the financial impact on all school districts throughout the state is manageable and equitable and so that the best interests of all children, whether or not in out-of-home placement, can be served.

(2) (a) Contingent upon implementation of the children, youth, and families automation project in the department of human services, the department shall make the following information available to all county departments throughout the state:

(I) Vacancies in out-of-home placement facilities within each county;

(II) The number of out-of-home placement children enrolled in each school district in relation to the total number of students enrolled in the school district;

(III) A list of all out-of-home placement facilities in each school district; and

(IV) To the extent known and within available resources, a list of the types of services available in each school district to meet the special needs of children in out-of-home placement.

(b) In every proceeding pursuant to this title in which the court contemplates placing a child out of home, the county department shall make recommendations to the court concerning the proposed placement. Such recommendations shall include information about placement facilities that are most able to serve appropriately the best interests of the child. In making its recommendations to the court, the county department shall consider:

(I) The special needs, if any, of the child to be placed, including the ability of the proposed out-of-home placement facility and the school district in which the proposed out-of-home placement facility is located to provide the necessary services to meet those needs;

(II) The proximity of the proposed out-of-home placement facility to the child's parents' home, if parental rights have not been terminated;

(III) Whether the proposed placement facility is in the same school district as the child's parents' residence;

(IV) If the proposed placement facility is not in the same school district as the child's parents' residence and if the information is available through the children, youth, and families automation project, the number of children placed out of home by the court who are already enrolled in the school district in which the proposed out-of-home placement facility is located.

(c) If the recommendation of the county department is to place the child in a placement facility that is not located in the same school district as the child's parents' residence, the placing county department shall inform the school district in which the child's parents reside of the recommended placement.

(d) In placing a child out of home, the court shall consider the recommendations of the county department and any information it may have concerning whether the child's educational needs can be met adequately if the child is placed in an out-of-home placement facility located in a school district other than the district in which the child's parents reside.

(e) Upon entry of the court's order placing a child in an out-of-home placement facility located in a school district other than the school district in which the child's parents reside, the county department shall advise the school district in which the child's parents reside of the court's order.

(f) When a school district is advised by the county department that a child residing in that school district is to be placed in an out-of-home placement facility in another school district pursuant to a court order, the school district shall contact the school district in which the child is to be placed concerning:

(I) The special educational needs, if any, of the child; and

(II) The resources necessary to meet those special needs.

(3) The state board of education shall provide the department of human services with all aggregate, nonidentifying information concerning student enrollment in every school district in the state that the department of human services may request for purposes of implementing this section.

Source: L. 97: Entire section added, p. 147, § 1, effective July 1. **L. 2018:** (1)(b) amended, (SB 18-092), ch. 38, p. 408, § 30, effective August 8. **L. 2024:** (1)(a)(I) amended, (HB 24-1448), ch. 236, p. 1526, § 26, effective May 23.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-1-115.7. Foster care prevention services - provision of services - rights and remedies - exchange of information.

(1) A county department of human or social services may provide both child welfare and prevention services, including but not limited to foster care prevention services, as defined in section 19-1-103, to families, kin caregivers, children, juveniles, and youth.

(2) Nothing in this section affects any existing rights of a child, juvenile, or youth or a parent or legal guardian.

(3) When prevention services information is exchanged between state agencies, county departments, and service providers to allow for the provision of prevention services, such information is confidential and not available to the public. Any entities providing prevention services shall ensure that all information obtained and exchanged is confidential as required pursuant to this section, sections 19-1-103 and 19-1-307, and any other applicable state or federal law.

Source: L. 2020: Entire section added, (SB 20-162), ch. 221, p. 1090, § 4, effective July 2. **L. 2021:** (1) amended, (SB 21-059), ch. 136, p. 729, § 67, effective October 1.

19-1-116. Funding - alternatives to placement out of the home - services to prevent continued involvement in child welfare system.

(1) The state department of human services shall reimburse allowable expenses to county departments of human or social services for foster care. The state department's budget request for

foster care must be based upon the actual aggregate expenditure of federal, state, and local funds of all counties during the preceding twenty-four months on foster care. Special purpose funds, not to exceed five percent of the total appropriation for foster care, must be retained by the state department of human services for purposes of meeting emergencies and contingencies in individual counties. The amount thus reimbursed to each county must represent the total expenditure by an individual county for foster care and for alternative services provided in conformance with the plan prepared and approved pursuant to subsections (2)(b) and (4) of this section.

(1.5) No later than July 1, 1994, each county in the state shall assure access to alternatives to out-of-home placements for families with children and youth who are at imminent risk of out-of-home placements. Beginning September 1, 2011, a county may also provide access for families to alternative services to prevent continued involvement with the county department child welfare system. Beginning September 1, 2018, a county may also provide access to alternative services for former foster care youth, as defined in section 26-5-101, who are no longer in the custody of the department but need limited assistance from the county. Two or more counties may jointly provide or purchase alternative services to families in the respective counties. Such services shall either be provided for under the plan adopted by placement alternative commissions in accordance with subsection (2)(b) of this section or purchased by the county if such county does not have a placement alternative commission for the county. If a county purchases alternative services, the county shall ensure that the services purchased meet the goals of placement alternative commission plans, as described in subsection (2)(b)(I) of this section.

(2) (a) The county commissioners in each county may appoint a placement alternatives commission consisting, where possible, of a physician or a licensed health professional, an attorney, representatives of a local law enforcement agency, representatives recommended by the court and probation department, representatives from the county department of human or social services, a local mental health clinic, and the county, district, or municipal public health agency, a representative of a local school district specializing in special education, a representative of a local case management agency, as defined in section 25.5-6-1702, representatives of a local residential child care facility and a private nonprofit agency providing nonresidential services for children and families, a representative specializing in occupational training or employment programs, a foster parent, and one or more representatives of the lay community. At least fifty percent of the commission members must represent the private sector. The county commissioners of two or more counties may jointly establish a district placement alternatives commission. A placement alternatives commission may be consolidated with other local advisory boards pursuant to section 24-1.7-103.

(b) (I) On or before July 1, 1994, the commission, if established, shall annually prepare a plan for the provision of services. The primary goals under the plan shall be to prevent imminent placement of children out of the home and to reunite children who have been placed out of the home with their families. If a county provides services to children who, without intervention, risk

continued involvement with the child welfare system, the county shall include in the plan the goals to be achieved by providing said services. The plan shall be prepared using all available sources of information in the community, including public hearings. The plan shall specify the nature of the expenditures to be made and shall identify the services which are intended to prevent or minimize placement out of the home and to what extent. The plan shall contain, whenever practicable, a vocational component to provide assistance to older children concerning a transition into the work force upon completion of school. Upon approval of the plan by the county commissioners, the counties shall submit the plan to the department of human services.

(II) On and after July 1, 1994, the commissions shall prepare multi-year plans for services which contain the same goals as described in subparagraph (I) of this paragraph (b), and the period for the plans shall be determined in state board rules. The multi-year plans may be amended annually for budgetary or programmatic changes that are necessary to enhance service delivery or as otherwise deemed necessary to accomplish the goals of the plan, which reasons shall be set forth in state board rules. Counties shall submit the multi-year plans for approval by the state board.

(c) The commission shall review, on an ongoing basis, the effectiveness of programs within its jurisdiction which are designed to prevent or reduce placement and shall report its findings to the county commissioners annually.

(d) Repealed.

(e) Upon approval by the state board of human services of the plan submitted pursuant to paragraph (b) of this subsection (2), the department of human services shall reimburse county departments, as described in section 26-1-122, C.R.S., for eighty percent of the expenditures made in conformance with the plan.

(3) Repealed.

(4) (a) The departments of human services and education and the judicial department shall jointly develop guidelines for the content and submission of plans as described in paragraph (b) of subsection (2) of this section. Said guidelines shall include but not be limited to the information that is gathered by the commission, the goals to be addressed by the plan, the form of the budget for expenditures that are to be made under the plan, the services that are to be provided which are intended to prevent or minimize placement out of the home and to reunite children with their families and to what extent, and the method by which the plan may be amended during the year to meet the changing local conditions; except that amendments to the plan on and after July 1, 1994, shall be in accordance with subparagraph (II) of paragraph (b) of subsection (2) of this section. On and after July 1, 1993, any amendments to the guidelines shall be developed by the department of human services. Said guidelines shall then be submitted to the state board of human services, which shall promulgate rules for the submission of plans.

(b) In addition to the duties described in paragraph (a) of this subsection (4), the state board of human services is hereby authorized to develop through the adoption of rules categories of programs and services that promote the primary goals of the plan established in accordance with paragraph (b) of subsection (2) of this section. Any plan established on and after July 1, 1994, shall provide for the availability and provision of services or programs within such categories. Any plan established before July 1, 1994, shall be amended on or before that date to provide for the availability and provision of services or programs within such categories. The department of human services shall monitor the implementation of the plans as approved by the state board.

(5) Children currently residing in institutions whose condition would permit them to be discharged to less restrictive settings shall be so transferred at the earliest possible date. Moneys appropriated and available to the department of human services shall be allocated on a priority basis by the department to county departments for the purposes of providing care to children who are discharged from the institution in which they reside if such children then receive care that is less intensive, closer to the residence of the parents or family, or in a less restrictive setting.

(6) It is the intent of the general assembly that state money appropriated for placements out of the home must not be used by county boards of human or social services for the development of new county-run programs or for the expansion of existing staff or programs, if such development or expansion duplicates services already provided in the community, including, but not limited to, day care programs, independent living programs, home-based care, transitional care, alternative school programs, counseling programs, street academies, tutorial programs, and in-home treatment and counseling programs.

(7) (a) Any county is hereby authorized to establish a program under which a multidisciplinary, noncategorical program fund for the county shall be created and moneys from such fund shall be used to provide child welfare services to at-risk children and their families. Except as otherwise provided by federal law, the moneys in the county's fund contributed by state agencies shall be exempt from restrictive, categorical rules otherwise governing the use of such funds, including the "M" notation in the state's annual appropriations act which describes the general and federal fund contributions for federally supported programs.

(b) Such services shall include, but are not limited to, assessment, intervention, treatment, supervision, and shelter when and if appropriate.

(c) (I) The fund for each county must consist of contributions, made by any state, county, or local agency, of federal, state, or local funds appropriated to or contributed by such agencies for child welfare services for at-risk children and their families. Appropriated funds include, but are not limited to, those appropriated to county departments of human or social services, the state department of human services, the department of public health and environment, the department of education, the department of public safety, the judicial department, and the job training partnership office in the governor's office. Each state agency's contribution to a county's fund must be contingent upon and equal to contributions from the participating county and any other

local agency that participates and seeks money from the fund. Nothing in this subsection (7) allows the allocation of general fund money to any other participating county in the same manner that such money is allocated to Mesa county in accordance with section 2 of House Bill 93-1171, as enacted during the first regular session of the fifty-ninth general assembly.

(II) The fund for each county may also consist of contributions from the fund of any other participating county.

(d) The county board of human or social services for a county shall convene a meeting of the local and state agencies that provide child welfare services to at-risk children and their families, that will participate in the program, and that seek money from the county's fund. The meeting is for the purpose of developing and adopting a memorandum of understanding between such agencies and the county's board of human or social services concerning the amount of contributions to the fund described in subsection (7)(c) of this section and the allocation and use of money allocated from the fund. The memorandum of understanding must provide for the designation of a governing entity to oversee the administration of the fund and a fiscal agent, a three-year plan, provisions for evaluating the programmatic and fiscal impact and overall effectiveness of the program, and a process for submitting the results of the evaluation to the general assembly and state officials on an annual basis.

(e) The state agencies affected by the implementation of the three-year plan described in subsection (7)(d) of this section shall review and approve the plan. The state agencies shall act on the plan within ninety days after the plan is submitted to the state agencies. It is the intent of the general assembly that the plan be implemented and that the state agencies cooperate in the plan's development and implementation. Prior to the implementation of the program, a copy of the approved plan must be submitted to the joint budget committee of the general assembly. Prior to the expiration of the three-year plan, the county board of human or social services shall follow the procedures described in subsection (7)(d) of this section for readoption of or revisions to the three-year plan.

Source: L. 87: Entire title R&RE, p. 707, § 1, effective October 1. **L. 90:** (1), (2)(b), (2)(e), and (3) amended and (2)(d) repealed, pp. 1013, 1015, §§ 1, 4, effective July 1. **L. 93:** (1.5) added and (2) and (4) amended, p. 2002, § 2, effective June 9; (7) added, p. 2095, § 1, effective July 1; (4) amended, p. 1135, § 66, effective July 1, 1994. **L. 94:** (1), (2)(a), (2)(b)(I), (2)(e), (3), (4)(b), (5), and (7)(c) amended, pp. 2659, 2736, §§ 147, 363, effective July 1; (7) amended, p. 1798, § 1, effective July 1. **L. 96:** (2)(b)(I) amended, p. 82, § 3, effective March 20; (3) amended, p. 1256, § 143, effective August 7. **L. 97:** (2)(a) amended, p. 1191, § 12, effective July 1. **L. 98:** (3) amended, p. 729, § 16, effective May 18; (4)(a) amended, p. 821, § 23, effective August 5. **L. 2001:** (3) repealed, p. 1176, § 5, effective August 8. **L. 2010:** (2)(a) amended, (HB 10-1422), ch. 419, p. 2075, § 35, effective August 11. **L. 2011:** (1.5) and (2)(b)(I) amended, (HB 11-1196), ch. 160, p. 553, § 3, effective August 10. **L. 2018:** (1.5) amended, (HB 18-1319), ch. 217, p. 1391, §

4, effective May 18; (1), (2)(a), (6), (7)(c)(I), (7)(d), and (7)(e) amended, (SB 18-092), ch. 38, p. 408, § 31, effective August 8. **L. 2021:** (2)(a) amended, (HB 21-1187), ch. 83, p. 326, § 7, effective July 1, 2024.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-120 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (4) in Senate Bill 93-254 and House Bill 93-1317 were harmonized. Amendments to subsection (2)(a) in section 147 of House Bill 94-1029 were superseded by amendments in section 363 of House Bill 94-1029. Amendments to subsection (7) in House Bill 94-1357 and House Bill 94-1029 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (4), see section 1 of chapter 230, Session Laws of Colorado 1993. For the legislative declaration contained in the 1996 act amending subsection (3), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

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

Provision stating that the department shall reimburse each county for an amount representing the "total expenditure" does not require a reimbursement rate of one hundred percent. Section 26-5-104 describes the applicable rate as eighty percent. Colo. Dept. of Soc. Servs. v. Montezuma County Dept. of Soc. Servs., 844 P.2d 1341 (Colo. App. 1992).

19-1-117. Visitation rights of grandparents or great-grandparents. (Repealed)

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. **L. 2014:** IP(1), (1)(c), (2), (3), (4), and (5) amended, (HB 14-1362), ch. 374, p. 1787, § 2, effective June 6. **L. 2023:** Entire section repealed, (HB 23-1026), ch. 243, p. 1308, § 8, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) This section was relocated to §14-10-124.4 in 2023.

Cross references: (1) For the legislative declaration contained in the 1993 act amending subsection (5), see section 1 of chapter 165, Session Laws of Colorado 1993.

(2) For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001). For article, "The Constitutionality of Colorado's Grandparent Visitation and Third-Party Standing Statutes", see 32 Colo. Law. 51 (Feb. 2003). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (Oct. 2008). For article, "Constitutional Issues and Legal Standards in Parental Responsibility Matters", see 42 Colo. Law. 33 (Jan. 2013).

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

This section not unconstitutional on its face. This section may be construed to embody the protections required by Troxel v. Granville, 530 U.S. 57 (2000). The court read this section as requiring that the biological parent's decisions concerning grandparent visitation must carry special weight and significance in the adjudication of the grandparent's visitation petition. The burden of proof must be such that the parent need not prove that the grandparent visitation would adversely affect the child. In re C.M., 74 P.3d 342 (Colo. App. 2002); In re R.A., 66 P.3d 146 (Colo. App. 2002).

Section does not violate due process clause of the United States Constitution merely because it authorizes visitation rights for grandparents. In re M.G., 58 P.3d 1145 (Colo. App. 2002).

Due process does not require a showing of parental unfitness prior to applying the best interest of the child standard to determine custody of a child. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Adoptive parents not similarly situated to biological parents for purposes of an equal protection analysis when determining the threshold circumstances under which grandparents could be

permitted to seek court-enforced visitation rights. In re Petition of R.A., 66 P.3d 146 (Colo. App. 2002).

The wishes of adoptive parents should be given "special significance" like those of biological parents in determining the merits of a grandparents' visitation request, since the intent underlying the adoption statutes is to place the adopted child in the same position as the natural child and, correspondingly, bestow upon the adoptive parents the same rights and duties of natural parents. In re Petition of R.A., 121 P.3d 295 (Colo. App. 2005), rev'd on other grounds sub nom. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Appropriate standard for issuance of an order of grandparent visitation requires: (1) A presumption in favor of the parental visitation determination; (2) to rebut this presumption, a showing by grandparents through clear and convincing evidence that the parental determination is not in the child's best interests; and (3) placement of the ultimate burden on grandparents to establish by clear and convincing evidence that the visitation they seek is in the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

In applying the best interest of the child standard in grandparent visitation petitions, the court must, if it orders grandparent visitation, make findings of fact and conclusions of law identifying those "special factors" upon which it relied. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Colorado statute is construed to contain a presumption that parental determinations about grandparent visitation are in the child's best interest. This is a rebuttable presumption, however, when the grandparent presents clear and convincing evidence that the parent is either unfit to make the grandparent visitation determination or that the grandparent visitation decision made by the parent is not in the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Grandparent bears same burden of proof in resisting subsequent motion to terminate grandparent visitation as in seeking initial order for grandparent visitation. Mother and adoptive father, as movants, have burden to present some evidence of a material change in circumstances affecting the child's best interests to support their motion to terminate grandparent visitation, and the marriage of the mother, the adoption of the child by stepfather, the reports of the child's therapist, and evidence of the child's difficulties in school met this burden. Grandparent must then rebut the presumption, by clear and convincing evidence, that mother's request to terminate visitation is in the best interests of the child. In re A.M., 251 P.3d 1119 (Colo. App. 2010).

Nonparent need not show demonstrated harm to child to satisfy "special weight" accorded to parental determinations. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006); In re Reese, 227 P.3d 900 (Colo. App. 2010).

Trial court correctly determined that the filing requirement set forth in this section did not affect the court's subject matter jurisdiction; instead, this section is a venue provision and, as such, is subject to waiver. In re Villalva, 56 P.3d 1214 (Colo. App. 2002).

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).

Grandmother lacked standing on the sole basis that the children did not reside with their father, who was never married to the children's mother, as the plain meaning of this section does not authorize the court to hear grandmother's petition unless there has been a judicial intervention into the marriage of the children's parents, a judicial placement of the children outside their family, or the death of the grandparent's child. In re D.C., 116 P.3d 1251 (Colo. App. 2005).

A paternity proceeding is a "child custody case" within the meaning of this section and, therefore, grants grandparent standing to seek visitation under the statute. Although paternity actions are not enumerated in this section, the statute has been construed to include paternity actions within its definition of a child custody case. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

"Great-grandmother" does not fall within the definition of "grandparent", therefore, great-grandmother lacked standing to seek visitation under this section. In re M.D.E., 2013 COA 13, 297 P.3d 1058.

Mother may make determinations about the level of contact her children have with her own family without fear of court intervention when the children are in the care and custody of their mother, grandmother's daughter, and there has been no prior court intervention. In re D.C., 116 P.3d 1251 (Colo. App. 2005).

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).

Because trial court made no findings concerning child's best interests, did not accord special weight to mother's visitation proposal nor address whether mother's proposal would fail to meet the child's interests, and made no findings supporting its order allowing grandparent to take child to Wyoming over mother's objections, the visitation issue must be redetermined. In re C.M., 74 P.3d 342 (Colo. App. 2002).

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).

The presumption giving custodial preference to biological parent need not be accorded to a legal guardian. In re M.G., 58 P.3d 1145 (Colo. App. 2002).

No irreconcilable conflict between subsections (1)(b) and (1)(c). The so-called "adoption exclusion" in subsection (1)(b) has been construed to apply only when a child becomes available for adoption because the natural parents' rights have been legally terminated. Thus, subsection (1)(b) creates an interim statutory right in favor of grandparents to visit grandchildren until placement of the child for adoption or entry of a final decree of adoption. Under subsection (1)(c), a grandparent may seek visitation even after an adoption if a parent is deceased. In re R.A., 66 P.3d 146 (Colo. App. 2002).

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).

Grandparent's 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).

Grandparent's visitation rights are lapsed, not terminated because of death of biological parents. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Adoptive parents and biological parents not treated differently when grandparents are allowed visitation rights of an adopted child unless a custody case has taken place. In re R.A., 66 P.3d 146 (Colo. App. 2002).

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).

A paternity proceeding is a "child custody case" within the meaning of this section and, therefore, grants grandparent standing to seek visitation under the statute. Although paternity actions are not enumerated in this section, the statute has been construed to include paternity actions within its definition of a child custody case. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

This section does not confer an unconditional right to intervene in a paternity action under C.R.C.P. 24(a)(1) or as of right under 24(a)(2). Because the statute requires a grandparent to rebut the presumption that the parent's decision regarding visitation is in the child's best interest, it does not give rise to an absolute right to visitation. Because the statute does not vest a grandparent with an absolute right to visitation and issues concerning grandparent visitation are not inherent in a paternity action, there is no absolute or unconditional right for a grandparent to intervene in a paternity action. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

Subsection (3) does not authorize court to award attorney fees in all requests for grandparent visitation. Subsection (3) does not apply to initial requests for visitation; rather, it applies only when visitation rights have been established in a prior dissolution proceeding. In re Gallegos, 251 P.3d 1086 (Colo. App. 2010).

19-1-117.5. Disputes concerning grandparent or great-grandparent visitation. (Repealed)

Source: L. 91: Entire section added, p. 262, § 4, effective May 31. **L. 98:** IP(1), (1)(b), and IP(2) amended, p. 1407, § 65, effective February 1, 1999. **L. 2014:** IP(1), (1)(b), IP(2)(d), (2)(d)(III), and (2)(f) amended, (HB 14-1362), ch. 374, p. 1788, § 3, effective June 6. **L. 2023:** Entire section repealed, (HB 23-1026), ch. 243, p. 1308, § 8, effective August 7.

Editor's note: This section was relocated to § 14-10-124.5 in 2023.

Cross references: For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001).

A grandparent can possess visitation rights. Although the visitation rights of a grandparent are more limited than those of parents, they are still recognized by Colorado law. A limited right remains a right. Thus, a Colorado state court order of visitation rights vests a maternal grandmother with "parental rights" under the plain language of the federal International Parental Kidnapping Crime Act (IPKCA). Further, a grandparent with joint custody or sole custody as defined by state law also has "parental rights" under the IPKCA. U.S. v. Alahmad, 28 F. Supp. 2d 1273 (D. Colo. 1998) (decided under law in effect prior to the 1998 amendment), aff'd, 211 F.3d 538 (10th Cir. 2000).

19-1-117.6. Definitions. (Repealed)

Source: L. 91: Entire section added, p. 262, § 4, effective May 31. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

19-1-117.7. Requests for placement - legal custody by grandparents. (Repealed)

Source: L. 91: Entire section added, p. 262, § 4, effective May 31. **L. 2003:** Entire section amended, p. 1401, § 6, effective January 1, 2004. **L. 2026:** Entire section repealed, (HB 26-1314), ch. 271, p. 1533, § 3, effective June 1.

Cross references: For the legislative declaration in HB 26-1314, see section 1 of chapter 271, Session Laws of Colorado 2026.

19-1-118. Court records - inspection. (Repealed)

Source: L. 87: Entire title R&RE, p. 710, § 1, effective October 1. **L. 89:** (4) and (5) added, p. 914, § 1, effective July 1. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-1-119. Confidentiality of juvenile records - delinquency. (Repealed)

Source: L. 90: Entire section added, p. 1007, § 2, effective July 1. **L. 91:** IP(1)(a) amended and (1)(b.5) added, p. 205, § 1, effective July 1. **L. 93:** Entire section amended, p. 932, § 2, effective May 28; (1)(a), (1)(b), and (2)(a) amended, p. 1547, § 3, effective July 1; (1)(a)(VII) amended, p. 969, § 5, effective July 1; (5) amended, p. 453, § 4, effective July 1. **L. 93, 1st Ex. Sess.:** (1)(b.5) amended, p. 36, § 1, effective September 13. **L. 94:** (1)(b.5), IP(1)(c)(II), IP(2)(a), and (5) amended and (1)(b.7) added, p. 910, § 6, effective April 28; (1)(a)(X), (1)(a)(XIII)(A), (1)(c)(V), (2)(a)(X), (2)(a)(XIV)(A), and (6) amended, p. 2661, § 148, effective July 1. **L. 96:** (1)(a)(XIV) added, p. 1585, § 8, effective July 1; entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-304 in 1997.

19-1-120. Confidentiality of records - dependency and neglect. (Repealed)

Source: L. 90: Entire section added, (2)(k) and (2)(k)(I) amended, and (2)(l) added, pp. 1009, 1031, 1845, §§ 2, 21, 27, effective July 1; (2)(j) amended, p. 1845, § 37, effective October 1. **L. 91:** (2)(k) amended and (2)(m) to (2)(o) and (2.5) added, pp. 221, 222, §§ 1, 2, effective May 24. **L. 92:** (2)(a) amended, p. 406, § 21, effective June 3; (2)(a) amended, p. 1103, § 1, effective July 1. **L. 93:** (2)(k) and (2)(l) amended, p. 1779, § 42, effective June 6. **L. 94:** (2)(p) added, p. 2084, § 3, effective June 3; (2)(k), IP(2)(m), and (2)(o) amended, p. 2662, § 149, effective July 1. **L. 96:** (2)(q) added and (2.5) amended, p. 1586, §§ 9, 10, effective July 1; entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-307 in 1997.

19-1-121. Confidentiality of records - "Uniform Parentage Act". (Repealed)

Source: L. 90: Entire section added, p. 1011, § 2, effective July 1. **L. 94:** Entire section amended, p. 1540, § 12, effective May 31. **L. 96:** Entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-308 in 1997.

19-1-122. Confidentiality of records - relinquishments and adoptions. (Repealed)

Source: L. 90: Entire section added, p. 1011, § 2, effective July 1. **L. 93:** Entire section amended, p. 656, § 2, effective July 1. **L. 96:** Entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-309 in 1997.

19-1-123. Expedited procedures for permanent placement - children under the age of six years - designated counties.

(1) (a) The expedited procedures for the permanent placement of children under the age of six years required by article 3 of this title 19 must be implemented on a county-by-county basis

beginning July 1, 1994. The state department of human services, in consultation with the judicial department and the governing boards of each county department of human or social services, shall have the responsibility for establishing an implementation schedule that provides for statewide implementation of such expedited procedures by June 30, 2004. A designated county is required to implement the expedited procedures on and after the implementation date applicable to the county as specified in the implementation schedule for each new case filed in the county involving a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2).

(b) (Deleted by amendment, L. 2000, p. 73, § 1, effective March 10, 2000.)

(2) (a) The implementation of expedited procedures in additional counties shall be subject to specific appropriation by the general assembly or by determination by a county that no additional resources are needed.

(b) (Deleted by amendment, L. 2004, p. 193, § 6, effective August 4, 2004.)

Source: L. 94: Entire section added, p. 2052, § 3, effective July 1. **L. 98:** (2)(a) amended, p. 730, § 17, effective May 18. **L. 2000:** (1)(b) and (2)(a) amended, p. 73, § 1, effective March 10. **L. 2004:** (2) amended, p. 193, § 6, effective August 4. **L. 2018:** (1)(a) amended, (SB 18-092), ch. 38, p. 409, § 32, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Where trial court finds by clear and convincing evidence that a parent's conduct or condition is unlikely to change and parent has not therefore been adversely affected by decrease in time to comply with a treatment plan, parent lacks standing to challenge the constitutionality of this section under the equal protection guarantees of the fourteenth amendment of the U.S. Constitution and art. II, § 25, Colo. Const., as discriminatory based upon county-by-county adoption of the section. People in Interest of R.J.A., 994 P.2d 470 (Colo. App. 1999).

The policies underlying both the expedited procedures and sibling group preference do not permit the application of the shorter incarceration period so as to terminate parental rights concerning an older child whose parent is subject to the longer incarceration period. The termination of parental rights concerning the older child must still be subject to the longer allowable

incarceration period. People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010).

19-1-124. Providers of children's services using federal or state moneys - use of state accounting standards.

In order to ensure financial accountability, on and after July 1, 1997, all service providers receiving federal or state moneys through the state for the provision of services to children, youth, and families pursuant to this title shall use the accounting standards of the governmental accounting standards board.

Source: L. 96: Entire section added, p. 1155, § 5, effective January 1, 1997.

19-1-125. Family stabilization services.

(1) It is the intent of the general assembly to assist in the provision of appropriate and necessary short-term services to help stabilize families that are at risk of having their children placed in out-of-home placement when those families voluntarily request such services. It is further the intent of the general assembly that county departments provide for family stabilization services through contracts with private or nonprofit organizations or entities whenever possible.

(2) Repealed.

(3) County departments shall use any moneys allocated pursuant to this section to provide for family stabilization services, defined by rule of the state board of human services, that may include but not be limited to:

(a) Less than twenty-four-hour respite care for parents and children;

(b) In-home services that may include kinship care and counseling; or

(c) Services that assist the family to reintegrate following a separation or out-of-home placement.

Source: L. 2001: Entire section added, p. 739, § 1, effective June 1. **L. 2002:** (1) and (2) amended, p. 528, § 2, effective May 24. **L. 2003:** (2) amended, p. 386, § 1, effective March 5. **L. 2004:** (2)(d) added, p. 1555, § 3, effective May 28.

Editor's note: Subsection (2)(d)(I) provided for the repeal of subsection (2), effective July 1, 2006. (See L. 2004, p. 1555.)

19-1-126. Compliance with the federal "Indian Child Welfare Act of 1978". (Repealed)

Source: L. 2002: Entire section added, p. 784, § 3, effective May 30. **L. 2018:** (3) amended, (SB 18-092), ch. 38, p. 410, § 33, effective August 8. **L. 2019:** Entire section amended, (HB 19-1232), ch. 305, p. 2791, § 2, effective May 28. **L. 2023:** (4) amended, (SB 23-211), ch. 150, p. 637, § 1, effective May 4. **L. 2025:** Entire section repealed, (HB 25-1204), ch. 338, p. 1779, § 1, effective August 6.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 217, Session Laws of Colorado 2002. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 19-1232, see section 1 of chapter 305, Session Laws of Colorado 2019.

ANNOTATION

Law reviews. For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (Nov. 2002). For article, "Finding the Indian Child Welfare Act in Unexpected Places: Applicability in Private Non-Parent Custody Actions", see 81 U. Colo. L. Rev. 1119 (2010). For article, "New ICWA Regulations Promote Tribal Sovereignty and Culture for Native American Children", see 46 Colo. Law. 41 (Apr. 2017). For article, "ICWA on Appeal: New Challenges and New Approaches" see 49 Colo. Law. 8 (Jan. 2020). For comment, "People ex rel. K.C. V. K.C.: ICWA Is for All Native Children", see 100 Denv. L. Rev. 465 (2023).

The definition of "Indian child" under the federal Indian Child Welfare Act of 1978 (ICWA) turns on membership rather than enrollment as enrollment is not always required to be a member of a tribe. People in Interest of My.K.M., 2021 COA 33M, 491 P.3d 495, rev'd on other grounds sub nom. People v. V.K.L., 2022 CO 35, 512 P.3d 132.

Juvenile court erred in finding that ICWA did not apply because the children were not eligible for enrollment in the tribe. The tribal representative's statement that the tribe considered the children to be members of the tribe conclusively established that the children are Indian children under ICWA. People in Interest of My.K.M., 2021 COA

33M, 491 P.3d 495, rev'd on other grounds sub nom. People v. V.K.L., 2022 CO 35, 512 P.3d 132.

Reasonable grounds to believe that a child is an Indian child must depend upon the totality of the circumstances. In light of the purpose of the federal ICWA, however, to permit tribal involvement in child-custody determinations whenever tribal members are involved, the threshold requirement for notice is clearly not intended to be high. B.H. v. People ex rel. X.H., 138 P.3d 299 (Colo. 2006).

Even if a trial court inquires at an initial temporary custody hearing at the commencement of a dependency and neglect proceeding whether there is a reason to know that the child is an Indian child, it must make another inquiry when termination is sought if the court has not already identified the child as an Indian child and the petitioning party has not disclosed what efforts it has made to determine if the child is an Indian child. People in Interest of C.A., 2017 COA 135, 417 P.3d 909.

But the federal ICWA does not require district court to hold a tribal enrollment hearing to determine whether it is in the child's best interest to become an Indian child as a prerequisite to the termination of parental rights. People in Interest of K.C., 2021 CO 33, 487 P.3d 263.

The court has "reason to know" that a child is an Indian child for purposes of the federal ICWA when any participant in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child. If the court receives such information, it must direct the petitioning party to exercise due diligence in gathering additional information to assist the court in having a reason to know if the child is indeed an Indian child. Mere assertions do not suffice to give a court "reason to know". People in Interest of E.A.M., 2022 CO 42, 516 P.3d 924.

"Due diligence", when used under subsection (3) to determine whether a court has a "reason to know" that a child is an Indian child for purposes of this section, requires the petitioning party to: (1) earnestly endeavor to investigate the basis for the parent or other participant's assertion that the child may be an Indian child; (2) contact those family members or others who are specifically identified as having knowledge regarding that assertion of general Indian heritage; and (3) learn whether additional information exists that will help the court determine whether there is a reason to know that the child is an Indian child. People in Interest of A-J.A.B., 2023 CO 48, 535 P.3d 67.

Neither federal nor state ICWA law obligates a department of human or social services to assist or facilitate a child's enrollment in a tribal nation. It might be the better practice, however, to do so. People in Interest of K.C., 2021 CO 33, 487 P.3d 263.

Where caseworker knew that child would be able to enroll in a tribe if mother enrolled, this knowledge is sufficient to warrant notice to the tribe of a motion to terminate parental rights. The

state's obligation to notify potentially concerned tribes necessarily arises prior to an ultimate determination of the child's Indian status. As long as there is sufficiently reliable information of virtually any criteria on which membership might be based, there is adequate information to trigger the notice provisions of the federal ICWA. People ex rel. S.R.M., 153 P.3d 438 (Colo. App. 2006).

Department of human services must file notices or return receipt cards with the court even if the status of the minor child as an Indian child pursuant to the federal ICWA is undetermined. Failure to file notices or return receipts was not harmless error because department had relevant facts about the child, and it was not possible to determine from the record whether those facts were shared with the tribe. People ex rel. N.D.C., 210 P.3d 494 (Colo. App. 2009).

Father's failure to timely return assessment form did not eliminate the duty of notice and further inquiry under subsection (1)(a). People ex rel. J.O., 170 P.3d 840 (Colo. App. 2007).

Waiver of notice. Tribe does not waive right to intervene, or corresponding right to receive notice, unless it explicitly states that it will not intervene. People ex rel. S.R.M., 153 P.3d 438 (Colo. App. 2006); People ex rel. T.M.W., 208 P.3d 272 (Colo. App. 2009).

Court may not rely on notice given to tribe concerning sibling. Notice was insufficient where court relied on notice given to tribe concerning a sibling to determine another child's membership in, or eligibility to enroll in, the tribe. Although the siblings had the same parents, determination of tribal membership is made on an individual basis and tribe is free to change enrollment criteria at any time. People ex rel. T.M.W., 208 P.3d 272 (Colo. App. 2009).

Notice requirement of the federal ICWA not sufficiently complied with. People ex rel. J.O., 170 P.3d 840 (Colo. App. 2007); People ex rel. N.D.C., 210 P.3d 494 (Colo. App. 2009); People ex rel. E.C., 259 P.3d 1272 (Colo. App. 2010); People in Interest of L.L., 2017 COA 38, 395 P.3d 1209.

Notice under the federal ICWA not required when court had no reason to know or believe that child had possible Indian ancestry because mother failed to provide information in that regard during termination proceedings. People ex rel. J.C.R., 259 P.3d 1279 (Colo. App. 2011).

The federal ICWA does not set forth any different standard of proof for an adjudicatory hearing in a dependency and neglect proceeding. The state need only prove the allegations set forth in the petition by a preponderance of the evidence in all adjudications, regardless of heritage. People in Interest of L.L., 2017 COA 38, 395 P.3d 1209.

Trial court erred in using the standard of proof beyond a reasonable doubt in termination hearing because, on the date of the termination hearing, the court could not conclude that the child was an Indian child within the meaning of the federal ICWA. More than 10 days had

passed since notice was made to tribes and at least two tribes had responded that the child was not eligible for enrollment. Further, no tribe indicated the child was an Indian child. Although mother provided the department with the child's grandfather's death certificate, and the department had the obligation to make continuing efforts to determine whether the child is an Indian child, the mother should have sought a continuance to require the department to send proper notice based upon information in its possession. Because no tribe responded within the statutory time frame stating that the child was an Indian child within the meaning of the federal ICWA, the trial court was required to apply the clear and convincing burden of proof at the termination hearing. People ex rel. L.O.L., 197 P.3d 291 (Colo. App. 2008).

Juvenile court erred in denying tribe's motion to transfer jurisdiction and entertaining former foster parents' opposition to the transfer. Plain language of the Colorado Children's Code applies transfer of jurisdiction requests to pre-adoptive and adoptive placement proceedings and places burden of proof on the party opposing transfer, who in this case lacked standing to oppose motion. People in Interest of L.R.B., 2019 COA 85, 487 P.3d 1058 (decided prior to 2019 amendment).

Inquiries related to the federal ICWA in a prior case involving the same child(ren) and same parent(s) does not nullify the court's or a department of human or social services' obligation to conduct "continuing inquiries" in a subsequent new case. People in Interest of A.D., 2017 COA 61, 413 P.3d 290.

The federal ICWA's "active efforts" standard requires more than the "reasonable efforts" standard in non-ICWA cases (§ 19-3-604). People ex rel. A.R., 2012 COA 195M, 310 P.3d 1007.

"Active efforts" is a heightened standard requiring a greater degree of engagement by agencies with Native American families than the traditional "reasonable efforts" standard. Agencies must provide a parent with remedial services and resources to complete all of the parent's treatment plan objectives. People v. V.K.L., 2022 CO 35, 512 P.3d 132.

While an agency's active efforts must be affirmative, active, thorough, and timely, such efforts also must be tailored to the facts and circumstances of the case, and the agency retains discretion to prioritize certain services and resources to address a parent's and family's most urgent needs to assist parents with completing the court-ordered treatment plan. People v. V.K.L., 2022 CO 35, 512 P.3d 132.

By expressly defining the term "parent" in the federal ICWA, Congress expressed its intention that the term is not subject to definition by state courts. In re Stockwell, 2019 COA 96, 446 P.3d 957.

Therefore, even though father was the minor's "legal father" under state law, he was not the minor's "parent" for purposes of the federal ICWA. In re Stockwell, 2019 COA 96, 446 P.3d 957.

If a person is not a "parent" under the federal ICWA, then an allocation of parental responsibilities becomes a foster care placement and a child custody placement under the federal ICWA. In re Stockwell, 2019 COA 96, 446 P.3d 957.

Paternity adjudication falls under the purview of the federal ICWA when it is a part of a dependency and neglect proceeding and the child might be placed in foster care placement with the nonbiological parent. It is not, however, a stand-alone child custody proceeding that falls within the purview of the federal ICWA. People in Interest of O.S-H., 2021 COA 130, 503 P.3d 884.

Father's assertion of lineal tribal affiliation gave juvenile court reason to know that the children involved are Indian children, thus triggering ICWA's notice requirements. People in Interest of M.M., 2022 COA 61, 517 P.3d 87.

Applied in In re People ex rel. A.R.Y.-M., 230 P.3d 1259 (Colo. App. 2010); People in Interest of L.H., 2018 COA 27, 431 P.3d 663; People in Interest of K.R., 2020 COA 35, 463 P.3d 336; People in Interest of Jay.J.L., 2022 COA 43, 514 P.3d 312.

19-1-127. Responsibility for placement and care.

(1) "Responsibility for placement and care", for purposes of compliance with federal requirements pursuant to the federal "Social Security Act", 42 U.S.C. sec. 672 (a)(2), means the specified entity is considered to have the responsibility for placement and care of a child if:

(a) A county department of human or social services has entered into a voluntary placement agreement with the parent or guardian of the child;

(b) A court, as a result of a petition for review of need of placement, has determined that a county department of human or social services shall have continuing placement and care responsibility of the child who entered care pursuant to a voluntary placement;

(c) A court has awarded legal custody of the child to a county department of human or social services, or has committed the child to the custody of the state department of human services; or

(d) An agency, such as a tribal agency, with which the state department of human services has a contract pursuant to the federal "Social Security Act", has placement and care responsibility of the child pursuant to a voluntary placement agreement or a court order awarding custody of the child to the agency.

Source: L. 2006: Entire section added, p. 507, § 2, effective April 18. **L. 2018:** Entire section amended, (SB 18-092), ch. 38, p. 410, § 34, effective August 8. **L. 2022:** IP(1) amended, (SB 22-212), ch. 421, p. 2971, § 34, effective August 10.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-1-128. Foster care sibling visits - rules. (Repealed)

Source: L. 2008: Entire section added, p. 1, § 1, effective August 5. **L. 2019:** Entire section repealed, (HB 19-1288), ch. 216, p. 2238, § 3, effective August 2.

Editor's note: This section was relocated to § 19-7-204 in 2019.

19-1-129. Department - research authorized - prenatal substance exposure - newborn and family outcomes - report.

(1) The state department of human services may conduct research as related to the definition of "abuse" in section 19-1-103 concerning the incidence of prenatal substance exposure and related newborn and family health and human services outcomes as the result of a mother's lawful and unlawful intake of controlled substances.

(2) Beginning in January 2021 and every two years thereafter, the state department of human services shall report the outcomes of any research conducted pursuant to subsection (1) of this section to the joint health committees of the general assembly as part of its "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" presentation required by section 2-7-203.

Source: L. 2019: Entire section added, (SB 19-228), ch. 276, p. 2603, § 6, effective May 23. **L. 2020:** Entire section amended, (HB 20-1402), ch. 216, p. 1048, § 35, effective June 30.

19-1-130. Access to services related to out-of-home placement - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Gender expression" means a person's way of reflecting and expressing their gender to the outside world, typically demonstrated through appearance, dress, and behavior.

(b) "Gender identity" means a person's innate sense of the person's own gender, which may or may not correspond with the person's sex as assigned at birth.

(c) "Placement-related service" means any program, benefit, or service related to out-of-home placement, including adoption, kinship care, foster care homes, and private child placement, or a benefit or service described in title 26 that is related to out-of-home placement, provided by the state department of human services, a county department of human or social services, a child placement agency, or any other such entity, or a contractor or subcontractor that provides such program, benefit, or service on behalf of the state department of human services, a county department of human or social services, a child placement agency, or any other such entity. Placement-related services may include, but are not limited to, pursuing adoption or any other child placement; providing early intervention services, out-of-home placement prevention services, or family preservation services; or any service related to licensing or training for child care centers, adoptive or foster parents, or kinship care. The state department of human services, a county department of human or social services, a child placement agency, or any other such entity is not required to contract with or access a placement-related service outside the current placement-related services that are utilized by that specific entity.

(d) "Service provider" means the state department of human services, a county department of human or social services, or a child placement agency. "Service provider" includes a contractor or subcontractor that provides placement-related services on a service provider's behalf.

(2) A service provider that receives state money to provide placement-related services shall provide to each individual, family, or other service provider requesting services, including a service provider under investigation by the state department of human services or its designee for a violation of this section, fair and equal access to all available placement-related services offered by the service provider. Service providers that provide specialized placement-related services to specific populations are not required to provide services outside the scope of their specialized service or their specific population if the specialization serves a specific treatment-related purpose.

(3) In addition to any restrictions set forth in section 24-34-805 (2)(b), a service provider that receives state money to provide placement-related services shall not:

(a) Deny any person the opportunity to become an adoptive or a foster parent solely on the basis of a real or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, or any communicable disease, including HIV, of the person or a member of the person's household. Any denial to care for a specific child or youth that includes one of these factors as the basis for the denial must be documented, must have a clear nexus to the ability to meet the needs of the child or youth, and the denial to care must not be detrimental to the health or welfare of the child or youth.

(b) Delay or deny the placement of a child or youth for adoption or into foster care on the basis of a real or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, or any communicable disease, including HIV, of the child or youth, unless the delay or denial of the placement is not detrimental to the health or welfare of the child or youth;

(c) Require different or additional screenings, processes, or procedures for adoptive or foster placement decisions solely on the basis of the following, unless such screenings, processes, or procedures are necessary to determine if the placement is detrimental to the health or welfare of the child or youth:

(I) A real or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, or any communicable disease, including HIV, of the prospective adoptive or foster parent; or

(II) A real or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, or any communicable disease, including HIV, of the child or youth involved; or

(d) Subject a child or youth in foster care or an individual, family, or other service provider to discrimination or harassment on the basis of actual or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, or any communicable disease, including HIV, when providing any placement-related service.

(4) (a) A service provider shall provide placement-related services in a manner that is culturally responsive to the complex social identity of the individual receiving such services. Complex social identities include but are not limited to race, ethnicity, nationality, age, religion, sex, sexual orientation, gender identity, gender expression, socioeconomic status, physical or cognitive ability, language, beliefs, values, behavior patterns, and customs. Nothing in this subsection (4) may be used to cause the delay or denial of an out-of-home placement of a child or youth, unless the delay or denial of the placement is not detrimental to the health or welfare of the child or youth.

(b) The state department of human services shall determine whether placement-related services are provided in a manner that is culturally responsive to the complex social identity of the individual receiving such services.

(5) Nothing in this section diminishes the protections afforded to a parent, prospective parent, child, or youth with a disability, as described in sections 19-3-208, 19-5-100.2, and 24-34-805.

Source: L. 2021: Entire section added, (HB 21-1072), ch. 43, p. 182, § 1, effective April 19.

19-1-131. Children of parents who are incarcerated - rules.

The department shall promulgate rules that facilitate communication and family time between children and their parents who are incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail. The purpose of the rules is to normalize, to the extent possible, the child and parent relationship, to aid and encourage healthy child development, and reduce recidivism and intergenerational incarceration. The rules must consider the benefits to the child through maintaining contact with the child's parent and the parent's willingness and desire to maintain a meaningful relationship with the child, and assist in the reunification of the child and parent when appropriate. The rules must consider the impact of rules promulgated pursuant to this section on department of corrections facilities, private correctional facilities under contract with the department of corrections, jails, and county departments that must implement the rules. The department shall consider opportunities to assess the efficacy of the rules promulgated pursuant to this section.

Source: L. 2023: Entire section added, (SB 23-039), ch. 191, p. 953, § 2, effective January 1, 2024.

Cross references: For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of Colorado 2023.

PART 2

COURT-APPOINTED SPECIAL ADVOCATE PROGRAM

Law reviews: For article, "CASA -- A Powerful Voice for a Child", see 36 Colo. Law. 97 (Oct. 2007).

19-1-201. Legislative intent.

(1) (a) The general assembly hereby finds and declares that quality representation for children requires legal expertise and thorough case monitoring.

(b) The work of community volunteers has been proven to be effective in addressing the needs of children. Partnerships between guardians ad litem and community volunteers can enhance the quality of representation for children.

(c) The general assembly further finds and declares that the state should promote volunteerism and the exercise of responsible citizenship to enable members of local communities to become advocates for children.

(2) Therefore, the general assembly hereby authorizes the creation of volunteer court-appointed special advocate (CASA) programs in order to enhance the quality of representation of children.

Source: L. 96: Entire part added, p. 1090, § 4, effective May 23. **L. 2003:** (2) amended, p. 754, § 5, effective March 25.

19-1-202. Creation of CASA programs.

(1) CASA programs may be established in each judicial district or any two or more judicial districts and shall operate pursuant to a memorandum of understanding between the chief judge of the judicial district and the CASA program. The memorandum of understanding must identify the roles and responsibilities of any CASA volunteer appointed in the judicial district or districts and must indicate whether any CASA volunteer may be made a party to the action. The memorandum of understanding may be amended or modified at any time to add or delete roles and responsibilities pursuant to this part 2.

(2) A CASA program established pursuant to the provisions of this part 2 must:

(a) Be a community organization that screens, trains, and supervises CASA volunteers to advocate for the best interests of children in actions brought pursuant to this title and titles 14 and 15, C.R.S., or for a child in a truancy proceeding pursuant to the "School Attendance Law of 1963", part 1 of article 33 of title 22, C.R.S.;

(b) Be a member in good standing of the Colorado CASA association and the national CASA association and adhere to the guidelines established by those associations;

(c) Appoint a program director who shall have the responsibilities set forth in section 19-1-203;

(d) Have adequate supervisory and support staff who shall be easily accessible, hold regular case conferences with CASA volunteers to review case progress, and conduct annual performance reviews for all CASA volunteers;

(e) Provide staff and CASA volunteers with written program policies, practices, and procedures;

(f) Provide the training required pursuant to section 19-1-204; and

(g) Attempt to maintain a CASA volunteer-to-supervisor ratio of thirty-to-one.

Source: L. 96: Entire part added, p. 1090, § 4, effective May 23. **L. 2008:** (1) amended, p. 30, § 1, effective March 13. **L. 2015:** (1), IP(2), and (2)(a) amended, (SB 15-004), ch. 254, p. 925, § 1, effective August 5.

19-1-203. Program director.

(1) The program director shall be responsible for the administration of the CASA program, including recruitment, selection, training, and supervision and evaluation of staff and CASA volunteers.

(2) The program director shall serve as a professional liaison between the court and community agencies serving children.

Source: L. 96: Entire part added, p. 1091, § 4, effective May 23.

19-1-204. Training requirements.

(1) All CASA volunteers shall participate fully in preservice training, including instruction on recognizing child abuse and neglect, cultural awareness, child development, education standards, the juvenile court process, permanency planning, volunteer roles and responsibilities, advocacy, information gathering, and documentation. CASA volunteers shall be required to participate in observation of court proceedings prior to appointment.

(2) All CASA volunteers shall receive a training manual that shall include guidelines for their service and duties.

(3) Each CASA program shall provide a minimum of ten hours of in-service training per year to CASA volunteers.

Source: L. 96: Entire part added, p. 1091, § 4, effective May 23. **L. 2015:** (1) amended, (SB 15-004), ch. 254, p. 926, § 2, effective August 5.

19-1-205. Selection of CASA volunteers.

(1) Each CASA program shall adopt regulations consistent with subsection (2) of this section and with the Colorado CASA association and national CASA association guidelines governing qualifications and selection of CASA volunteers. Each CASA program's regulations shall include provisions that qualified adults shall not be discriminated against based on gender, socioeconomic, religious, racial, ethnic, or age factors.

(2) The minimum qualifications for any prospective CASA volunteer are that he or she shall:

(a) Be at least twenty-one years of age or older and have demonstrated an interest in children and their welfare;

(b) Be willing to commit to the court for a minimum of one year of service to a child;

(c) Complete an application, including providing background information required pursuant to subsection (3) of this section;

(d) Participate in a screening interview;

(e) Participate in the training required pursuant to section 19-1-204; and

(f) Meet other qualifications as determined by the CASA program director and the chief judge of the judicial district.

(3) A prospective CASA volunteer's application shall include:

(a) A copy of any criminal history record and motor vehicle record;

(a.5) Written authorization for the CASA program to obtain information contained in any records or reports of child abuse or neglect concerning the prospective CASA volunteer;

(b) At least three references who can address his or her character, judgment, and suitability for the position; and

(c) Records from any other jurisdictions in which he or she resided during the one-year time period prior to the date of the application if the prospective CASA volunteer has resided in the state of Colorado for less than twelve months.

Source: L. 96: Entire part added, p. 1091, § 4, effective May 23. **L. 2003:** (3)(a) amended and (3)(a.5) added, p. 1401, § 7, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (3)(a) and enacting subsection (3)(a.5), see section 1 of chapter 196, Session Laws of Colorado 2003.

19-1-206. Appointment of CASA volunteers.

(1) (a) A judge or magistrate may appoint a CASA volunteer in any action brought pursuant to this title and titles 14 and 15, C.R.S., when, in the opinion of the judge or magistrate, a child who may be affected by such action requires services that a CASA volunteer can provide. At the discretion of the judge or magistrate, a CASA volunteer may be a party to the action if so provided for in the memorandum of understanding.

(b) A judge or magistrate may appoint a CASA volunteer in any action brought in a proceeding pursuant to the "School Attendance Law of 1963", part 1 of article 33 of title 22, C.R.S., provided that at least one parent or legal guardian of the child involved is provided with notice of the appointment of a CASA volunteer.

(2) A CASA volunteer shall be appointed at the earliest stages of an action pursuant to a court order that gives him or her the authority to review all relevant documents and interview all parties involved in the case, including parents, other parties in interest, and any other persons having significant information relating to the child.

(3) The CASA volunteer's appointment concludes:

(a) When the court's jurisdiction over the child terminates; or

(b) Upon discharge by the court on its own motion or at the request of the program director of the CASA program to which the CASA volunteer is assigned.

Source: L. 96: Entire part added, p. 1092, § 4, effective May 23. **L. 2015:** (1) and IP(3) amended, (SB 15-004), ch. 254, p. 926, § 3, effective August 5.

19-1-207. Restrictions.

(1) A CASA volunteer shall not:

(a) Accept any compensation for the duties and responsibilities of his or her appointment;

(b) Have any association that creates a conflict of interest with his or her duties;

(c) Be related to any party or attorney involved in a case;

(d) Be employed in a position that could result in a conflict of interest or give rise to the appearance of a conflict;

(e) Use the CASA volunteer position to seek or accept gifts or special privileges.

Source: L. 96: Entire part added, p. 1093, § 4, effective May 23.

19-1-208. Duties of CASA volunteer.

(1) **Independent case investigation.** Upon appointment in an action, a CASA volunteer may:

(a) Conduct an independent investigation regarding the best interests of the child that will provide factual information to the court regarding the child and the child's family. The investigation shall include interviews with and observations of the child, interviews with other appropriate individuals, and the review of relevant records and reports.

(b) Determine if an appropriate treatment plan, as described in section 19-1-103, has been created for the child, whether appropriate services are being provided to the child and family, and whether the treatment plan is progressing in a timely manner;

(c) Determine if additional services are necessary to ensure educational success for a child in a proceeding pursuant to the "School Attendance Law of 1963", part 1 of article 33 of title 22, C.R.S.

(2) **Recommendations.** Unless otherwise ordered by the court, the CASA volunteer, with the support and supervision of the CASA program staff, shall make recommendations consistent with the best interests of the child or youth regarding placement, family time, and appropriate services for the child or youth and family and shall prepare a written report to be distributed to the parties of the action.

(3) **Reports.** The CASA volunteer shall assure that the child's best interests are being advocated at every stage of the case and prepare written reports to be distributed to the parties of the action.

(4) **Case monitoring.** The CASA volunteer shall monitor the case to which he or she has been appointed to assure that the child's essential needs are being met and that the terms of the court's orders have been fulfilled in an appropriate and timely manner.

(5) **Witness.** The CASA volunteer may be called as a witness in an action by any party or the court and may request of the court the opportunity to appear as a witness.

(6) **Foster youth in transition program.** With the consent of the youth, a CASA volunteer may be appointed in a foster youth in transition program case filed pursuant to part 3 of article 7 of this title 19 and may support the youth in planning for the youth's future and accessing necessary services, supports, and assistance consistent with the youth's expressed interests and the program's goals. A CASA volunteer appointed to a youth in a foster youth in transition

program case shall not make best interests recommendations to the court or others and must not have access to or share confidential information about the youth without the youth's express consent to access or share such information.

Source: L. 96: Entire part added, p. 1093, § 4, effective May 23. **L. 98:** (1)(b) amended, p. 821, § 24, effective August 5. **L. 2015:** (1)(c) added, (SB 15-004), ch. 254, p. 926, § 4, effective August 5. **L. 2021:** IP(1) and (1)(b) amended, (SB 21-059), ch. 136, p. 729, § 68, effective October 1. **L. 2023:** (2) amended, (HB 23-1027), ch. 284, p. 1681, § 9, effective June 1. **L. 2024:** (6) added, (HB 24-1377), ch. 254, p. 1674, § 2, effective August 7.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

19-1-209. Role and responsibilities of guardians ad litem - other parties.

(1) (a) Any guardian ad litem, and all state and local agencies, departments, authorities, and institutions shall cooperate and share information with any CASA volunteer appointed to serve on a case and with each local CASA program to facilitate the implementation of its program.

(b) The CASA program will help facilitate the cooperation and sharing of information among CASA volunteers, the attorneys, the county department of human or social services, and other community agencies.

(2) In any case in which the court has appointed both a CASA volunteer and a guardian ad litem, the CASA volunteer and the guardian ad litem shall cooperate to represent the best interests of the child.

(3) The CASA volunteer shall be notified of hearings, staffings, meetings, and any other proceedings concerning the case to which he or she has been appointed.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23. **L. 2018:** (1)(b) amended, (SB 18-092), ch. 38, p. 410, § 35, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-1-210. Access to information.

Upon appointment of a CASA volunteer, the court shall issue an order authorizing access to such records and other information relating to the child, parent, legal guardian, or other parties in interest as the court deems necessary.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

19-1-211. Confidentiality.

A CASA volunteer shall not disclose the contents of any document, record, or other information relating to a case to which the CASA volunteer has access in the course of an investigation. All such information shall be considered confidential and shall not be disclosed to persons other than the court and parties to the action.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

19-1-212. Liability.

CASA program directors and volunteers participating in a CASA program shall have the same civil immunity and liability as described in sections 13-21-115.5 and 13-21-115.7, C.R.S.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

19-1-213. State CASA entity - duties - state court administrator duties - state court-appointed special advocate fund - definitions.

(1) For the purposes of this section, unless the context otherwise requires:

(a) "Local CASA program" means a CASA program established in a judicial district, or any two or more judicial districts, pursuant to section 19-1-202.

(b) "Office of the child's representative" means the office of the child's representative created in section 13-91-104.

(c) "State CASA entity" means the nonprofit entity that has entered into a contract with the office of the child's representative as described in subsection (2) of this section.

(2) The office of the child's representative shall contract with a nonprofit entity that is in good standing with the national CASA association to enhance the CASA program in Colorado. The state CASA entity shall:

(a) Aid and develop local CASA programs in each judicial district or in adjacent judicial districts;

(b) Ensure that local CASA programs adhere to state and national CASA standards;

(c) Ensure the provision and availability of high-quality accessible training for local CASA programs and volunteers;

(d) Seek to enhance existing funding sources, develop private-public partnership funding, and study the availability of new funding sources for the provision of high-quality local CASA programs in each judicial district or in adjacent judicial districts.

(3) Beginning July 1, 2019, and at least annually thereafter, the office of the child's representative shall allocate money appropriated to the state judicial department for CASA programs to the state CASA entity for allocation to local CASA programs. The state CASA entity shall report to the office of the child's representative regarding its duties described in subsection (2) of this section within one month before receiving an allocation.

(4) The state CASA entity, in consultation with local CASA programs, shall annually establish a formula for the allocation of money appropriated and shall allocate money to the local CASA programs in accordance with the established allocation formula. The allocation formula must be provided to the office of the child's representative no later than June 15, 2019, and each June 15 thereafter, prior to the state CASA entity receiving its annual allocation. On a schedule described in the contract, but at least annually, the state CASA entity shall provide to the office of the child's representative a certification from each local CASA program of the amount that program received from each allocation since the prior certification.

(5) On or before November 1, 2020, and on or before November 1 each year thereafter, the state CASA entity shall report its activities and the activities of each local CASA program to the office of the child's representative.

(6) (a) The state court-appointed special advocate fund, referred to in this subsection (6) as the "fund", is hereby created in the state treasury. The fund consists of money credited to the fund pursuant to subsection (6)(b) of this section and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. The money in the fund is subject to annual appropriation by the general assembly to the state judicial department for the purposes of funding local CASA programs established in each judicial district, or in adjacent judicial districts, pursuant to this part 2, and the enhancement of local CASA programs. Any

money not appropriated remains in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

(b) The office of the child's representative may seek, accept, and expend gifts, grants, or donations from private or public sources to fund the work of the state CASA entity. The office of the child's representative shall transmit all money received through gifts, grants, or donations to the state treasurer, who shall credit the money to the fund.

Source: L. 2019: Entire section added, (HB 19-1282), ch. 312, p. 2813, § 1, effective May 28.

PART 3

RECORDS AND INFORMATION

Editor's note: This part 3 was added with relocations in 1996, effective January 1, 1997. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

19-1-301. Short title.

This part 3 shall be known and may be cited as the "Children's Code Records and Information Act".

Source: L. 96: Entire part added with relocations, p. 1156, § 6, effective January 1, 1997.

19-1-302. Legislative declaration.

(1) (a) The general assembly declares that information obtained by public agencies in the course of performing their duties and functions under this title is considered public information under the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S. The general assembly, however, recognizes that certain information obtained in the course of the implementation of this title is highly sensitive and has an impact on the privacy of children and members of their families. The disclosure of sensitive information carries the risk of stigmatizing children; however, absolute confidentiality of such information may result in duplicated services in some cases, fragmented services in others, and the delivery of ineffective and costly programs and, in some situations, may put other members of the public at risk of harm. In addition, disclosure may result in serving the best interests of the child and may be in the public interest.

(b) Furthermore, the general assembly specifically finds that schools, school districts, and criminal justice agencies attempting to protect children and the public are often frustrated by their lack of ability to exchange information concerning disruptive children who may have experienced disciplinary actions at school or whose actions outside of a school setting may have resulted in contact with local law enforcement. The general assembly finds that schools, school districts, and criminal justice agencies are often better able to assist such disruptive children and to preserve school safety when they are equipped with knowledge concerning a child's history and experiences. The general assembly, however, recognizes that any such sharing of information among and between schools, school districts, and agencies to promote school safety or otherwise to assist disruptive children mandates an awareness of the responsibility on the part of those schools, school districts, and agencies receiving or providing the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information be preserved. The general assembly finds, therefore, that it is desirable to authorize and encourage open communication among appropriate agencies, including criminal justice agencies, assessment centers for children, school districts, and schools, in order to assist disruptive children and to maintain safe schools.

(c) The general assembly further finds that partners in multi-agency assessment centers for children are often frustrated by their lack of ability to exchange information with each other when attempting to serve children and the public. The general assembly finds that assessment centers for children are better able to assist children when they are equipped with knowledge concerning a child's history and experiences. The general assembly, however, recognizes that any such sharing of information among agencies who are part of a multi-agency assessment center for children mandates an awareness of the responsibility on the part of the agencies receiving or providing the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information be preserved.

(d) The general assembly recognizes the importance of children receiving support from all responsible parties and further finds that the state child support enforcement agency and the delegate child support enforcement units have a need to exchange information with other state, federal, and local agencies in order to effectively locate responsible parties; establish paternity and child support, including child support debt pursuant to section 14-14-104, C.R.S.; enforce support orders; disburse collected child support payments; and facilitate the efficient and effective delivery of services under articles 13 and 13.5 of title 26, C.R.S. Therefore, the general assembly recognizes that the state child support enforcement agency and the delegate child support enforcement units need access to the records and databases of the judicial department, the contents of which are otherwise protected under the provisions of this part 3. The general assembly, however, recognizes that any such information sharing mandates an awareness of responsibility on the part of the state child support enforcement agency and the delegate child support enforcement units receiving information that it be used only for its intended purposes as

authorized by law and in accordance with the provisions of section 26-13-102.7, C.R.S., and that the confidential nature of the information be preserved.

(e) The general assembly recognizes the need to make recommendations to the court concerning the many aspects of a child's legal status, including but not limited to existing court orders on placement of the child, legal custody of the child, and orders of protection. Because the population of this state is transitory, and jurisdictional lines for the purpose of court actions are arbitrary, communication of certain information available electronically on a statewide basis may assist state and county agencies, attorneys representing state or county agencies, and attorneys appointed by the court in making recommendations to the court. The general assembly recognizes that any such sharing of information among agencies, attorneys representing agencies, and attorneys appointed by the court mandates an awareness of the responsibility on the part of these agencies, attorneys representing agencies, and attorneys appointed by the court in receiving and providing the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information be preserved.

(f) (I) The general assembly further recognizes the need for the command authority of military installations under the United States secretary of defense to receive notice and information regarding any report that is assigned for an assessment by the state department of human services or a county department of known or suspected instances of child abuse or neglect in which the person having care of the child in question is a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces. The general assembly recognizes the need for the state department of human services and county departments to collect information concerning the military affiliation of the individual having custody or control of a child who is the subject of an investigation of child abuse or neglect.

(II) To further the fulfillment of these needs, the state department of human services and county departments should be able to enter into memorandums of understanding with the command authority of military installations. The memorandums of understanding may establish protocols for the sharing of information related to assessments of known or suspected instances of child abuse or neglect and for collaboration on the oversight of child abuse or neglect investigations involving a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces.

(III) The general assembly, however, recognizes that any sharing of such information is critical for an awareness of the responsibility of the involved agencies and military installations that receive or provide the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information must be preserved.

(IV) The general assembly finds, therefore, that it is desirable to authorize and encourage open communication between the state department of human services, county departments, and command authority of military installations to better serve children and families of Colorado.

(2) Therefore, in an effort to balance the best interests of children and the privacy interests of children and their families with the need to share information among service agencies and schools and the need to protect the safety of schools and the public at large, the general assembly enacts the provisions of this part 3.

Source: L. 96: Entire part added with relocations, p. 1156, § 6, effective January 1, 1997. **L. 2000:** Entire section amended, p. 314, § 1, effective April 7. **L. 2003:** (1)(d) added, p. 1266, § 55, effective July 1. **L. 2008:** (1)(e) added, p. 1241, § 3, effective August 5. **L. 2009:** (1)(a) amended, (SB 09-292), ch. 369, p. 1949, § 35, effective August 5. **L. 2017:** (1)(f) added, (SB 17-028), ch. 332, p. 1782, § 1, effective August 9.

19-1-303. General provisions - delinquency and dependency and neglect cases - exchange of information - civil penalty - rules - definitions.

(1) (a) The judicial department or any agency that performs duties and functions pursuant to this title 19 with respect to juvenile delinquency or dependency and neglect cases or any other provisions of this title 19 may exchange information, to the extent necessary, for the acquisition, provision, oversight, or referral of services and support with the judicial department or any other agency or individual, including a professional representing state or county agencies and an appointed professional, that performs duties and functions pursuant to this title 19 with respect to such cases. In order to receive such information, the judicial department, professional, or agency shall have a need to know for purposes of investigations and case management in the provision of services or the administration of their respective programs. The judicial department or the agencies shall exchange information in accordance with subsection (1)(b) of this section.

(b) The judicial department, an agency, an attorney representing an agency, or an appointed professional described in subsection (1)(a) of this section shall exchange information with the judicial department or similar agencies or individuals who have a need to know to the extent necessary for the acquisition, provision, oversight, and referral of services and support and if provided in the course of an investigation or for case management purposes. The provision of information by the judicial department shall include electronic read-only access to the name index and register of actions for agencies or appointed professionals to those case types necessary to carry out their statutory purpose and the duties of their appointment as provided in this part 3. The state court administrator of the judicial department and the executive directors of the affected agencies shall ensure that there is a process for electronically exchanging information pursuant to this section. Agencies, professionals, and individuals shall maintain the confidentiality of the information obtained.

(c) Nothing in this section shall require the exchange of information that is subject to the attorney-client privilege under section 13-90-107 (1)(b), C.R.S.

(2) (a) School personnel may obtain from the judicial department or agencies described in paragraph (a) of subsection (1) of this section any information required to perform their legal duties and responsibilities. Said personnel shall maintain the confidentiality of the information obtained.

(b) Notwithstanding any other provision of law to the contrary, any criminal justice agency or assessment center for children in the state may share any information or records concerning a specific child who is or will be enrolled as a student at a school with that school's principal or with the principal's designee and, if the student is or will be enrolled at a public school, with the superintendent of the school district in which the student is or will be enrolled or the superintendent's designee as follows:

(I) Any information or records, except mental health or medical records, relating to incidents that, in the discretion of the agency or center, rise to the level of a public safety concern including, but not limited to, any information or records of threats made by the child, any arrest or charging information, any information regarding municipal ordinance violations, and any arrest or charging information relating to acts that, if committed by an adult, would constitute misdemeanors or felonies; or

(II) Any records, except mental health or medical records, of incidents that such agency or center may have concerning the child that, in the discretion of the agency or center, do not rise to the level of a public safety concern but that relate to the adjudication or conviction of a child for a municipal ordinance violation or that relate to the charging, adjudication, deferred prosecution, deferred judgment, or diversion of a child for an act that, if committed by an adult, would have constituted a misdemeanor or a felony.

(c) Notwithstanding any other provision of law to the contrary, a criminal justice agency investigating a criminal matter or a matter under the "School Attendance Law of 1963", part 1 of article 33 of title 22, C.R.S., concerning a child may seek disciplinary and truancy information from the principal of a school, or the principal's designee, at which the child is or will be enrolled as a student and, if the student is enrolled in a public school, from the superintendent of the school district in which the student is enrolled, or such superintendent's designee. Upon written certification by the criminal justice agency that the information will not be disclosed to any other party, except as specifically authorized or required by law, without the prior written consent of the child's parent, either the principal of the school in which the child is enrolled, or such principal's designee, or, if the student is enrolled in a public school, the superintendent of the school district in which the student is enrolled, or such superintendent's designee, shall provide the child's attendance and disciplinary records to the requesting criminal justice agency. The criminal justice agency receiving such information shall use it only for the performance of its legal duties and responsibilities and shall maintain the confidentiality of the information received.

(d) School and school district personnel receiving information pursuant to this subsection (2) shall use it only in the performance of their legal duties and responsibilities and shall otherwise maintain the confidentiality of the information received. Any information received by a school or a school district pursuant to this subsection (2) that is shared with another school or a school district to which a student may be transferring shall only be shared in compliance with the requirements of federal law.

(2.5) (a) Notwithstanding any other provision of law to the contrary and in addition to the provisions of subsections (1) and (2) of this section, assessment centers for children and the agencies, other than schools and school districts, participating in the local assessment centers for children are authorized to provide and share information, except for mental health or medical records and information, with each other, without the necessity of signed releases, concerning children who have been taken into temporary custody by law enforcement or who have been referred to the assessment center for children for case management purposes. Agencies shall have annually updated signed agreements with assessment centers for children to be considered a participating agency.

(b) For purposes of sharing information pursuant to this subsection (2.5) only, "mental health or medical records and information" does not include the standardized behavioral or mental health disorder screening. An assessment center that conducts a standardized behavioral or mental health disorder screening on a child who has been taken into temporary custody by law enforcement or has been referred to the assessment center for children for case management purposes may share the results of such screening, without the necessity of a signed release, with the agencies, other than schools and school districts, participating in the assessment center for children. To receive the results of the standardized behavioral or mental health disorder screening, a participating agency must have a need to know for purposes of investigations and case management in the administration of its respective programs. Any participating agency receiving such information shall use it only for the performance of its legal duties and responsibilities and shall maintain the confidentiality of the information received, except as may be required pursuant to rule 16 of the Colorado rules of criminal procedure.

(2.6) (a) The state department of human services and county departments:

(I) Shall collect information concerning the military affiliation of any person who has custody or control of a child who is the subject of an investigation of child abuse or neglect;

(II) Shall provide notice and information to the command authority of military installations under the United States secretary of defense regarding any report received of known or suspected instances of child abuse or neglect that is assigned for an assessment and in which the person having custody or control of the child is a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces assigned to that military installation; and

(III) May enter into memorandums of understanding with the command authority of military installations establishing protocols for the sharing of information and for collaboration on the oversight of investigations involving a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces. The military installation receiving information shall ensure it is used only for its intended and limited purpose as authorized by law and that the confidential nature of the information is preserved.

(b) The state board of human services may promulgate any rules necessary for the implementation of this subsection (2.6).

(2.7) (a) Upon the receipt of written notice sent by a foster parent, employees of the department of human services and of county departments, or other individuals with a need to know, shall be prohibited from releasing personally identifiable information about a foster parent, other than the foster parent's first name, to any adult member of the foster child's family, unless the foster parent subsequently provides his or her express written consent for the release of the information. The consent may consist of a hand-written note by the foster parent specifying the foster child's name, the consent for release of information to the foster child's family, the foster parent's signature, and the date. The consent shall be given individually for each foster child, unless the foster children are members of a sibling group.

(b) The civil penalty described in subsection (4.7) of this section shall not apply to any foster child or siblings of the foster child.

(3) and (4) (Deleted by amendment, L. 2000, p. 315, § 2, effective April 7, 2000.)

(4.3) School and school district personnel, employees of the state judicial department, employees of state agencies, employees of criminal justice agencies, and employees of assessment centers for children who share information concerning a child pursuant to this part 3 shall be immune from civil and criminal liability if such personnel or employee acted in good faith compliance with the provisions of this part 3.

(4.4) The judicial department, with respect to dependency or neglect cases or any other provisions under this title, shall exchange information, to the extent necessary, with the state child support enforcement agency and the delegate child support enforcement units for the purposes of effectively locating responsible parties, establishing paternity and child support, including child support debt pursuant to section 14-14-104, C.R.S., enforcing support orders, disbursing collected child support payments, and facilitating the efficient and effective delivery of services under articles 13 and 13.5 of title 26, C.R.S.

(4.7) Any person who knowingly violates the confidentiality provisions of this section shall be subject to a civil penalty of up to one thousand dollars.

(5) The provisions of this section are in addition to and not in lieu of other statutory provisions of law pertaining to the release of information. Access to or exchange of information not otherwise addressed by this section is governed as otherwise provided by law.

(6) For purposes of this section:

(a) "Assessment center for children" is defined in section 19-1-103 (13).

(a.1) "Case management purposes" is defined in section 19-1-103 (19).

(a.3) "Criminal justice agency" is defined in section 19-1-103 (48).

(b) "Need to know" is defined in section 19-1-103 (99).

(c) "School" is defined in section 19-1-103 (123).

(7) This section shall be interpreted to promote the best interests of the child and, where possible, the child's family.

(8) to (10) (Deleted by amendment, L. 2008, p. 1242, § 4, effective August 5, 2008.)

(11) (a) The judicial department or any agency described in subsection (1)(a) of this section may provide a prospective foster parent, relative, or kin caregiver, as defined by rule of the department of human services, or a foster parent who is responsible for the health or welfare of a foster child named in a report who is residing in the foster parent's home, with information that is necessary to meet the foster child's physical, mental, emotional, behavioral, and other identified trauma needs.

(b) The information described in subsection (11)(a) of this section is only information directly relevant to meeting the foster child's physical, mental, emotional, behavioral, and other identified trauma needs, and includes, but is not limited to, the following:

(I) A foster child's educational records;

(II) Relevant information in the family services plan to meet the safety, permanency, and well-being needs of the foster child, including any safety issues that impact the foster parent's ability to parent the foster child;

(III) Circumstances related to the removal of the foster child from his or her home; and

(IV) Youth placement history, including safety concerns and reasons for unplanned placement moves.

(c) Mental health and medical records of a child may be released pursuant to this subsection (11), subject to any privilege recognized or governed by state or federal law.

(d) The foster parent, relative, or kin caregiver shall maintain the confidentiality of any information obtained pursuant to this subsection (11).

Source: L. 96: Entire part added with relocations, p. 1156, § 6, effective January 1, 1997. **L. 2000:** Entire section amended, p. 315, § 2, effective April 7. **L. 2001:** (2)(c) amended, p. 870, § 1, effective June 1. **L. 2002:** (2.5) amended, p. 575, § 5, effective May 24. **L. 2003:** (4.4) added, p. 1267, § 56, effective July 1. **L. 2004:** (2.7) added, p. 973, § 2, effective August 4. **L. 2007:** (8), (9), and (10) added, p. 1300, § 1, effective July 1. **L. 2008:** (1), (8), (9), and (10) amended, p. 1242, § 4, effective August 5. **L. 2016:** (5) amended, (HB 16-1098), ch. 103, p. 297, § 1, effective April 15. **L. 2017:** (2.5)(b) amended, (SB 17-242), ch. 263, p. 1309, § 151, effective May 25; (2.6) added, (SB 17-028), ch. 332, p. 1783, § 2, effective August 9. **L. 2018:** (11) added, (HB 18-1348), ch. 325, p. 1960, § 1, effective May 30. **L. 2022:** (6)(a), (6)(a.1), (6)(a.3), (6)(b), and (6)(c) amended, (SB 22-212), ch. 421, p. 2971, § 35, effective August 10. **L. 2023:** (11)(a) and (11)(d) amended, (HB 23-1024), ch. 367, p. 2205, § 2, effective August 7. **L. 2025:** (1)(a) and (1)(b) amended, (SB 25-239), ch. 142, p. 536, § 2, effective August 6.

Editor's note: Subsection (6)(c) was originally enacted as subsection (6)(a.7) in House Bill 00-1119 but was renumbered on revision in 2003 for ease of location.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of Colorado 2023.

19-1-304. Juvenile delinquency records - division of youth services critical incident information - definitions.

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

(I) The juvenile named in said record;

(II) The juvenile's parent, guardian, legal custodian, or attorney;

(III) Any attorney of record;

(IV) The juvenile's guardian ad litem or counsel for youth;

(V) The juvenile probation department and the adult probation department for purposes of a presentence investigation and the preparation of a presentence report as described in section 16-11-102 (1)(a), C.R.S.;

(VI) Any agency to which legal custody of the juvenile has been transferred;

(VII) Any law enforcement agency or police department in the state of Colorado;

(VII.5) The Colorado bureau of investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase;

(VIII) A court which has jurisdiction over a juvenile or domestic action in which the juvenile is named;

(IX) Any attorney of record in a juvenile or domestic action in which the juvenile is named;

(X) The state department of human services;

(XI) Any person conducting an evaluation pursuant to section 14-10-127, C.R.S.;

(XII) All members of a child protection team, if one exists pursuant to section 19-3-308 (6)(a);

(XIII) Any person or agency for research purposes, if all of the following conditions are met:

(A) The person or agency conducting the research is employed by the state of Colorado or is under contract with the state of Colorado and is authorized by the department of human services to conduct the research; except that the department of public safety is not required to obtain prior authorization from the department of human services for purposes of this subsection (1)(a)(XIII);

(B) The person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed; and

(C) Any data released must only be in aggregate form;

(XIV) The victim and the complaining party, if different, identified in the court file;

(XV) The department of corrections for aid in determinations of recommended treatment, visitation approval, and supervised conditions;

(XVI) The principal, or the principal's designee, of a school in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee;

(XVII) The department of education when acting pursuant to section 22-2-119, C.R.S., or pursuant to the "Colorado Educator Licensing Act of 1991", article 60.5 of title 22, C.R.S.

(b) **Court records - limited.** With consent of the court, records of court proceedings in delinquency cases may be inspected by any other person having a legitimate interest in the proceedings.

(b.5) **Arrest and criminal records - certain juveniles - public access - information limited.** The public has access to information reporting the arrest or other formal filing of charges against a juvenile; the identity of the criminal justice agency taking such official action relative to an accused juvenile; the date and place that such official action was taken relative to an accused juvenile; the nature of the charges brought or the offenses alleged; and one or more dispositions relating to the charges brought against an accused juvenile, when this information:

(I) Is in the custody of the investigating law enforcement agency, the agency responsible for filing a petition against the juvenile, and the court; and

(II) Concerns a juvenile who:

(A) Is adjudicated a juvenile delinquent or is subject to a revocation of probation for committing the crime of possession of a handgun by a juvenile or for committing an act that would constitute a class 1, 2, 3, or 4 felony or would constitute any crime that involves the use or possession of a weapon if such act were committed by an adult; or

(B) Is charged with the commission of any act described in sub-subparagraph (A) of this subparagraph (II).

(b.7) The information that is open to the public pursuant to subsection (1)(b.5) of this section regarding a juvenile who is charged with the commission of a delinquent act shall not include records of investigation as such records are described in section 24-72-305 (5). In addition, any psychological profile of any such juvenile, any intelligence test results for any such juvenile, or any information regarding whether such juvenile has been sexually abused is not open to the public unless released by an order of the court. The information that is open to the public pursuant to subsection (1)(b.5) of this section regarding a juvenile who is charged with a delinquent act shall not include the juvenile's name, birth date, or photograph.

(b.8) The court shall report the final disposition concerning a juvenile who has been adjudicated a juvenile delinquent to the Colorado bureau of investigation in a form that is electronically consistent with applicable law. The report must be made within seventy-two hours after the final disposition; except that the time period shall not include Saturdays, Sundays, or legal holidays. The report must include the disposition of each charge and the court case number, and the Colorado bureau of investigation shall reflect any change of status but shall not delete or eliminate information concerning the original charge. Colorado bureau of investigation records regarding juvenile offenses are not open to the public.

(c) **Probation records - limited access.** Except as otherwise authorized by section 19-1-303, a juvenile probation officer's records, whether or not part of the court file, are not open to inspection except as provided in subsection (1)(c)(I) to (1)(c)(XI) of this section:

(I) To persons who have the consent of the court;

(II) To law enforcement officers, as defined in section 19-1-103 (93), and to fire investigators, as defined in section 19-1-103 (65). The inspection shall be limited to the following information:

(A) Basic identification information as defined in section 24-72-302 (2), C.R.S.;

(B) Details of the offense and delinquent acts charged;

(C) Restitution information;

(D) Juvenile record;

(E) Probation officer's assessment and recommendations;

(F) Conviction or plea and plea agreement, if any;

(G) Sentencing information; and

(H) Summary of behavior while the juvenile was in detention, if any;

(II.5) To the Colorado bureau of investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase. The inspection shall be limited to the information identified in sub-subparagraphs (A) to (H) of subparagraph (II) of this paragraph (c).

(III) To a court which has jurisdiction over a juvenile or domestic action in which the juvenile is named;

(IV) To any attorney of record in a juvenile or domestic action in which the juvenile is named;

(V) To the state department of human services;

(VI) To any person conducting an evaluation pursuant to section 14-10-127, C.R.S.;

(VII) To all members of a child protection team, if one exists pursuant to section 19-3-308 (6)(a);

(VII.5) To the juvenile named in the record;

(VIII) To the juvenile's parent, guardian, legal custodian, or attorney;

(IX) To the juvenile's guardian ad litem or counsel for youth;

(X) To the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee; or

(XI) To the department of education when acting pursuant to section 22-2-119, C.R.S., or pursuant to the "Colorado Educator Licensing Act of 1991", article 60.5 of title 22, C.R.S.

(d) **Social and clinical studies - closed - court authorization.** Except as otherwise authorized by section 19-1-303, any social and clinical studies, including all formal evaluations of the juvenile completed by a professional, whether or not part of the court file or any other record, are not open to inspection, except:

(I) To the juvenile named in the record;

(II) To the juvenile's parent, guardian, legal custodian, or attorney; or

(III) By order of the court, upon a finding of a legitimate interest in and need to review the social and clinical studies.

(2) (a) **Law enforcement records in general - closed.** Except as otherwise provided by subsection (1)(b.5) of this section and otherwise authorized by section 19-1-303, the records of law enforcement officers concerning juveniles, including identifying information, must be identified as juvenile records and must not be inspected by or disclosed to the public, except:

(I) To the juvenile and the juvenile's parent, guardian, legal custodian, or attorney;

(II) To other law enforcement agencies and to fire investigators, as defined in section 19-1-103 (65), who have a legitimate need for such information;

(II.5) To the Colorado bureau of investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase;

(III) To the victim and the complaining party, if different, in each case after authorization by the district attorney or prosecuting attorney;

(IV) When the juvenile has escaped from an institution to which such juvenile has been committed;

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

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

(VII) By order of the court;

(VIII) To a court which has jurisdiction over a juvenile or domestic action in which the juvenile is named;

(IX) To any attorney of record in a juvenile or domestic action in which the juvenile is named;

(X) To the state department of human services;

(XI) To any person conducting an evaluation pursuant to section 14-10-127, C.R.S.;

(XII) To all members of a child protection team, if one exists pursuant to section 19-3-308 (6)(a);

(XIII) To the juvenile's guardian ad litem or counsel for youth;

(XIV) To any person or agency for research purposes, if all of the following conditions are met:

(A) The person or agency conducting such research is employed by the state of Colorado or is under contract with the state of Colorado and is authorized by the department of human services to conduct such research; except that the department of public safety does not need to obtain prior authorization from the department of human services for the purposes of this subsection (2)(a)(XIV)(A); and

(B) The person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

(XV) To the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee;

(XVI) To assessment centers for children;

(XVII) To the department of education when acting pursuant to section 22-2-119, C.R.S., or pursuant to the "Colorado Educator Licensing Act of 1991", article 60.5 of title 22, C.R.S.

(b) The fingerprints, photograph, name, address, and other identifying information regarding a juvenile may be transmitted to the Colorado bureau of investigation to assist in any apprehension or investigation and for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase.

(2.5) **Parole records.** Parole records are open to inspection by the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, by the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee. Parole records are

also open to inspection by assessment centers for children and by the juvenile named in the record and the juvenile's parent, guardian, legal custodian, or attorney.

(3) Prior to adjudication, the defense counsel, the district attorney, the prosecuting attorney, or any other party to a pending delinquency petition with consent of the court must have access to records of any proceedings pursuant to this title 19, except as provided in section 19-1-309, which involve a juvenile against whom criminal or delinquency charges have been filed. No new criminal or delinquency charges against such juvenile may be brought based upon information gained initially or solely from such examination of records.

(4) For the purpose of making recommendations concerning sentencing after an adjudication of delinquency, the defense counsel and the district attorney or prosecuting attorney shall have access to records of any proceedings involving the adjudicated juvenile pursuant to this title, except as provided in sections 19-1-307, 19-1-308, and 19-1-309. No new criminal or delinquency charges against the adjudicated juvenile shall be brought based upon information gained initially or solely from such examination of records.

(5) **Direct filings - arrest and criminal records open.** Whenever a petition filed in juvenile court alleges that a juvenile between the ages of twelve to eighteen years has committed an offense that would constitute unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S., or a crime of violence, as defined in section 18-1.3-406, C.R.S., if committed by an adult or whenever charges filed in district court allege that a juvenile has committed such an offense, then the arrest and criminal records information, as defined in section 24-72-302 (1), C.R.S., and including a juvenile's physical description, concerning such juvenile shall be made available to the public. The information is available only from the investigative law enforcement agency, the agency responsible for filing a petition, and the court, and shall not include records of investigation as such records are described in section 24-72-305 (5), C.R.S. Basic identification information, as defined in section 24-72-302 (2), C.R.S., along with the details of the alleged delinquent act or offense, shall be provided immediately to the school district in which the juvenile is enrolled. Such information shall be used by the board of education for purposes of section 22-33-105 (5), C.R.S., but information made available to the school district and not otherwise available to the public shall remain confidential.

(5.5) Whenever a petition is filed in juvenile court alleging a class 1, class 2, class 3, or class 4 felony; a level 1, level 2, or level 3 drug felony; an offense involving unlawful sexual behavior as defined in section 16-22-102; a crime of violence as described in section 18-1.3-406; a burglary offense as described in part 2 of article 4 of title 18; felony menacing, in violation of section 18-3-206; harassment, in violation of section 18-9-111; fourth degree arson, in violation of section 18-4-105; motor vehicle theft, in violation of section 18-4-409; hazing, in violation of section 18-9-124; or possession of a handgun by a juvenile, in violation of section 18-12-108.5, or when a petition is filed in juvenile court in which the alleged victim of the crime is a student or staff person in the same school as the juvenile or in which it is alleged that the juvenile

possessed a deadly weapon during the commission of the alleged crime, the prosecuting attorney, within three working days after the petition is filed, shall make good faith reasonable efforts to notify the principal of the school in which the juvenile is enrolled and shall provide such principal with the arrest and criminal records information, as defined in section 24-72-302. In the event the prosecuting attorney, in good faith, is not able to either identify the school that the juvenile attends or contact the principal of the juvenile's school, then the prosecuting attorney shall contact the superintendent of the juvenile's school district.

(6) The department of human services shall release to the committing court, the prosecuting attorney, the Colorado bureau of investigation, and local law enforcement agencies basic identification information as defined in section 24-72-302 (2) concerning any juvenile released or released to parole supervision or any juvenile who escapes. This information is not open to the public.

(7) In addition to the persons who have access to court records pursuant to subsection (1)(a) of this section, statewide electronic read-only access to the name index and register of actions of the judicial department must be allowed to the following agencies or persons:

(a) County departments, as defined in section 19-1-103 (43), and attorneys who represent the county departments as county attorneys, as defined in section 19-1-103 (42), as it relates to the attorneys' work representing the county;

(b) The office of the state public defender, created in section 21-1-101, C.R.S.;

(c) Professionals under contract with the office of the child's representative, created in section 13-91-104, or authorized by the office of the child's representative to act as a guardian ad litem, or a professional under contract or employed by the office of the child's representative, as it relates to a case in which the attorney is appointed;

(d) Professionals under contract with the office of alternate defense counsel, created in section 21-2-101, as it relates to a case in which the attorney is appointed;

(e) A professional under contract with the office of the respondent parents' counsel, created in section 13-92-103, or authorized by the office of the respondent parents' counsel to act as a respondent parent's counsel, as it relates to a case in which the attorney is appointed; and

(f) A licensed attorney working with a nonprofit association providing free legal assistance as it relates to screening an applicant for eligibility for free services or to a case in which the organization has entered an appearance to provide free representation, if the office of the alternate defense counsel agrees to monitor the attorney's use of the electronic name index and register of actions.

(8) **Division of youth services critical incident information.**

(a) For the purposes of this subsection (8), "critical incident" means any of the following:

(I) An intentional physical or sexual act of aggression that:

(A) Causes or attempts to cause serious bodily injury;

(B) Causes bodily injury that requires only first aid or lesser attention; or

(C) Causes no bodily injury;

(II) Unauthorized physical or sexual contact caused through recklessness or negligence, where physical or sexual harm was not intended; or

(III) An attempt to harm or gain power by blows or with weapons.

(b) The department of human services, the division of youth services, or any agency with relevant information shall release the following information related to any critical incident, or aggregate of critical incidents, that occurred in a facility operated by the division of youth services upon request so long as the disclosing agency, except as described in subsection (8)(b)(V) of this section, redacts any identifying information, any information concerning security procedures or protocols, and any information that would jeopardize the safety of the community, youths, or staff:

(I) The type of critical incident that occurred or a summary of types of critical incidents that have occurred within a given time frame;

(II) A summary of whether the number and types of critical incidents are increasing or decreasing in frequency and severity;

(III) On average, how many of the youth have been involved in multiple critical incidents and the average length of detainment;

(IV) A summary of responses to critical incidents by the facility involved, such as de-escalation or typical consequence imposed; and

(V) A summary of any critical incident that has occurred, which summary must include a summary of any use of force on a youth, including any physical-management techniques or restraints utilized and any seclusion of a youth. The division shall not redact the information other than to protect the personal identifying information of any individual.

(c) The division of youth services, the department of human services, or any agency with relevant information related to a critical incident shall provide redacted records related to the critical incident, provided confidentiality is maintained. The division may charge a fee in accordance with section 24-72-205.

(d) The division of youth services may release to the public information at any time to correct inaccurate information pertaining to the critical incident that was reported in the news media, so long as the release of information by the division protects the confidentiality of any youth involved; is not explicitly in conflict with federal law; is not contrary to the best interest of

the child who is the subject of the report, or his or her siblings; is in the public's best interest; and is consistent with the federal "CAPTA Reauthorization Act of 2010", Pub.L. 111-320.

(e) Except as otherwise authorized by section 19-1-303, all records prepared or obtained by the department of human services in the course of carrying out its duties pursuant to article 2.5 of this title 19 are confidential and privileged.

Source: L. 96: Entire part added with relocations, p. 1158, § 6, effective January 1, 1997; (1)(a)(XV) added, p. 1587, § 15, effective January 1, 1997. **L. 98:** (1)(a)(XI), (1)(c)(VI), and (2)(a)(XI) amended, p. 1407, § 66, effective February 1, 1999. **L. 99:** (1)(a)(V) amended, p. 316, § 5, effective July 1; (5) amended, p. 1144, § 1, effective July 1. **L. 2000:** (1)(b.8) added, p. 12, § 5, effective March 7; (1)(a)(VII.5), (1)(c)(II.5), and (2)(a)(II.5) added and (2)(b) amended, pp. 226, 227, §§ 1, 2, 3, 4, effective March 29; (1)(a)(XVI), (1)(c)(X), (2)(a)(XV), (2)(a)(XVI), and (2.5) added and IP(1)(c) and (5) amended, pp. 319, 320, §§ 3, 4, 5, 6, 9, effective April 7; (1)(a)(XVI), (1)(c)(X), and (5.5) added and IP(1)(c) amended, pp. 1964, 1965, §§ 6, 7, 8, effective June 2. **L. 2001:** (5.5) amended, p. 138, § 3, effective July 1. **L. 2002:** (5) amended, p. 1187, § 23, effective July 1; (5) amended, p. 1522, § 222, effective October 1. **L. 2003:** (1)(c)(II.5) amended, p. 1991, § 33, effective May 22. **L. 2008:** (1)(a)(XVII), (1)(c)(XI), and (2)(a)(XVII) added and IP(1)(c), (1)(c)(IX), and (1)(c)(X) amended, pp. 1667, 1668, §§ 10, 11, 12, effective May 29; (7) added, p. 1243, § 5, effective August 5. **L. 2015:** (8) added, (HB 15-1131), ch. 164, p. 499, § 2, effective May 8. **L. 2016:** IP(1)(a) and (1)(a)(XIII) amended, (HB 16-1098), ch. 103, p. 297, § 2, effective April 15; IP(7) and (7)(e) amended, (HB 16-1193), ch. 81, p. 207, § 2, effective July 1. **L. 2017:** IP(8)(b), (8)(b)(V), (8)(c), and (8)(d) amended, (HB 17-1329), ch. 381, p. 1965, § 6, effective June 6; IP(1)(a), (1)(a)(XII), IP(1)(c), (1)(c)(VII), IP(2)(a), and (2)(a)(XII) amended, (SB 17-016), ch. 107, p. 391, § 3, effective August 9; IP(1)(a), (1)(a)(II), (1)(a)(XIII)(A), IP(1)(b.5), (1)(b.7), (1)(b.8), IP(1)(c), (1)(c)(VIII), (1)(d), IP(2)(a), (2)(a)(I), (2)(a)(XIV)(A), (2.5), (3), (5.5), (6), IP(7), (7)(d), and (7)(e) amended and (1)(c)(VII.5) and (7)(f) added, (HB 17-1204), ch. 206, p. 771, § 1, effective November 1. **L. 2021:** (8)(e) amended, (SB 21-059), ch. 136, p. 729, § 69, effective October 1. **L. 2022:** IP(1)(c)(II) and (2)(a)(II) amended, (SB 22-212), ch. 421, p. 2971, § 36, effective August 10; (1)(a)(IV), (1)(c)(IX), (2)(a)(XIII), and (7)(c) amended, (HB 22-1038), ch. 92, p. 439, § 18, effective January 9, 2023. **L. 2023:** (5.5) amended, (SB 23-097), ch. 309, p. 1889, § 4, effective July 1. **L. 2025:** (7)(c), (7)(d), and (7)(e) amended, (SB 25-239), ch. 142, p. 536, § 3, effective August 6.

Editor's note: (1) This section was formerly numbered as § 19-1-119.

(2) Amendments to subsection (1)(a)(XVI) by Senate Bill 00-133 and House Bill 00-1119 were harmonized.

(3) (a) Amendments to the introductory portion to subsection (1)(c) by Senate Bill 00-133 and House Bill 00-1119 were harmonized.

(b) Subsection (1)(c)(XI) as enacted by Senate Bill 00-133 was renumbered as (1)(c)(X) and harmonized with subsection (1)(c)(X) as enacted by House Bill 00-1119.

(4) Amendments to subsection (5) by House Bill 02-1046 and Senate Bill 02-010 were harmonized.

(5) Subsection (7) was originally numbered as (8.5) in House Bill 08-1264 but has been renumbered on revision for ease of location.

(6) Amendments to subsection IP(2)(a) by SB 17-016 and HB 17-1204 were harmonized, effective November 1, 2017.

Cross references: For the legislative declaration contained in the 2000 act enacting subsection (1)(b.8), see section 1 of chapter 5, Session Laws of Colorado 2000. For the legislative declaration contained in the 2002 act amending subsection (5), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982).

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

The disposition of arrest records is subject to legislative control. Davidson v. Dill, 180 Colo. 123, 503 P.2d 157 (1972).

The Colorado Children's Code does not supply definition of "interested party". In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

C.R.C.P. 24 has no application in proceeding under the Colorado Children's Code, as the code itself expressly contemplates the active participation of interested parties. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

19-1-305. Operation of juvenile facilities.

(1) Except as otherwise authorized by section 19-1-303 or 19-1-304 (8), all records prepared or obtained by the department of human services in the course of carrying out its duties pursuant to article 2.5 of this title 19 are confidential and privileged. The records may be disclosed only:

(a) To the parents, legal guardian, legal custodian, attorney for the juvenile, district attorney, guardian ad litem, counsel for youth, law enforcement official, and probation officer;

(b) In communications between appropriate personnel in the course of providing services or in order to facilitate appropriate referrals for services;

(c) To the extent necessary to make application for or to make claims on behalf of the juvenile who is eligible to receive aid, insurance, federal or state assistance, or medical assistance;

(d) To the court as necessary for the administration of the provisions of article 2.5 of this title;

(e) To persons authorized by court order after notice and a hearing, to the juvenile, and to the custodian of the record; and

(f) For research or evaluation purposes pursuant to rules regarding research or evaluation promulgated by the department of human services. Any rules so promulgated shall require that persons receiving information for research or evaluation purposes are required to keep such information confidential.

(g) Repealed.

(2) Nothing in this section shall be construed to limit the effect of any other provision of this part 3 which requires the confidentiality of records under the control of the department of human services.

Source: L. 96: Entire part added with relocations, p. 1163, § 6, effective January 1, 1997. **L. 98, 2nd Ex. Sess.:** (1)(e) and (1)(f) amended and (1)(g) added, p. 7, § 3, effective September 16. **L. 99:** (1)(g) amended, p. 1317, § 4, effective August 4. **L. 2015:** IP(1) amended, (HB 15-1131), ch. 164, p. 499, § 1, effective May 8. **L. 2021:** IP(1) amended, (SB 21-059), ch. 136, p. 729, § 70, effective October 1. **L. 2022:** (1)(d) amended, (SB 22-212), ch. 421, p. 2972, § 37, effective August 10; (1)(a) amended, (HB 22-1038), ch. 92, p. 440, § 19, effective January 9, 2023. **L. 2024:** (1)(e) and (1)(f) amended and (1)(g) repealed, (SB 24-228), ch. 170, p. 899, § 7, effective May 14.

Editor's note: This section was formerly numbered as 19-2-1104.5.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

19-1-306. Expungement of juvenile delinquent records - definition.

(1) (a) For the purposes of this section, "expungement" is defined in section 19-1-103 (63). Upon the entry of an expungement order, the person who is the subject of the record that has been expunged may assert that he or she has no juvenile delinquency record. Further, the person who is the subject of the record that has been expunged may lawfully deny that he or she has ever been arrested, charged, adjudicated, convicted, or sentenced in regard to the expunged case, matter, or charge.

(b) The court, law enforcement, and all other agencies shall reply to any inquiry regarding an expunged record that no record exists with respect to the person named in the record, unless information may be shared with the inquiring party pursuant to subsection (3) of this section.

(c) The expungement order only applies to the named juvenile and not to any co-participant.

(2) (a) At the time of the adjudication, the court shall advise the adjudicated juvenile and any respondent parent or guardian, in writing, of the right to expunge and the time period and process for expunging the order. The court, on its own motion or the motion of the juvenile probation department, the juvenile parole department, the juvenile, a respondent parent or guardian, or a court-appointed guardian ad litem, may initiate expungement proceedings concerning the record of any juvenile who has been under the jurisdiction of the court.

(b) If a juvenile is supervised by probation, the probation department, upon the termination of the juvenile's supervision period, shall provide the juvenile with a written advisement of the right to expungement and the time period and process for expunging the record.

(c) If a juvenile is supervised by parole, the department or division supervising the juvenile's parole, upon the termination of the juvenile's parole supervision period, shall provide the juvenile with a written advisement of the right to expungement and the time period and process for expunging the record.

(d) If the juvenile is supervised by a diversion officer or agency other than probation, the agency supervising the diversion program, upon the termination of the juvenile's diversion period, shall provide the juvenile with a written advisement of the right to expungement and the time period and process for expunging the record.

(e) If a juvenile is sentenced in municipal court, the municipal court, at sentencing, shall provide the juvenile and any respondent parent or guardian with a written advisement of the right to expungement and the time period and process for expunging the record. The municipal court may provide the notice through a municipal diversion program, the city attorney, or a municipal probation program.

(f) If a juvenile is committed to the division of youth services and is released without a requirement to complete further parole, the division shall provide the juvenile with a written advisement of the right to expungement and the time period and process for expunging the record.

(g) Expungement must be effectuated by physically sealing or conspicuously indicating on the face of the record or at the beginning of the computerized file of the record that the record has been designated as expunged.

(h) The prosecuting attorney shall not require as a condition of a plea agreement that the juvenile waive his or her right to expungement under this section upon the completion of the juvenile's sentence.

(i) Prior to the court ordering any records expunged, the court shall determine whether the juvenile has any felony, drug felony, misdemeanor, drug misdemeanor, petty offense, or delinquency actions pending, and, if the court determines that there is a felony, drug felony, misdemeanor, drug misdemeanor, petty offense, or delinquency action pending against the juvenile, the court shall stay the petition for expungement proceedings until the resolution of the pending case.

(3) (a) After expungement, basic identification information on the juvenile and a list of any state and local agencies and officials having contact with the juvenile, as they appear in the records, are not open to the public but are available to a prosecuting attorney, local law enforcement agency, the department of human services, the state judicial department, and the victim as defined in section 24-4.1-302 (5); except that such information is not available to an agency of the military forces of the United States.

(b) Notwithstanding any order for expungement pursuant to this section, any record that is ordered expunged is available to any judge and the probation department for use in any future proceeding in which the person whose record was expunged is charged with an offense as either a juvenile or as an adult. A new criminal or delinquency charge may not be brought against the juvenile based upon information gained initially or solely from examination of the expunged records.

(c) Notwithstanding an order for expungement pursuant to this section, any criminal justice record of a juvenile who has been charged, adjudicated, or convicted of any offense shall be available for use by the juvenile, the juvenile's attorney, a prosecuting attorney, any law enforcement agency, or any agency of the state judicial department in any subsequent criminal investigation or prosecution as a substantive predicate offense conviction or adjudication of record.

(d) Notwithstanding any order for expungement issued pursuant to this section, nothing prevents the prosecuting attorney, including the staff of a prosecuting attorney's office or a victim or witness assistance program or a law enforcement agency or law enforcement victim assistance

program, from discussing with the victim the case, the results of any expungement proceedings, information regarding restitution, and information related to any victim services available to the victim as defined in section 24-4.1-302 (5), but copies of expunged records must not be provided to the victim. The victim may petition the court and request that a copy of the expunged records be provided to the victim. If the court finds that there are compelling reasons for the release, a copy of the expunged records may be released to the victim. If the court orders the release of a copy of the expunged records to the victim, the court must issue a protective order regarding the usage of the expunged records.

(e) Notwithstanding any order for expungement issued pursuant to this section, any information, including police affidavits and reports and records related to any prior conviction or adjudication, are available without court order to the persons, government agencies, or entities allowed access to or allowed to exchange such information pursuant to section 19-1-303 for the purposes described therein. Any person who knowingly violates the confidentiality provisions of section 19-1-303 is subject to the penalty in section 19-1-303 (4.7).

(f) Notwithstanding any order for expungement issued pursuant to this section, nothing in this section precludes a county department of human or social services employee from reviewing internal department records that are ordered expunged and are in the county department's possession for purposes of department investigations and case management in the provision of child welfare services.

(g) Repealed.

(4) (a) The court shall order all records in a juvenile delinquency case in the custody of the court, and any records related to the case and charges in the custody of any other agency, person, company, or organization, expunged within forty-two days after:

(I) A finding of not guilty at an adjudicatory trial;

(II) Dismissal of the petition in its entirety prior to any disposition or alternative to sentencing, including diversion, a deferred adjudication, or an informal adjustment; or

(III) The completion of a sentence or alternative to sentencing, including diversion, a deferred adjudication, or an informal adjustment, for a petty offense, drug petty offense, class 2 or class 3 misdemeanor offense, or level 1 or level 2 drug misdemeanor if the offense does not involve unlawful sexual behavior as defined in section 16-22-102 (9), is not an act of domestic violence as defined in section 18-6-800.3, or is not a crime listed under section 24-4.1-302 (1), and the defendant was under eighteen years of age at the time the offense was committed.

(b) (I) Upon successful completion of diversion at the prefiling level as an alternative to the filing of a petition, the custodian of any record shall expunge the record in the custody of law enforcement, the juvenile's school, the diversion provider, and the district attorney without the need for a court order.

(II) The district attorney or other diversion provider shall notify the Colorado bureau of investigation, the law enforcement agency that had contact with the juvenile, and the juvenile's school, if the incident occurred at school or the district attorney notified the school of the case, that diversion is complete and the records are expunged. Any law enforcement agency or school that receives a notice shall acknowledge receipt of the notice. The Colorado bureau of investigation, law enforcement agency, school, diversion provider, and district attorney shall treat the records as expunged within thirty-five days after the completion of diversion, and all provisions of this section addressing expunged records apply to those records.

(III) If victim notification is required pursuant to part 4.1 of title 24, the district attorney shall notify the victim prior to sending the notice pursuant to subsection (4)(b)(II) of this section, and offer the victim an opportunity to object. If the victim objects, the district attorney shall notify the court and the diversion provider. Upon receipt of the notice of objection from the district attorney, the diversion provider shall complete and file a report pursuant to subsection (5)(c) of this section, and the provisions of subsections (5)(e), (5)(e.5), (5)(f), and (5)(g) of this section apply.

(c) The court shall, on or before November 1 of each year, review all juvenile delinquency court files during the two previous years that resulted in a finding of not guilty; a dismissal of the petition; a sentence for a petty offense; a sentence for a drug petty offense; a sentence for a drug misdemeanor offense; or a sentence for a class 2 or class 3 misdemeanor offense if the offense does not involve unlawful sexual behavior as defined in section 16-22-102 (9), is not an act of domestic violence as defined in section 18-6-800.3, or is not a crime listed under section 24-4.1-302 (1), and the defendant was under eighteen years of age at the time the offense was committed. The court shall enter an expungement order for all juveniles eligible for expungement pursuant to this subsection (4), if the expungement order was not previously made.

(5) (a) At the time that the court orders the following sentences or alternatives to sentencing, the court shall make a finding that the juvenile is eligible for expungement pursuant to this subsection (5) and include that finding on the written mittimus or other sentencing document:

(I) A juvenile diversion program, a deferred adjudication, or an informal adjustment, except for those described in subsection (4)(a)(III) of this section;

(II) A juvenile sentence for an adjudication for a class 1 misdemeanor or a petty or a misdemeanor offense that is not eligible for expungement pursuant to subsection (4) of this section; or

(III) Repealed.

(IV) A juvenile sentence for an adjudication for a felony offense or felony drug offense if:

(A) The felony offense did not constitute unlawful sexual behavior as defined in section 16-22-102 (9);

(B) The felony offense was not a crime of violence as described in section 18-1.3-406;

(C) The felony offense was not a class 1 or class 2 felony; and

(D) The juvenile had no prior felony adjudications.

(b) Repealed.

(c) (I) If the court makes a finding that a juvenile is eligible for expungement pursuant to subsection (5)(a) of this section, the agency supervising the juvenile shall, at the conclusion of the agency's supervision, prepare a report and summary of supervision outlining the performance of the juvenile while under supervision. The supervising agency shall provide the report to the court and provide a copy of the report to the prosecuting attorney, the juvenile, and the juvenile's attorney of record no earlier than thirty-five days prior to the end of supervision and no later than fourteen days after the conclusion of supervision. If there is no supervising agency, the court shall send a notice that the unsupervised sentence is complete to the district attorney when the sentence is complete.

(II) Upon receipt of the report or notice pursuant to this subsection (5)(c), the prosecuting attorney shall contact the victim regarding expungement if notification is required pursuant to part 4.1 of title 24.

(d) If neither the prosecuting attorney nor a victim files an objection within thirty-five days after the filing of the report or notice pursuant to subsection (5)(c) of this section, the court shall order all records in the juvenile delinquency case in the custody of the court, and any records related to the case and charges in the custody of any other agency, person, company, or organization, expunged.

(e) If the prosecuting attorney or a victim files an objection within thirty-five days after the filing of the report or notice pursuant to subsection (5)(c) of this section, the court shall schedule a hearing on the issue of expungement. The court shall notify all objecting parties of the hearing date. The hearing must be set at least thirty-five days after the date the court sends notice of the hearing.

(e.5) If the offense for which the records are eligible for expungement requires the juvenile to register pursuant to section 16-22-103 and the court has not already issued a notice pursuant to section 16-22-113 (1.3)(b), upon receipt of the report from the supervising agency pursuant to subsection (5)(c) of this section, the court shall issue a notice pursuant to section 16-22-113 (1.3)(b) and this subsection (5)(e.5), and the victim and prosecution have sixty-three days from the issuance of that notice to file an objection to expungement or the discontinuation of registration. All other requirements of subsections (5)(d), (5)(e), (5)(f), and (5)(g) of this section apply to the expungement. The provisions of section 16-22-113 (1.3) apply to the issue of discontinuing registration. The court shall consider both issues at the same hearing. If the court has not already ordered that the juvenile may discontinue registration pursuant to section 16-22-

113, the court shall enter an order granting expungement and discontinuing the registration requirement, denying expungement and discontinuing the registration requirement, or denying expungement and continuing the registration requirement.

(f) If a hearing is scheduled pursuant to subsection (5)(e) of this section, the court shall send notice to the last-known address of the juvenile notifying the juvenile of the date of the hearing and of the juvenile's right to appear at the hearing and to present evidence to the court in writing prior to the hearing and in person at the hearing. The notice must indicate that, at the hearing, the court will consider whether the juvenile has been rehabilitated and whether expungement is in the best interest of the juvenile and the community. The juvenile is not required to appear at the hearing.

(g) At a hearing held pursuant to this subsection (5), the court shall order all records of the case in the custody of the court, and any records related to the case or charges in the custody of any other agency, person, company, or organization, expunged if the court makes written findings that:

(I) The rehabilitation of the juvenile has been attained to the satisfaction of the court; and

(II) The expungement is in the best interest of the juvenile and the community.

(h) The court shall, starting on November 1, 2019, and each November 1 thereafter, review all juvenile delinquency court files during the two previous years that resulted in participation in diversion, a deferred adjudication, or an informal adjustment; a sentence for a class 1 misdemeanor offense, any drug felony offense, or a misdemeanor offense involving domestic violence as defined in section 18-6-800.3; or a felony offense that did not constitute unlawful sexual behavior as defined in section 16-22-102 (9), was not a crime of violence as described in section 18-1.3-406, and was not a class 1 or class 2 felony. The court shall send the notice required for all records eligible for a notice pursuant to this subsection (5) if the notice was not previously sent and an expungement order was not previously made. After the notice is sent, the provisions of subsections (5)(b) to (5)(g) of this section apply.

(i) With the victim's consent, or if there is no named victim, the prosecuting attorney may agree at the time of a plea that there will be no objection to expungement upon the completion of the juvenile's sentence. In such a case, the court shall order all records of the case in the custody of the court, and any records related to the case or charges in the custody of any other agency, person, company, or organization, expunged upon completion of the juvenile's sentence. A hearing is not required.

(j) A juvenile who was adjudicated as a mandatory sentence offender pursuant to section 19-2.5-1125 (1) or as a repeat juvenile offender pursuant to section 19-2.5-1125 (2) is not eligible for expungement pursuant to this subsection (5) but may petition for expungement pursuant to subsection (6)(e) of this section.

(6) (a) A person may petition the juvenile court to expunge records in a closed case pursuant to subsection (4) of this section if the records are otherwise eligible for expungement, have not been expunged by the court, and a proceeding concerning a felony, misdemeanor, or delinquency action is not pending against the petitioner. A filing fee, notarization, or other formalities are not required. If the court determines the records are eligible for expungement pursuant to the requirements of subsection (4) of this section, the court shall grant the petition to expunge without a hearing and shall issue an order pursuant to subsection (4) of this section.

(b) A person may petition the juvenile court to expunge records in a closed case pursuant to subsection (5) of this section if the records are otherwise eligible for expungement, have not been expunged by the court, and a proceeding concerning a felony, misdemeanor, or delinquency action is not pending against the petitioner. A filing fee, notarization, or other formalities are not required. If the records are eligible for expungement pursuant to subsection (5) of this section, the court shall request a report from the agency supervising the juvenile or issue a notice pursuant to subsection (5)(c) of this section, and the provisions of subsection (5) of this section apply.

(c) A person may petition the juvenile court to expunge records related to a law enforcement contact that did not result in referral to another agency after one year has passed since the law enforcement contact and a proceeding concerning a felony, misdemeanor, or delinquency action is not pending against the petitioner. A filing fee, notarization, or other formalities are not required. If the records are eligible for expungement pursuant to subsection (5) of this section, the court shall issue a notice to the district attorney that the records will be expunged if no objection is received, and the provisions of subsection (5) of this section apply.

(d) A person may petition the juvenile court to expunge records in a closed case pursuant to subsection (5) of this section if the person was previously denied an expungement order for those same records pursuant to subsection (5) of this section and at least twelve months have passed since the date of the original denial order, the petitioner provides new information not previously considered by the prior reviewing court, and a proceeding concerning a felony, misdemeanor, or delinquency action is not pending against the petitioner. The court shall schedule a hearing and notify the prosecuting attorney of the hearing date. The court shall set the hearing at least thirty-five days after the court sends the notice of the hearing. All other provisions of subsection (5) of this section apply.

(e) A juvenile who does not qualify for expungement pursuant to subsection (4) or (5) of this section, including a mandatory sentence offender pursuant to section 19-2.5-1125 (1) or a repeat offender pursuant to section 19-2.5-1125 (2), and is not otherwise ineligible for expungement pursuant to subsection (8) of this section and does not have a proceeding concerning a felony, misdemeanor, or delinquency action pending against himself or herself, may petition the court to request expungement of the juvenile's record thirty-six months after the date of the petitioner's unconditional release from the juvenile sentence. A filing fee, notarization, or other formalities

are not required. The court shall schedule a hearing, and subsections (5)(e), (5)(e.5), (5)(f), and (5)(g) of this section apply.

(7) Unless otherwise stated in the applicable section, a person may file a petition with the court for expungement of his or her record pursuant to subsections (4), (5), and (6) of this section only once during a twelve-month period.

(8) Notwithstanding subsections (4), (5), and (6) of this section, a court shall not expunge the record of a person who is:

(a) Adjudicated as an aggravated juvenile offender pursuant to section 19-2.5-1125 (4) or as a violent juvenile offender pursuant to section 19-2.5-1125 (3);

(b) Adjudicated of homicide and related offenses pursuant to part 1 of article 3 of title 18;

(c) Adjudicated for a felony offense involving unlawful sexual behavior as described in section 16-22-102 (9); or

(d) Charged, adjudicated, or convicted of any offense or infraction pursuant to title 42.

(9) **Municipal court records.**

(a) Municipal court records are expunged pursuant to section 13-10-115.5.

(b) If municipal court records have not been expunged within seventy days from the end of the case pursuant to section 13-10-115.5, an individual may petition the juvenile court in the judicial district where the municipality is located to expunge records of a municipal case brought against a juvenile. Expungement proceedings pursuant to this subsection (9) must be initiated by the filing of a petition requesting an order of expungement. A filing fee, notarization, or other formalities are not required. If the petition is not granted without a hearing, the court shall set a date for a hearing on the petition for expungement and shall notify the appropriate prosecuting attorney.

(10) Upon the entry of an order expunging a record pursuant to this section, the court shall order, in writing, the expungement of all case records in the custody of the court and any records related to the case and charges in the custody of any other agency, person, company, or organization. The court may order expunged any records, but, at a minimum, the following records must be expunged pursuant to every expungement order:

(a) All court records;

(b) All records retained within the office of the prosecuting attorney;

(c) All probation and parole records;

(d) All law enforcement records;

(e) All department of human services records;

(f) All division of youth services records;

(g) All department of corrections records; and

(h) References to the criminal case or charge contained in the school records.

(11) (a) When an expungement order is issued pursuant to this section, the court shall send a copy of the order to the juvenile, the juvenile's last attorney of record, the prosecuting attorney, any law enforcement agency that investigated the case, the state court administrator's office, and the Colorado bureau of investigation directing the entity to expunge its records within thirty-five days after the receipt of the order.

(b) The court shall send a copy of an expungement order to each of the following, directing the entity to expunge the records in its custody as soon as practicable but no later than ninety days after the receipt of the order:

(I) The probation office if the juvenile was placed on probation at any point during the case;

(II) The division of youth services if the juvenile was detained in a facility operated by the division, committed to the custody of the division, or screened through the Colorado youth detention continuum at any point during the case;

(III) Any county department of human or social services through which the juvenile received services at any point during the juvenile's case; and

(IV) Any other agency, person, company, or organization named in the order if the court is aware that the entity has records related to the case in its possession.

(c) Each entity described in this subsection (11) shall expunge the records in its custody as directed by the order.

(d) The person who is the subject of records expunged pursuant to this section may petition the court to permit inspection of the records held by persons named in the order, and the court may so order.

(12) Any agency, person, company, or organization that violates this section and knew that the records in question were subject to an expungement order may be subject to criminal and civil contempt of court and may be punished by a fine.

(13) Employers; educational institutions; landlords; and state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in expunged records. In answer to any question concerning arrest or juvenile and criminal records information that has been expunged, an applicant need not include a reference to or information concerning the expunged information and may state that no record exists. An application may not be denied solely because of the applicant's refusal to disclose records or information that has been expunged.

(14) Nothing in this section authorizes the physical destruction of any juvenile or criminal justice record.

Source: L. 96: Entire part added with relocations, p. 1163, § 6, effective January 1, 1997; (9) added, p. 1588, § 18, effective January 1, 1997. **L. 98:** (7)(d) added and (9) repealed, p. 399, §§ 4, 5, effective April 21. **L. 2002:** (7)(d) amended, p. 1187, § 24, effective July 1; (7)(b) amended, p. 1523, § 223, effective October 1. **L. 2009:** (7)(c) amended, (HB 09-1044), ch. 19, p. 96, § 1, effective September 1. **L. 2012:** (5)(d) and (6)(a.5) added, (HB 12-1151), ch. 174, p. 623, § 6, effective August 8. **L. 2013:** (2)(a), (3), (5)(c)(I), (6), and (7) amended and (5)(a.5) and (10) added, (HB 13-1082), ch. 238, p. 1155, § 1, effective August 7. **L. 2014:** (5)(d)(I) amended, (HB 14-1273), ch. 282, p. 1157, § 21, effective July 1. **L. 2016:** (5)(c)(II.5) added and (7)(e) repealed, (SB 16-065), ch. 277, p. 1143, § 3, effective July 1. **L. 2017:** Entire section R&RE, (HB 17-1204), ch. 206, p. 775, § 2, effective November 1. **L. 2019:** (1)(c) and (5)(e.5) added, (4)(a)(II), (4)(a)(III), (4)(b), IP(5)(a), (5)(a)(I), (5)(a)(II), (5)(c), (5)(d), (5)(e), (6)(b), (6)(c), (6)(e), (10)(e), and (11) amended, (5)(a)(III) and (5)(b) repealed, and (9) R&RE, (HB 19-1335), ch. 304, p. 2780, § 1, effective May 28. **L. 2020:** (11)(b)(III) amended, (HB 20-1402), ch. 216, p. 1048, § 36, effective June 30. **L. 2021:** (5)(j), (6)(e), IP(8), and (8)(a) amended, (SB 21-059), ch. 136, p. 729, § 71, effective October 1. **L. 2022:** (3)(g) added, (HB 22-1131), ch. 380, p. 2704, § 3, effective June 7. **L. 2026:** (1)(a) amended, (SB 26-169), ch. 311, p. 1800, § 14, effective August 12.

Editor's note: (1) This section was formerly numbered as 19-2-902. The said section 19-2-902 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(g)(II) provided for the repeal of subsection (3)(g), effective July 1, 2023. (See L. 2022, p. 2704.)

Cross references: For the legislative declaration contained in the 2002 act amending subsection (7)(b), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration in HB 22-1131, see section 1 of chapter 380, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982).

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

The disposition of arrest records is subject to legislative control. Davidson v. Dill, 180 Colo. 123, 503 P.2d 157 (1972).

The general assembly did not intend that the limitation on expungement set forth in subsection (7)(d) apply to a person who has successfully completed a deferred adjudication. C.B. v. People, 122 P.3d 1065 (Colo. App. 2005).

The Colorado Children's Code does not supply definition of "interested party". In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

C.R.C.P. 24 has no application in proceeding under the Colorado Children's Code, as the code itself expressly contemplates the active participation of interested parties. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Since § 24-72-308 concerns the sealing of criminal records and juvenile delinquency proceedings are noncriminal in nature, the trial court should have proceeded under the expungement provisions set forth in this section when considering a petition to seal arrest and criminal records relating to a juvenile delinquency case. C.B. v. People, 122 P.3d 1065 (Colo. App. 2005).

19-1-307. Dependency and neglect records and information - access - fee - records and reports fund - misuse of information - penalty - adult protective services data system check - rules - repeal.

(1) (a) **Identifying information - confidential.**

(I) Except as otherwise provided in this section and section 19-1-303, reports or records of child abuse or neglect, and any identifying information contained in the reports or records of child abuse or neglect, must not be shared with the public.

(II) For purposes of this subsection (1)(a), the name, address, and any other information that may reveal the identity of a child, family, or informant is considered identifying information. A person in possession of a report or record of child abuse or neglect shall not release identifying information contained in the report or record of child abuse or neglect to a person not permitted to access the information pursuant to this section or by section 19-1-303 unless otherwise authorized by the law of this state. A county department is not liable for the redisclosure made by a person following the county department's lawful release of a report or record of child abuse or neglect.

(b) **Good cause exception.** 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. 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 or the alleged juvenile offender is or was a victim of abuse or neglect or the suspected or alleged perpetrator becomes the subject of an arrest by a law enforcement agency or the subject of the filing of a formal charge by a law enforcement agency.

(c) Any person who violates any provision of this subsection (1) commits a civil infraction.

(2) **Records and reports - access to certain persons - agencies - definition.** Except as set forth in section 19-1-303, the following persons or agencies have access to child abuse or neglect records or reports:

(a) The law enforcement agency, district attorney, coroner, or county or district department of human or social services investigating a report of a known or suspected incident of child abuse or neglect or treating a child or family that is the subject of the report;

(b) A physician who has before him or her a child whom the physician reasonably suspects to be abused or neglected;

(c) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare, including, in the case of an anatomical gift, a coroner and a procurement organization, as those terms are defined in section 15-19-202;

(d) (I) A person named in the report or record who was alleged as an abused or neglected child;

(II) If the child named in the report or record is otherwise incompetent at the time of the request, the child's guardian ad litem or counsel for youth; and

(III) The assigned designee of a person named in the report or record who is acting on the person's behalf as a result of a valid release of information, signed by an authorized person, with protection for the identity of the person named in the reports or records.

(e) A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report or record, or the assigned designee of the person acting by and through a valid release of information signed by an authorized person, with protection for the identity of reporters and other appropriate persons;

(e.5) (I) A mandatory reporter specified in this subsection (2)(e.5)(I) who is and continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report, but only with regard to information that the mandatory reporter has a need to know in

order to fulfill the mandatory reporter's professional and official role in maintaining the child's safety. A county department shall request written affirmation from a mandatory reporter stating that the reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report and describing the nature of the involvement, unless the county department has actual knowledge that the mandatory reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report. This subsection (2)(e.5)(I) applies to:

(A) Hospital personnel engaged in the admission, care, or treatment of children;

(B) Mental health professionals;

(C) Physicians or surgeons, including physicians in training;

(D) Registered nurses or licensed practical nurses;

(E) Dentists;

(F) Psychologists;

(G) Unlicensed psychotherapists;

(H) Licensed professional counselors;

(I) Licensed marriage and family therapists;

(J) Public or private school officials or employees;

(K) Social workers or workers with any facility or agency that is licensed or certified pursuant to part 9 of article 6 of title 26 or part 3 of article 5 of title 26.5;

(L) Victim's advocates, as defined in section 13-90-107 (1)(k)(II), C.R.S.;

(M) Clergy members, as defined in section 19-3-304 (2)(aa)(III);

(N) Educators providing services through a federal special supplemental nutrition program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786;

(O) A person who is registered as a psychologist candidate pursuant to section 12-245-304 (3), marriage and family therapist candidate pursuant to section 12-245-504 (4), or licensed professional counselor candidate pursuant to section 12-245-604 (4), or who is described in section 12-245-217; and

(P) Officials or employees of a county department of health or a county department of human or social services.

(II) Within sixty calendar days after receipt of a report of suspected child abuse or neglect from a mandatory reporter specified in subsection (2)(e.5)(I) of this section, a county department

shall provide the following information to the mandatory reporter for the purpose of assisting the mandatory reporter in his or her professional and official role in maintaining the child's safety:

(A) The name of the child and the date of the report;

(B) Whether the referral was accepted for assessment;

(C) Whether the referral was closed without services;

(D) Whether the assessment resulted in services related to the safety of the child;

(E) The name of and contact information for the county caseworker responsible for investigating the referral; and

(F) Notice that the reporting mandatory reporter may request updated information identified in sub-subparagraphs (A) to (E) of this subparagraph (II) within ninety calendar days after the county department received the report and information concerning the procedure for obtaining updated information.

(III) Information disclosed to a mandatory reporter pursuant to this paragraph (e.5) is confidential and shall not be disclosed by the mandatory reporter to any other person except as provided by law.

(IV) Unless requested by a county department, a mandatory reporter shall not have the authority to participate in any decision made by the county department concerning a report of abuse or neglect.

(V) In accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the state department shall promulgate any rules necessary for the implementation of this paragraph (e.5).

(f) A court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

(g) (Deleted by amendment, L. 2003, p. 1401, § 8, effective January 1, 2004.)

(h) All members of a child protection team, if one exists pursuant to section 19-3-308 (6)(a);

(i) Such other persons as a court may determine, for good cause;

(j) The state department of human services or department of early childhood or a county or district department of human or social services or a child placement agency investigating an applicant for a license to operate a child care facility or agency pursuant to section 26-6-912 or 26.5-5-316, when the applicant, as a requirement of the license application, has given written authorization to the licensing authority to obtain information contained in records or reports of

child abuse or neglect. Access to the records and reports of child abuse or neglect granted to the named department or agencies must serve only as the basis for further investigation.

(j.5) The state department of human services, department of early childhood, or a county or district department of human or social services investigating an exempt family child care home provider pursuant to section 26.5-5-326, as a prerequisite to issuance or renewal of a contract or any payment agreement to receive money for the care of a child from publicly funded state child care assistance programs. Access to the records and reports of child abuse or neglect granted to the named department or agencies must serve only as the basis for further investigation.

(j.7) The department of early childhood, when requested in writing by any operator of a facility that is investigating an applicant for an employee or volunteer position with, or an employee or volunteer of, a licensed neighborhood youth organization pursuant to section 26.5-5-308, when the applicant, employee, or volunteer has given written authorization to the department of early childhood to check records or reports of child abuse or neglect. Any operator who requests information concerning an individual who is not a current employee or an applicant for employment commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501. Within twenty days after the operator's request, the department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county that investigated the incident contained in the confirmed reports of child abuse or neglect.

(j.8) The state department of human services or department of early childhood investigating any person required to submit to a background check pursuant to section 26-6-705 (2), when the person has given written authorization to the state department of human services or department of early childhood to check records or reports of child abuse or neglect;

(k) The state department of human services or department of early childhood, when requested in writing by any operator of a facility or agency that is licensed by the state department of human services pursuant to section 26-6-912 or department of early childhood pursuant to section 26.5-5-316, to check records or reports of child abuse or neglect for the purpose of screening an applicant for employment or a current employee. Any operator who requests information concerning an individual who is not a current employee or an applicant for employment commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501. Within twenty days after the operator's request, the state department of human services or department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county that investigated the incident contained in the confirmed reports of child abuse and neglect. Any operator who releases any information obtained pursuant to this subsection (2)(k) to any other person commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501.

(k.5) The state department of human services or department of early childhood, when requested in writing by a qualified county department, individual, or child placement agency

approved to conduct home study investigations and reports pursuant to section 19-5-207.5 (2)(b)(I) for purposes of screening a prospective adoptive parent or any adult residing in the home pursuant to section 19-5-207 (2.5)(c), or investigating a prospective foster care parent, kinship care parent, or an adult residing in the home pursuant to section 26-6-912 (1)(c). Within twenty days after the request, the state department of human services or department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county that investigated the incident contained in the confirmed reports of child abuse or neglect. The county department, individual, or child placement agency is subject to the fee assessment established in subsection (2.5) of this section. With respect to screening a prospective adoptive parent, any employee of the county department or the child placement agency or any individual who releases any information obtained pursuant to this subsection (2)(k.5) to any person other than the adoption court commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501.

(l) The state department of human services or department of early childhood, when requested in writing by the department of education to check records or reports of child abuse or neglect for the purpose of aiding the department of education in its investigation of an allegation of abuse by an employee of a school district in this state. Within twenty days after the department of education's request, the state department of human services or department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse or neglect, and the county that investigated the incident contained in the confirmed reports of child abuse or neglect. The department of education is subject to the fee assessment established in subsection (2.5) of this section. Any employee of the department of education who releases any information obtained under this subsection (2)(l) to any person not authorized to receive the information pursuant to section 22-32-109.7 or any member of the board of education of a school district who releases the information obtained pursuant to section 22-32-109.7 commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501.

(m) The department of early childhood, state department of human services, and county departments of human or social services, for the following purposes:

(I) Screening any person who seeks employment with, is currently employed by, or volunteers for service with the department of early childhood, state department of human services, department of health care policy and financing, or a county department of human or social services, if the person's responsibilities include direct contact with children;

(II) Conducting evaluations pursuant to section 14-10-127, C.R.S.;

(III) 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;

(IV) Screening prospective adoptive parents;

(n) Private adoption agencies, including private adoption agencies located in other states, for the purpose of screening prospective adoptive parents;

(o) A person, agency, or organization engaged in a bona fide research or evaluation project, but without information identifying individuals named in a report, unless having said identifying information open for review is essential to the research and evaluation, in which case the executive director of the state department of human services shall give prior written approval and the child through a legal representative shall give permission to release the identifying information;

(o.5) An auditor conducting a financial or performance audit of a county department of human or social services pursuant to section 26-1-114.5, C.R.S.;

(p) A governing body as defined in section 19-1-103;

(q) (Deleted by amendment, L. 2003, p. 1401, § 8, effective January 1, 2004.)

(r) The department of early childhood, when requested in writing by any operator of a guest child care facility or public service short-term child care facility that is 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 pursuant to section 26.5-5-307, when the applicant or employee, as a requirement of application for employment, has given written authorization to the department of early childhood to check records or reports of child abuse or neglect. Any operator who requests information concerning an individual who is not a current employee or an applicant for employment commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501. Within twenty days after the operator's request, the department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county that investigated the incident contained in the confirmed reports of child abuse and neglect.

(s) The state department of human services or the department of early childhood investigating a prospective CASA volunteer for the CASA program when the prospective CASA volunteer has given written authorization to the CASA program to check any records or reports of child abuse or neglect pursuant to section 19-1-205 (3)(a.5);

(t) State, county, and local government agencies of other states and child placement agencies located in other states, for the purpose of screening prospective foster or adoptive parents or any adult residing in the home of the prospective foster or adoptive parents;

(u) The child protection ombudsman program created in section 19-3.3-102, when conducting an investigation pursuant to article 3.3 of this title;

(v) A licensed child placement agency, for the purpose of screening prospective foster parents, any adult residing in the home of the prospective foster parent, and specialized group facilities, pursuant to the following conditions:

(I) Access is limited to information concerning a current or prospective foster parent, an adult residing in the home of the current or prospective foster parent, or a specialized group facility and includes only the following information:

(A) Whether a report of child abuse or neglect has been made regarding the person;

(B) The general nature of the alleged incident of child abuse or neglect, including the category of the allegation, and the name and relationship of the perpetrator and victim;

(C) Whether the report of child abuse or neglect was screened for assessment;

(D) The outcome of the investigation including the investigator's summary of the reason or reasons for his or her finding or conclusions; and

(E) Child care and child welfare licensing history;

(II) (A) Access is limited to one person at each child placement agency, as designated by the agency and reported to the state department of human services.

(B) The state department of human services shall monitor a child placement agency's access to the records and reports of child abuse or neglect to ensure that the child placement agency is accessing the records and reports of child abuse or neglect in accordance with this paragraph (v).

(C) An unaccepted referral or an unfounded or inconclusive assessment pursuant to subparagraph (I) of this paragraph (v) does not necessarily require that a current or prospective foster parent be denied placement pursuant to this article.

(w) The designated authorities at the military base of assignment or installation for a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces who is the individual responsible for the abused or neglected child. The authorities may be designated in a memorandum of understanding as described and authorized in section 19-1-303 (2.6).

(x) A county department that assesses or provides protective services for at-risk adults, pursuant to article 3.1 of title 26, when the information is necessary for the county department to adequately assess for safety and risk or to provide protective services for an at-risk adult. The information disclosed pursuant to this subsection (2)(x) is limited to information regarding prior or current referrals, assessments, investigations, or case information related to a child or an alleged perpetrator. A county department that assesses or provides protective services for children is permitted to access information from a county department that assesses or provides protective services for at-risk adults pursuant to section 26-3.1-102 (7)(b)(VIII). The provisions of this subsection (2)(x) are in addition to and not in lieu of other federal and state laws concerning protected or confidential information.

(y) The state department of human services, department of early childhood, or a requesting individual, or the individual's designee, after proof of identification, when requested in writing to

check records or reports of child abuse or neglect of the requesting individual for the purpose of screening the requesting individual when the requesting individual's responsibilities include care of children, treatment of children, supervision of children, or unsupervised contact with children.

(2.1) As used in subsection (2) of this section, "authorized person" means a person who is an alleged abused or neglected child if the person is currently eighteen years old or older or is an emancipated minor, or the parent or legal guardian of a person who is an abused or neglected child if the person is under eighteen years old.

(2.2) (a) A person who is named in a report or record as an alleged abused or neglected child and is in possession of a record or report, or the attorney or guardian ad litem of the person when that person was a child, with the person's consent, may disclose and make use of the record, including to disclose and make use of the record or report in litigation or to obtain treatment or services. The county departments are not responsible or liable for any disclosure of the report or record made pursuant to this subsection (2.2).

(b) The county departments shall establish, and submit to the state department upon completion, a process that clients and former clients may use to obtain access to their case records. If a county department updates its process, it shall submit the updated process to the state department.

(2.3) The following agencies or appointed attorneys must be granted statewide read-only access to the name index and register of actions for the judiciary department:

(a) Criminal justice agencies as described in section 24-72-302 (3), C.R.S.;

(b) County departments, as defined in section 19-1-103, and attorneys who represent the county departments as county attorneys, as defined in section 19-1-103, as it relates to the attorneys' work representing the county;

(c) Professionals under contract with the office of the child's representative, created in section 13-91-104, or authorized by the office of the child's representative to act as a guardian ad litem or counsel for youth, as it relates to a case in which the attorney is appointed; and

(d) A professional under contract with the office of the respondent parents' counsel, created in section 13-92-103, or authorized by the office of the respondent parents' counsel to act as a respondent parent's counsel, as it relates to a case in which the attorney is appointed.

(2.5) **Fee - records and reports fund - rules.**

(a) Any person or agency provided information from the state department of human services or department of early childhood pursuant to subsections (2)(i), (2)(k) to (2)(o), (2)(t), and (2)(y) of this section and any child placement agency must be assessed a fee that is established and collected by the state department of human services or established and collected by the department of early childhood pursuant to parameters set forth in rule established by the state

board of human services or the department of early childhood pursuant to parameters set forth in rule established by the executive director of the department of early childhood, whichever is applicable. At a minimum, the rules must include a provision requiring the state department of human services or department of early childhood, as applicable, to provide notice of the fee to interested persons and the maximum fee amount that the department shall not exceed without the express approval of the state board of human services or executive director of the department of early childhood, as applicable. The fee established must not exceed the direct and indirect costs of administering subsections (2)(i), (2)(k) to (2)(o), (2)(t), and (2)(y) of this section.

(b) All fees collected in accordance with subsection (2.5)(a) of this section must be transmitted to the state treasurer who shall credit the same to the records and reports fund, which fund is hereby created. The fund also consists of fees credited to the fund pursuant to section 26-3.1-111. The money in the records and reports fund is subject to annual appropriation by the general assembly for the direct and indirect costs of administering subsections (2)(i), (2)(k) to (2)(o), (2)(t), and (2)(y) of this section and for the direct and indirect costs described in section 26-3.1-111.

(c) (I) On June 30, 2026, the state treasurer shall transfer seven hundred fifty thousand dollars from the records and reports fund to the general fund.

(II) This subsection (2.5)(c) is repealed, effective July 1, 2027.

(3) and (4) Repealed.

(5) Unless this section explicitly grants access to child abuse or neglect reports or records, access to reports or records by a defendant in a criminal case must only occur after an in camera review by the criminal court in which the court finds that access to the reports or records is necessary for the resolution of an issue. Subject to constitutional limitations, when a court allows a criminal defendant access to the reports or records, the court may enter a protection order that the court finds is appropriate.

Source: L. 96: Entire part added with relocations, p. 1166, § 6, effective January 1, 1997; (2)(q) added and (2.5) amended, pp. 1587, 1588, §§ 16, 17, effective January 1, 1997. **L. 98:** IP(2) and (2)(p) amended, p. 821, § 25, effective August 5; (2)(m)(II) amended, p. 1408, § 67, effective February 1, 1999. **L. 99:** (2)(k.5) added, p. 1025, § 10, effective May 29. **L. 2002:** (2)(e) amended, p. 1809, § 2, effective July 1; (2)(r) added, p. 411, § 3, effective July 1; (2)(k) amended, p. 1523, § 224, effective October 1. **L. 2003:** (2), (2.5), and (3) amended and (4) added, p. 1401, § 8, effective January 1, 2004. **L. 2006:** (2)(j.5) added, p. 1084, § 5, effective May 25. **L. 2007:** (2)(j.5) amended, p. 318, § 3, effective April 2; (2)(r) amended, p. 866, § 3, effective May 14; (2)(k.5), (2)(n), and (2.5) amended and (2)(t) added, p. 1015, § 1, effective May 22; (2)(c) amended, p. 798, § 7, effective July 1. **L. 2008:** (2.3) added, p. 1243, § 6, effective August 5; (2.5) amended, p. 1892, § 62, effective August 5. **L. 2010:** (2)(j.7) added,

(HB 10-1044), ch. 85, p. 288, § 3, effective April 14; (2)(u) added, (SB 10-171), ch. 225, p. 982, § 3, effective May 14; (2)(e.5) added, (SB 10-152), ch. 224, p. 971, § 1, effective September 1. **L. 2011:** IP(2)(e.5)(I) and (2)(e.5)(I)(G) amended, (SB 11-187), ch. 285, p. 1327, § 70, effective July 1; (2)(j.7) amended, (HB 11-1145), ch. 163, p. 563, § 5, effective August 10; IP(2)(e.5)(I), (2)(e.5)(I)(L), and (2)(e.5)(I)(M) amended and (2)(e.5)(I)(N) added, (SB 11-034), ch. 125, p. 390, § 2, effective January 1, 2012. **L. 2013:** (2)(e.5)(I)(M) and (2)(e.5)(I)(N) amended and (2)(e.5)(I)(O) added, (HB 13-1104), ch. 77, p. 248, § 5, effective August 7. **L. 2015:** (2)(k.5) amended, (SB 15-087), ch. 263, p. 1019, § 13, effective June 2; (2)(o) amended and (2)(o.5) added, (HB 15-1370), ch. 324, p. 1326, § 3, effective June 5; (2)(v) added, (HB 15-1248), ch. 306, p. 1253, § 1, effective July 1; (2.5) amended, (SB 15-264), ch. 259, p. 952, § 42, effective August 5. **L. 2017:** (2.5) amended, (HB 17-1284), ch. 272, p. 1503, § 7, effective May 31; IP(2) amended and (2)(w) added, (SB 17-028), ch. 332, p. 1784, § 3, effective August 9; (2)(c) amended, (SB 17-223), ch. 158, p. 563, § 16, effective August 9; (2)(h) amended, (SB 17-016), ch. 107, p. 392, § 4, effective August 9; IP(2)(e.5)(I), (2)(e.5)(I)(N), (2)(e.5)(I)(O), and IP(2)(e.5)(II) amended and (2)(e.5)(I)(P) added, (HB 17-1185), ch. 194, p. 709, § 1, effective December 31. **L. 2018:** (2)(a), (2)(j), (2)(j.5), IP(2)(m), and (2)(m)(I) amended, (SB 18-092), ch. 38, p. 411, § 36, effective August 8. **L. 2019:** (2)(j.8) added, (HB 19-1142), ch. 265, p. 2509, § 2, effective August 2; (2)(w) and (2.5) amended and (2)(y) added, (SB 19-177), ch. 311, p. 2810, § 1, effective August 2; (2)(x) added, (HB 19-1063), ch. 46, p. 155, § 1, effective August 2; IP(2.3) and (2.3)(d) amended, (HB 19-1104), ch. 14, p. 56, § 1, effective August 2; (2)(e.5)(I)(O) amended, (HB 19-1172), ch. 136, p. 1681, § 111, effective October 1. **L. 2020:** (2)(e.5)(I)(G) amended, (HB 20-1206), ch. 304, p. 1550, § 64, effective July 14. **L. 2021:** IP(2), (2)(p), and (2.3)(b) amended, (SB 21-059), ch. 136, p. 730, § 72, effective October 1; (1)(c), (2)(k), and (4) amended, (SB 21-271), ch. 462, p. 3219, § 386, effective March 1, 2022. **L. 2022:** IP(2), IP(2)(e.5)(I), (2)(e.5)(I)(K), (2)(j), (2)(j.5), (2)(j.7), (2)(j.8), (2)(k), (2)(k.5), (2)(l), IP(2)(m), (2)(m)(I), (2)(r), (2)(s), (2)(y), and (2.5)(a) amended, (HB 22-1295), ch. 123, p. 831, § 35, effective July 1; IP(2), (2)(d), and (2.3)(c) amended, (HB 22-1038), ch. 92, p. 440, § 20, effective January 9, 2023. **L. 2023:** (2.5) amended, (SB 23-217), ch. 95, p. 354, § 1, effective April 20; (2)(p) amended, (SB 23-210), ch. 251, p. 1432, § 16, effective May 24; (2)(j.7), (2)(k), (2)(k.5), (2)(l), (2)(r), and (2)(y) amended, (HB 23-1235), ch. 434, p. 2552, § 20, effective June 7. **L. 2024:** (2)(e.5)(I)(P) amended, (HB 24-1222), ch. 155, p. 687, § 4, effective August 7. **L. 2025:** IP(2.3), (2.3)(c), and (2.3)(d) amended, (SB 25-239), ch. 142, p. 537, § 4, effective August 6. **L. 2026:** (2.5)(c) added, (HB 26-1405), ch. 396, p. 2480, § 5, effective June 4; (1)(a), IP(2), (2)(d), and (2)(e) amended, (2.1), (2.2), and (5) added, and (3) and (4) repealed, (HB 26-1234), ch. 99, p. 392, § 1, effective August 12.

Editor's note: (1) This section was formerly numbered as § 19-1-120.

(2) Amendments to the introductory portion to subsection (2)(e.5)(I) by Senate Bill 11-187 and Senate Bill 11-034 were harmonized, effective January 1, 2012.

(3) In Peck v. McCann, 43 F.4th 1116 (10th Cir. 2022), the United States Court of Appeals for the Tenth Circuit held that subsection (4) is unconstitutional under the first amendment of the United States Constitution because it restricts and punishes the disclosure of non-identifying information contained in child abuse reports.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(k), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2003 act amending subsections (2), (2.5), and (3) and enacting subsection (4), see section 1 of chapter 196, Session Laws of Colorado 2003. For the legislative declaration in HB 15-1370, see section 1 of chapter 324, Session Laws of Colorado 2015. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

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

The plain text of subsection (1)(a) limits its scope to identifying information only, as indicated by the subheading "[i]dentifying information". Peck v. McCann, 43 F.4th 1116 (10th Cir. 2022).

Two types of disclosures are prohibited: first, disclosures of the reports of child abuse or neglect themselves — that is, the literal documents that comprise a child abuse report — and, second, the name and address of any child, family, or informant or any other identifying information contained in such reports. Peck v. McCann, 43 F.4th 1116 (10th Cir. 2022).

Only addresses that constitute "identifying information" are confidential under subsection (1)(a). Subsection (1)(a) is ambiguous as to what information contained in reports of child abuse or neglect is confidential. Legislative history and other interpretive aides indicate that the legislature intended subsection (1)(a) to prohibit disclosure of only information that would identify a particular child, family, or informant associated with a child abuse or neglect report. Colo. Sun v. Brubaker, 2023 COA 101, 542 P.3d 1190.

Subsection (4) is broader than subsection (1) by punishing nonidentifying disclosures as well as identifying disclosures. Subsection (4) prohibits the disclosure not only of "reports" and "identifying information", as specified in subsection (1), but also any "data or information contained in the records and reports of child abuse or neglect". This latter category is unambiguously broad, such that it would include nonidentifying information contained in those reports. Peck v. McCann, 43 F.4th 1116 (10th Cir. 2022).

Under subsection (4), disclosure of data or information in the records and reports of child abuse or neglect to anyone not listed as exempt in subsection (2) is a crime, regardless of whether the information is identifying or nonidentifying. Peck v. McCann, 43 F.4th 1116 (10th Cir. 2022).

Subsection (4) is not narrowly tailored to the state's compelling interest, so is facially unconstitutional under the first amendment and void. Peck v. McCann, 43 F.4th 1116 (10th Cir. 2022).

The child protection team is subject to the provisions of the public meetings law, former § 29-9-101, since it is a committee of a political subdivision of the state. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Coverage of confidentiality provision. The confidentiality provision of this article covers the entire contents of a child abuse report and the records related thereto. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Matters to be handled at open meetings. Discussion of matters not contained in reports, and which do not pertain to identifying information, are not appropriate subjects for executive session. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

The child protection team's consideration of questions other than those on specific cases, such as agency availability and responsiveness to reports of child abuse, must be handled in meetings open to the public. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Subsection (2) does not provide equal access to social services records in a criminal case. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Subsection (2)(f) limits defendant's access to items that the trial court, after an in camera review, determines necessary for the resolution of an issue. Therefore, defendant cannot expect automatic disclosure of records within the possession and control of prosecuting attorney. Instead, defendant must request an in camera review, identify the information sought, and explain why disclosure is necessary for resolution of an issue. To achieve the broadest possible disclosure, defendant should explain the relevance and materiality of the information sought. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Prosecutor has full access to records while investigating a report of known or suspected incident of child abuse or neglect. Subsection (2)(f) does not suspend prosecutor's obligation to disclose information that is materially favorable to defendant. However, that duty to disclose is still subject to the in camera review process in subsection (2)(f). Therefore, if the prosecutor believes a social services record contains information it must disclose, the prosecutor must ask the trial court to conduct an in camera review of the information to determine if disclosure is necessary for the resolution of an issue. If the trial court determines the information is necessary then it is disclosed to the defendant. The prosecutor does not have the right to offer the material into evidence without first obtaining the trial court's

approval. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Subsection (2)(f) places the trial court in the middle of a procedural issue that normally would have been handled by counsel through the automatic disclosure requirements of Crim. P. 16(I)(a)(1). The trial court must review the records to determine whether the records are necessary for the resolution of an issue. Although the determination of whether the records should be disclosed must be made on case-specific circumstances, there are three principles that apply generally. First, under due process considerations, the trial court must disclose any information that is materially favorable to defendant because it is either exculpatory or impeaching. Second, the trial court should disclose inculpatory information when the information would materially assist in preparing the defense. Finally, it may be significant, although not determinative, that the information would be otherwise subject to automatic disclosure under Crim. P. 16(I)(a)(1). People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Defendant received adequate discovery of department of social services records. Subsection (2)(f) prohibits defendant from having the same direct access the prosecution has to the records. Moreover, trial court does not have an obligation through the in camera review to provide defendant all of the records, only those that are necessary for determination of an issue. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

Trial court erred in not disclosing report from department of social services file, but error was not prejudicial. People v. Jowell, 199 P.3d 38 (Colo. App. 2008).

A defendant meets the burden for requesting review and disclosure of juvenile records when the defendant joins the people's request for review based on the people's review of the records and belief they contain information that would materially assist the defendant in preparing a defense. People v. Herrera, 2012 COA 13, 272 P.3d 1158.

Identification of informant released only upon court's finding of necessity. In an action for slander, outrageous conduct, negligence, gross negligence arising out of a child abuse investigation, access to data that would identify the informant shall be given to the plaintiffs only upon a finding by the trial court that public disclosure of the information may be necessary for the resolution of an issue in the case then pending before it. Martin v. County of Weld, 43 Colo. App. 49, 598 P.2d 532 (1979).

Court should make in camera inspection of records to determine if public disclosure is necessary in the interest of a fair trial. People v. Ross, 745 P.2d 277 (Colo. App. 1987).

Party seeking access to child abuse reports has the burden of establishing the existence of an exception to the statute's rule of confidentiality. People v. Dist. Court, 743 P.2d 432 (Colo. 1987).

Trial court need not review department of social services child abuse reports to determine whether confidentiality of reports should be waived when defendant did not meet his initial burden of showing

applicability of the exception even though he did allege the reports were crucial to his case. People v. Exline, 775 P.2d 48 (Colo. App. 1988).

Trial court did not abuse its discretion in finding that nondisclosed documents were not relevant to any issue before the court. Further, defendant's appellate counsel had no right to review sealed records for purposes of his appeal. Neither appellate defense counsel nor the attorney general's office was allowed access to the records, and allowing appellate defense counsel to review the entire social services file would unnecessarily sacrifice the state's interest in protecting the confidentiality of social services records. People v. Frost, 5 P.3d 317 (Colo. App. 1999).

Juvenile court abused its discretion when it chose to review only the last of nine volumes of department of human services' records. First, after the court necessarily determined that defendant had made a sufficient showing to warrant in camera review of those records, it was obligated to review all of the records, despite the fact that such review would have imposed a significant burden on the court. Second, because subsection (2)(f) authorizes only the juvenile court to review the department of human services' records in a case such as this, only the court could determine whether any of the records might be necessary to the determination of an issue before it. People ex rel. A.D.T., 232 P.3d 313 (Colo. App. 2010).

Juvenile court erred in refusing to order disclosure of certain department of human services' records that were exculpatory or impeaching or that would materially assist in preparing a defense. People ex rel. A.D.T., 232 P.3d 313 (Colo. App. 2010).

19-1-308. Parentage information.

Notwithstanding any other law concerning public hearings and records, any hearing or trial held pursuant to article 4 of this title 19 must be held in closed court without admittance of any person other than those necessary to the action or proceeding. In addition to access otherwise provided for pursuant to section 19-1-303, all papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection by the parties to the action and their attorneys of record, and such parties and their attorneys are subject to a court order that must be in effect against all parties to the action prohibiting the parties from disclosing the genetic testing information contained in the court's record. Such court papers and records are not subject to inspection by any person not a party to the action except the state child support enforcement agency or delegate child support enforcement units for the purposes set forth in section 19-1-303 (4.4) or upon consent of the court and all parties to the action, or, in exceptional cases only, upon an order of the court for good cause shown. All papers and records in the custody of the county department of human or social services must be available for inspection by the parties to the action only upon the consent of all parties to the action and as provided by section 26-1-114, or by the rules governing discovery, but the papers and records

must not be subject to inspection by any person not a party to the action except upon consent of all parties to the action; except that the results of genetic testing may be provided to all parties, when available, notwithstanding laws governing confidentiality and without the necessity of formal discovery. Any person receiving or inspecting paternity information in the custody of the county department of human or social services is subject to a court order that must be in effect prohibiting such persons from disclosing the genetic testing information contained in the department's record.

Source: L. 96: Entire part added with relocations, p. 1169, § 6, effective January 1, 1997. **L. 2003:** Entire section amended, p. 1267, § 57, effective July 1. **L. 2018:** Entire section amended, (SB 18-092), ch. 38, p. 411, § 37, effective August 8.

Editor's note: This section was formerly numbered as 19-1-121.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

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

Section is intended to protect confidentiality of adoption proceedings against disclosure to third parties and not to protect confidentiality among siblings or parents and, therefore, separate petitions to adopt all four children of deceased natural mother are not required. Hopp v. Patterman, 757 P.2d 164 (Colo. App. 1988).

19-1-309. Relinquishments and adoption information.

Except as provided in parts 3 and 4 of article 5 of this title and section 19-1-303, all records and proceedings in relinquishment or adoption shall be confidential and open to inspection upon order of the court for good cause shown or as otherwise authorized pursuant to article 5 of this title. The court shall act to preserve the anonymity of the biological parents, the adoptive parents, and the child from the general public, except as ordered by the court for good cause shown pursuant to this section or except as authorized pursuant to a designated adoption or pursuant to section 19-5-104 (2) or part 3 or 4 of article 5 of this title. A separate docket shall be maintained for relinquishment proceedings and for adoption proceedings.

Source: L. 96: Entire part added with relocations, p. 1169, § 6, effective January 1, 1997. **L. 98:** Entire section amended, p. 822, § 26, effective August 5. **L. 99:** Entire section amended, p. 1130, § 2, effective July 1.

Editor's note: This section was formerly numbered as 19-1-122.

ANNOTATION

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

Section applies to adult adoption proceedings under § 14-1-101. In re W.D.A. v. City & County of Denver, 632 P.2d 582 (Colo. 1981).

Section is intended to protect confidentiality of adoption proceedings against disclosure to third parties and not to protect confidentiality among siblings or parents and, therefore, separate petitions to adopt all four children of deceased natural mother are not required. Hopp v. Patterman, 757 P.2d 164 (Colo. App. 1988).

The general assembly intended that adoption proceedings should be heard separately from a dependency and neglect proceeding even if the proceedings are related, such as a dependency and neglect proceeding that later results in an adoption. People in Interest of C.N., 2018 COA 165, 431 P.3d 1219.

19-1-309.3. Exchange of information for child support purposes - process.

The state court administrator of the judicial department and the executive director of the state department of human services, or their designees, shall design a process for exchanging information related to dependency or neglect actions, parentage actions, and any other actions brought pursuant to this title, as contemplated in sections 19-1-303 (4.4), 19-1-308, and 19-1-309, for purposes of locating responsible parties to pay child support, establishing paternity and child support, including child support debt pursuant to section 14-14-104, C.R.S., enforcing child support orders, disbursing collected child support payments, and facilitating the efficient and effective delivery of services under articles 13 and 13.5 of title 26, C.R.S. The process shall allow for the exchange of information by the state child support enforcement agency or the delegate child support enforcement units prior to or after intervention by the agency or units in an action brought pursuant to this title. Except for the limited purposes of the duties described in this section, the state child support enforcement agency or a delegate child support enforcement unit shall maintain the confidentiality of the information received pursuant to this part 3 and such information shall not be subject to discovery.

Source: L. 2003: Entire section added, p. 1268, § 58, effective July 1.

19-1-309.5. Adoptive family resource registry.

Limitations concerning the accessibility to information on the adoptive family resource registry are set forth in section 19-5-207.5 (5)(c).

Source: L. 99: Entire section added, p. 1025, § 7, effective May 29.

19-1-310. Information related to intervention and prevention programs - review and evaluation of programs. (Repealed)

Source: L. 96: Entire part added with relocations, p. 1169, § 6, effective January 1, 1997. **L. 2000:** Entire section repealed, p. 585, § 12, effective May 18.

19-1-311. Centralized integrated data base system for children and families - strategic business plan - technology plan - children's information management committee - report. (Repealed)

Source: L. 96: Entire part added with relocations, p. 1170, § 6, effective January 1, 1997. **L. 2002:** Entire section repealed, p. 1017, § 23, effective June 1.

19-1-312. Central registry phase out - implementation plan - repeal. (Repealed)

Source: L. 97: Entire section added, p. 45, § 1, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2000. (See L. 97, p. 45.)

PART 4

PREVENTION PROGRAMS FUNDED THROUGH STATE AGENCIES

19-1-401 to 19-1-403. (Repealed)

Source: L. 2000: Entire part repealed, p. 585, § 9, effective May 18.

Editor's note: This part 4 was added in 1999 and was not amended prior to its repeal in 2000. For the text of this part 4 prior to 2000, consult the 1999 Colorado Revised Statutes.

ARTICLE 1.2

Colorado Indian Child Welfare Act

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19-1.2-101. Short title.

The short title of this article 1.2 is the "Colorado Indian Child Welfare Act".

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1782, § 2, effective August 6.

19-1.2-102. Legislative declaration.

(1) The general assembly finds and declares that:

(a) Historically, an alarmingly high percentage of Indian families were disrupted by the removal, often unwarranted, of their children by non-tribal public and private agencies, and that a disturbingly high percentage of those Indian children were placed in non-Indian foster and adoptive homes and institutions;

(b) As a result of these actions, thousands of Indian families, tribal nations, and entire cultures were devastated;

(c) The states, in exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, historically failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and cultures;

(d) In response to these circumstances, the United States congress passed the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., known as "ICWA", to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards for the removal of Indian children from their families and for the placement of those Indian children in foster or adoptive homes that would reflect the unique values of Indian culture. The act provides assistance to Indian tribes in the operation of child and family service programs.

(e) ICWA has been the subject of targeted attacks in the federal courts, including most recently in *Haaland v. Brackeen*, 599 U.S. 255 (2023), in which the United States supreme court upheld ICWA in its entirety. Even with *Haaland v. Brackeen* upholding ICWA, the law remains subject to challenge.

(f) The Colorado general assembly can combat challenges to ICWA by upholding ICWA's recognized "gold standard" in child welfare protection;

(g) As of 2025, seventeen states have passed comprehensive state ICWA laws while Colorado has adopted parts of the federal law and, most recently in Senate Bill 23-211, adopted and incorporated ICWA and its regulations by reference as Colorado law;

(h) A critical element of ICWA is the requirement to notify an Indian child's tribe when a state court proceeding is commenced that could result in the placement of the Indian child out of the Indian child's home. The purpose of the notice is to provide the Indian child's tribe the opportunity to transfer the case to a tribal court or otherwise participate in the state court proceeding.

(i) To achieve these goals, it is crucial to determine, consistently and faithfully, whether a child who is the subject of these types of state court proceedings is an Indian child and to ensure that, if so, appropriate and timely notice is provided, particularly notice to the relevant tribes when the county department of human or social services receives information that a child may be an Indian child;

(j) The state of Colorado has previously recognized that Indian tribes have a compelling interest in promoting and maintaining their integrity and culture by entering into federal "Indian Child Welfare Act of 1978" agreements with the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe. The agreements, among other things, place stringent notice requirements on the state in proceedings involving Indian children and provide for the delay of proceedings until the required notice has been provided to the tribe in question. The state of Colorado further recognizes that the department of human services may also enter into a tribal-state agreement

with tribes outside of Colorado that have significant numbers of member Indian children or membership-eligible Indian children residing in Colorado.

(k) Colorado is committed to the consistent application of and compliance with the federal ICWA throughout the state to ensure that proper notice is provided and procedures are followed as specified by ICWA when state court actions involve Indian children; and

(l) Nothing is more vital to the continued existence and integrity of Indian tribes than their children.

(2) Therefore, the general assembly determines and declares that:

(a) It is appropriate and in the best interests of the Indian families who are intended to be protected by the terms of the federal "Indian Child Welfare Act of 1978" and the Indian children represented thereby that:

(I) The federal "Indian Child Welfare Act of 1978" agreements entered into between the state of Colorado and the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe are reaffirmed; and

(II) A comprehensive Colorado "Indian Child Welfare Act" is enacted to ensure consistent and reliable compliance with the federal ICWA for the protection of Indian children within Colorado and to ensure that Indian children in this state are protected as stated should the federal law be appealed, modified, or otherwise annulled;

(b) The state of Colorado recognizes all federally recognized Indian tribes as having the inherent authority to determine their own jurisdiction for any and all Indian child custody or child placement proceedings, regardless of whether the tribe's members are on or off the reservation and regardless of the procedural posture of the proceeding;

(c) The state of Colorado has long recognized the importance of Indian children to their tribes, not only as members of tribal families and communities but also as the tribe's greatest resource as future members and leaders of the tribe. The vitality of Indian children in Colorado is essential to the health and welfare of both the state and tribes, and is essential to the future welfare and continued existence of the tribes.

(d) It is the policy of the state to cooperate fully with Indian tribes and tribal citizens to ensure that the intent and provisions of the federal ICWA are enforced; and

(e) Advancing ICWA is consistent with the "Colorado Children's Code" and with article II of the state constitution.

(3) Therefore, the general assembly declares that the purpose of this article 1.2 is to codify the federal "Indian Child Welfare Act of 1978" into state law and to provide additional protections for Indian children pursuant to state law.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1782, § 2, effective August 6.

19-1.2-103. Definitions.

As used in this article 1.2, unless the context otherwise requires:

(1) "Active efforts" means efforts that are affirmative, active, thorough, timely, and intended to maintain or reunite an Indian child with the Indian child's family by providing remedial services and rehabilitative programs. "Active efforts" require more than a referral to a service and must be conducted in partnership with the Indian child, the Indian child's parent or Indian custodian, extended family members, and the tribe.

(2) (a) "Child custody proceeding" means a child custody proceeding within the court's jurisdiction and includes:

(I) Foster care placements, including any action removing an Indian child from the Indian child's parent or Indian custodian for temporary placement in a foster home or institution, or the home of a guardian or conservator when the Indian parent or Indian custodian cannot have the Indian child returned upon demand but parental rights have not been terminated, including, but not limited to, a hearing held pursuant to section 19-3-405, 19-3-507, 19-3-508, or 19-3-702;

(II) Termination of parental rights, including any action resulting in the termination of the parent-child relationship;

(III) Pre-adoptive placement, including the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but prior to or in lieu of adoptive placement;

(IV) Adoptive placement, including the permanent placement of an Indian child for adoption and any action resulting in a final decree of adoption;

(V) A parentage determination; and

(VI) Guardianship or allocation of parental responsibilities to a nonparent, including an action taken in a probate or domestic relations case removing an Indian child from the Indian child's parent or Indian custodian for temporary placement in the home of a guardian, conservator, or nonparent when the Indian child's parent or Indian custodian cannot have the Indian child returned upon demand but parental rights have not been terminated.

(b) An action that may culminate in one of the outcomes described in subsection (2)(a) of this section is a separate child custody proceeding from an action that may culminate in a different one of the outcomes. There may be several child custody proceedings involving an Indian child, and within each child custody proceeding, there may be several separate hearings.

(c) "Child custody proceeding" does not include:

(I) A proceeding for the custody or support of, or parenting time with, an Indian child that is solely between two parents;

(II) An emergency proceeding as described in section 19-1.2-110; or

(III) A delinquency proceeding other than those based solely on a status offense.

(3) "Court" means a district court, juvenile court, or probate court that is presiding over a child custody proceeding.

(4) "Custody" or "continued custody" means having legal or physical custody, or both, of an Indian child pursuant to applicable tribal law, tribal custom, or state law. An individual has custody of an Indian child if the individual is the Indian child's parent, if the individual has physical custody through an arrangement with the Indian child's parent outside of the involvement of a child welfare or child placement agency, or if the individual has legal custody of the Indian child pursuant to applicable tribal law, tribal custom, or state law.

(5) (a) "Domicile" means the place an individual regards as home, where the individual intends to remain, or to which, if absent, the individual intends to return.

(b) An Indian child's domicile, in order of priority, is the domicile of:

(I) The Indian child's parents or, if the Indian child's parents do not have the same domicile, the Indian child's parent who has physical custody of the Indian child;

(II) The Indian child's Indian custodian; or

(III) The Indian child's guardian.

(6) "Due diligence" means the earnest endeavor of the court and the petitioning or filing party to investigate the basis for a party's or other individual's assertion that a child may be an Indian child, as described in section 19-1.2-107.

(7) "Emergency proceeding" means any court action that involves the emergency removal or emergency placement of an Indian child, including removal pursuant to section 19-1.2-110, 19-1.2-123, 19-3-405, 14-10-129 (4), or 15-14-204 (5) with or without a protective custody order, or a temporary shelter care proceeding pursuant to section 19-3-401 or 19-3-403.

(8) (a) "Extended family member" has the same meaning as given in the tribal law or tribal custom of the Indian child's tribe.

(b) If the meaning of "extended family member" cannot be determined pursuant to subsection (8)(a) of this section, "extended family member" means an individual who has attained eighteen years of age and who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, godparent, stepparent,

or stepgrandparent, or as determined by the Indian child's tribe member. Even following termination of a marriage, a godparent, stepparent, or stepgrandparent is considered an "extended family member".

(9) "Indian" means an individual who is a member of an Indian tribe or who is an Alaska Native and a member of a regional corporation, as defined in the federal "Alaska Native Claims Settlement Act", 43 U.S.C. sec. 1606.

(10) "Indian child" means an unmarried individual who has not attained eighteen years of age and:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe as determined by that Indian tribe in writing or orally on the record and is the biological child of a member of an Indian tribe.

(11) "Indian Child Welfare Act of 1978" or "ICWA" means the federal law found at 25 U.S.C. sec. 1901 et seq. and its implementing regulations.

(12) "Indian custodian" means an Indian, other than the Indian child's parent, who has been granted legal custody or guardianship of the Indian child pursuant to tribal law, tribal custom, or state law, or to whom temporary physical care, custody, and control has been transferred by the Indian child's parent outside the involvement of a child welfare or child placement agency.

(13) "Indian organization" means a group, association, partnership, corporation, or other legal entity owned or controlled by Indians or with a majority of Indian members.

(14) "Indian tribe" or "tribe" means an Indian tribe, clan, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the United States secretary of the interior because of their status as Indians, including any Alaska Native village as defined in the federal "Alaska Native Claims Settlement Act", 43 U.S.C. sec. 1602 (c).

(15) "Member" or "membership" means a determination by an Indian tribe through its tribal law or tribal custom that an individual is a member or citizen of that Indian tribe.

(16) "Parent" means:

(a) A biological parent of an Indian child, except for an unwed father whose parentage has not been acknowledged or established pursuant to section 19-1.2-105, the "Uniform Parentage Act", article 4 of this title 19, or tribal law;

(b) An individual who has lawfully adopted an Indian child, including an adoption made pursuant to tribal law or tribal custom; or

(c) A parent whose parentage has been acknowledged or established pursuant to section 19-1.2-105, the "Uniform Parentage Act", article 4 of this title 19, or tribal law.

(17) "Party" or "parties" means a party to a child custody proceeding.

(18) "Reason to know" means that a court or a petitioning or filing party has reason to know that a child is an Indian child, as described in section 19-1.2-107.

(19) "Reservation" means:

(a) Indian country, as defined in 18 U.S.C. sec. 1151, and any lands not covered pursuant to that section and title that are held by the United States in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation; or

(b) For the Southern Ute Indian reservation, those lands include any lands confirmed pursuant to Pub.L. 98-290 and any other land subsequently placed in trust by the United States for the Southern Ute Indian Tribe's benefit.

(20) "Termination of parental rights" includes the termination of parental rights pursuant to section 19-3-604 or the termination of parental rights resulting from an adoption proceeding pursuant to section 19-5-101, 19-5-105.5, or 19-5-105.7.

(21) "Tribal court" means a court with jurisdiction over Indian child custody proceedings that is either a court of Indian offenses, a court established and operated under the law or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over Indian child custody proceedings.

(22) "Tribal customary adoption" means the adoption of an Indian child by and through tribal law or tribal custom of the Indian child's tribe and that may be effected without the termination of parental rights.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1784, § 2, effective August 6.

19-1.2-104. Applicability - incorporation of federal law.

(1) Unless explicitly stated otherwise in this article 1.2, all provisions of this article 1.2 apply to all child custody proceedings; any matter brought pursuant to the "Uniform Dissolution of Marriage Act", article 10 of title 14; the "Colorado Probate Code", articles 10 to 17 of title 15; all other private matters that meet the definition of a child custody proceeding; and the "Colorado Children's Code", this title 19.

(2) In a case filed pursuant to this article 1.2 that constitutes a child custody proceeding, the court and each party to the proceeding shall also comply with the federal implementing regulations of the federal "Indian Child Welfare Act of 1978" that outline the minimum federal standards governing ICWA's implementation to ensure that ICWA is applied in Colorado

consistent with the ICWA's express language, congress's intent in enacting ICWA, and to promote the stability and security of Indian children, tribes, and families.

(3) All provisions of the federal "Indian Child Welfare Act of 1978" are incorporated into this article 1.2, even if not specifically referenced. This article 1.2 may provide additional protections beyond those required by the federal ICWA, in which case the provisions of this article 1.2 apply.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1788, § 2, effective August 6.

19-1.2-105. Parentage of an Indian child - acknowledged or established - applicability of article.

(1) Parentage of an Indian child is acknowledged or established for purposes of this article 1.2 if the individual's parentage has been:

(a) Established pursuant to article 4 of this title 19;

(b) Established pursuant to tribal law; or

(c) Recognized in accordance with tribal custom.

(2) (a) For purposes of determining the biological parent of an Indian child, a court may order genetic tests pursuant to section 19-4-112 or 13-25-126.

(b) If an individual fails to comply with the court's order for genetic tests within a reasonable amount of time, the court may issue a subpoena pursuant to section 19-4-112 or issue an order to compel the individual to appear for genetic tests.

(c) If the genetic tests ordered pursuant to this subsection (2) do not confirm that an individual is the biological parent of the child as provided in section 19-4-105 (1)(f), or if the individual has refused to consent to the genetic tests, the individual is not established as the child's biological parent.

(3) This article 1.2 applies in its entirety if an individual is determined to be a parent of an Indian child, regardless of whether the parent has had prior custody of the Indian child.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1788, § 2, effective August 6.

19-1.2-106. Best interests of an Indian child - factors to consider.

(1) In a child custody proceeding involving an Indian child, when making a determination regarding the best interests of the Indian child, the court shall, in consultation with the Indian child's tribe and tribal community, as determined by the Indian child's tribe, consider the following:

(a) The Indian child's mental, physical, and emotional needs, including the Indian child's preferences;

(b) The prevention of unnecessary out-of-home placement of the Indian child;

(c) The prioritization of placement of the Indian child in accordance with the placement preferences set forth in section 19-1.2-120;

(d) The value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and

(e) The importance to the Indian child of the Indian tribe's or tribal community's ability to maintain the tribe's or tribal community's existence and integrity for the stability and security of Indian children and families.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1789, § 2, effective August 6.

19-1.2-107. Initial disclosures - inquiry and determination - form of inquiry - due diligence - Indian child's tribe - written findings.

(1) **Initial disclosures.** The petitioning or filing party shall disclose in the complaint, petition, or other commencing pleading filed with the court that the child who is the subject of the child custody proceeding is an Indian child and the identity of the Indian child's tribe or tribes, or efforts the petitioning or filing party has made in determining whether the child is an Indian child, including, but not limited to:

(a) If the petitioning or filing party indicates in the complaint, petition, or other commencing pleading that the child who is the subject of the child custody proceeding is an Indian child, the petitioning or filing party shall further identify what reasonable efforts have been made to send notice to the individuals identified in subsection (3)(d) of this section;

(b) The postal receipts or copies of postal receipts from the notice sent pursuant to subsection (3)(d) of this section indicating that the notice was properly sent by the petitioning or filing party to the Indian child's parent or Indian custodian and to the Indian child's tribe or tribes. The postal receipts must be attached to the complaint, petition, or other commencing pleading filed with the court; except that, if notification has not been perfected at the time the initial complaint, petition,

or other commencing pleading is filed with the court, or if the postal receipts have not been received back from the post office, the petitioning or filing party shall file the postal receipts with the court upon receipt of the postal receipts.

(c) Any responses sent by a tribal agent to the petitioning or filing party, a county department, or the court, which responses must be distributed to the parties and filed with the court.

(2) **Indian child inquiry and determination.** At the commencement of each child custody proceeding, the court shall make inquiries to determine whether the child who is the subject of the proceeding is an Indian child. In determining whether the child is an Indian child:

(a) The court shall ask each participant in an emergency, voluntary, or involuntary child custody proceeding whether the participant knows or has reason to know that the child is an Indian child or whether the participant has information that is relevant to determining whether the child is an Indian child. Any response to the inquiry must be made on the record. The court shall instruct the participants to inform the court if a participant subsequently receives information that provides reason to know the child is an Indian child.

(b) No later than the first appearance after an expedited hearing held pursuant to section 19-3-217 or 19-3-403, each party to the child custody proceeding shall disclose to the court and the petitioning and filing parties information indicating that the child is an Indian child, including, but not limited to, providing an identification card indicating the child's membership in a tribe. The court shall order the parties to provide information learned thereafter to the court and all parties no later than seven days after receiving the relevant information or prior to the next hearing on the matter, whichever occurs first.

(3) **Form of inquiry.**

(a) At the commencement of the child custody proceeding, the petitioning or filing party shall make a record, either in writing or orally in open court on the record, of the party's good faith efforts to determine whether the child is an Indian child, including, at a minimum, inquiries made by consulting with:

(I) The child, directly or through the child's representative;

(II) The child's parent or parents;

(III) An individual having custody of the child or with whom the child resides;

(IV) The child's extended family members;

(V) Any other individual who may reasonably be expected to have information regarding the child's membership or eligibility for membership in an Indian tribe; and

(VI) An Indian tribe when information from inquiries made pursuant to subsections (3)(a)(I) to (3)(a)(V) of this section indicate that there is a reasonable likelihood that the Indian tribe may provide additional information regarding whether the child is a member of that tribe or whether the child may be eligible for membership in that tribe.

(b) The court, upon reviewing the record of inquiries made pursuant to subsection (3)(a) of this section, has reason to know that a child is an Indian child if:

(I) A participant in the child custody proceeding, an officer of the court involved in the child custody proceeding, an Indian tribe, an Indian organization, or an agency informs the court that the child is an Indian child;

(II) A participant in the child custody proceeding, an officer of the court involved in the child custody proceeding, an Indian tribe, an Indian organization, or an agency informs the court that it has discovered information indicating that the child is an Indian child;

(III) The child who is the subject of the child custody proceeding gives the court reason to know that the child is an Indian child;

(IV) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is or was on a reservation of a federally recognized Indian tribe or in an Alaska Native village;

(V) The court is informed that the child is or has been a ward of a tribal court;

(VI) The court is informed that the child or the child's parent possesses an identification card or other sufficient documentation indicating membership in an Indian tribe;

(VII) The court is informed that the parent or child received health services from an Indian health service or tribal health facility;

(VIII) The court or the petitioning or filing party receives any other reasonably credible information, regardless of admissibility, that a parent or the child has an identifiable connection with a specific federally recognized tribe or tribes beyond a generalized assertion of heritage;

(IX) The court is informed that there are school records indicating that the child is an enrolled member of an Indian tribe; or

(X) After performing due diligence pursuant to subsection (4) of this section, information is presented to the court that subsections (3)(b)(I) to (3)(b)(IX) of this section apply or that the child is an Indian child.

(c) The court shall make specific findings, either in writing or orally on the record, regarding its reason to know that the child is an Indian child.

(d) If the court knows, or has reason to know as described in subsection (3)(b) of this section, that the child who is the subject of the child custody proceeding is an Indian child, the

petitioning or filing party shall send notice by registered or certified mail, return receipt requested, to the parent of the child, the child's Indian custodian, and the tribal agent of the Indian child's tribe or tribes, or, if there is not a designated tribal agent, the petitioning or filing party shall contact the Indian tribe for direction to the appropriate office or individual. In providing the notice, the court and each party shall comply with the federal ICWA and this article 1.2.

(4) (a) **Due diligence.** If the court receives information that the child may have Indian heritage but the court lacks sufficient information to determine that there is reason to know that the child is an Indian child pursuant to subsection (3) of this section, the court shall direct the petitioning or filing party to exercise due diligence in gathering additional information pursuant to subsection (4)(b) of this section, ensure that the due diligence requirements are followed, and ensure that all information known to the parties is disclosed in writing or orally on the record. The court shall direct the petitioning or filing party to make a record, either in writing or orally on the record, of the due diligence efforts taken to determine whether there is reason to know that the child is an Indian child.

(b) In performing due diligence, the petitioning or filing party shall, at a minimum:

(I) Ask each party, including the child directly or through the child's representative, what information the party has regarding the child's Indian heritage, if any;

(II) Ask or earnestly attempt to ask each parent what information the parent has regarding the child's Indian heritage, if any; where and how the parent received the information; and what, if any, other information sources the parent believes may have additional information regarding the child's Indian heritage, if any, including other relatives and their contact information, if known or reasonably obtained;

(III) Conduct searches for family and document-identified family relatives or kin who may have information regarding the child's Indian heritage, if any;

(IV) Ask or attempt to ask identified family relatives or kin for information the relatives or kin have regarding the child's Indian heritage, if any, and where and how the relatives or kin received that information;

(V) Review court and agency records identified by the parents and provided to the petitioner or filing party, or to which the petitioner or filing party has previously been granted access through the state automated child welfare system or the ICON system at the state judicial department, for all child custody proceedings related to the child and parents for information regarding the child's Indian heritage, if any; and

(VI) Contact the tribal representative or representatives by email, phone call, letter, or any other means agreed to by the parties regarding whether the child may be eligible for tribal

membership when informed that a parent, child, or specific extended family member has a potential connection with a federally recognized tribe or tribes.

(c) In performing due diligence, the petitioning or filing party may, if a known connection has not been identified pursuant to subsection (4)(b) of this section but the court or petitioning or filing party receives a reasonably credible assertion of the child's Indian heritage without identification of a specific tribe or tribes but narrowed to a region of the United States, ask either relevant tribes in that identified region or the relevant bureau of Indian affairs office if the relevant tribes or bureau have information relevant to the determination that the child is an Indian child.

(d) Subsection (4)(b) of this section does not prevent a petitioning party from sending a written inquiry to an asserted tribe for the purpose of satisfying the due diligence requirements pursuant to subsection (4)(b)(VI) of this section. A written inquiry must not be construed as formal notice and is not considered a determination that there is reason to know the child is an Indian child.

(5) (a) **Indian child's tribe.** If the child is an Indian child, the Indian child's tribe is:

(I) The tribe of which the Indian child is a member or eligible for membership if the Indian child is a member of or is eligible for membership in only one tribe;

(II) The tribe of which the Indian child is a member if the Indian child is a member of one tribe but is eligible for membership in one or more other tribes; or

(III) If the Indian child is a member of more than one tribe or if the Indian child is not a member of any tribe but is eligible for membership in more than one tribe:

(A) The tribe designated by an agreement between the tribes of which the Indian child is a member or in which the Indian child is eligible for membership; or

(B) If the tribes are unable to agree on the designation of the Indian child's tribe, the tribe designated by the court.

(b) When designating an Indian child's tribe pursuant to subsection (5)(a)(III)(A) of this section, the court shall, after a hearing, designate the tribe with which the Indian child has the more significant contacts, taking into consideration:

(I) The preference of the Indian child's parent;

(II) The duration of the Indian child's residency at their current or prior domicile or residence on or near the reservation of each tribe;

(III) The tribal membership of the Indian child's parent or Indian custodian;

(IV) The interests asserted by each tribe;

(V) Whether a tribe has previously adjudicated a case involving the Indian child; and

(VI) The self-identification of the Indian child if the court determines that the Indian child is of sufficient age and capacity to meaningfully self-identify.

(6) **Written findings.** The court shall make written findings determining whether the petitioning or filing party:

(a) Satisfied its inquiry and due diligence requirements concerning whether the child is an Indian child or whether there is reason to know that the child is an Indian child;

(b) Verified whether the child is in fact a member of a tribe, or a biological parent of the child is a member of a tribe, and the child is eligible for membership;

(c) Documented all contact with:

(I) The respective tribe or tribes. This contact must include at least two contacts or good faith attempts to contact the tribe or tribes within seventy days after the finding, unless the tribe or tribes provided written documentation indicating membership, eligibility, or ineligibility of the child.

(II) The bureau of Indian affairs to seek assistance with contacting the tribe or tribes, if good faith attempts to contact the tribe or tribes have been unsuccessful; and

(d) Treated the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an Indian child.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1789, § 2, effective August 6.

19-1.2-108. Formal notice - language, accessibility, and content requirements.

(1) Notices required by this article 1.2 in a child custody proceeding must be provided in clear, accessible, and understandable language and include the following information:

(a) The Indian child's name, date of birth, and place of birth;

(b) To the extent known, all names, including maiden, married, and former names or aliases of the Indian child's parents, the parents' birthplaces, and the parents' tribal enrollment information;

(c) To the extent known, the names, dates of birth, places of birth, and tribal enrollment information of other direct lineal ancestors of the Indian child;

(d) The name of each Indian tribe of which the Indian child is a member or in which the Indian child may be eligible for membership;

(e) To the extent known, information regarding the Indian child's direct lineal ancestors, an ancestral chart for each biological parent, and the Indian child's tribal affiliation and blood quantum;

(f) A copy of the petition or motion initiating the proceeding and, if a hearing has been scheduled, information on the date, time, and location of the hearing;

(g) The name of the petitioning or filing party and the name and address of the party's attorney;

(h) A statement that the Indian child's parent or Indian custodian has the right to participate in the proceeding pursuant to section 19-1.2-113;

(i) A statement that the Indian child's tribe has the right to intervene or participate in the proceeding as a party or in an advisory capacity pursuant to section 19-1.2-113;

(j) A statement that if the court determines that the Indian child's parent or Indian custodian is unable to afford counsel, the parent or Indian custodian has the right to court-appointed counsel;

(k) A statement that the Indian child's parent, Indian custodian, or tribe has the right, upon request, to up to twenty additional days to prepare for the proceeding;

(l) A statement that the Indian child's parent, Indian custodian, or tribe has the right to petition the court to transfer the child custody proceeding to the tribal court;

(m) A statement describing the potential legal consequences of the proceeding on future parental and custodial rights of the Indian child's parent or Indian custodian;

(n) The mailing address and telephone numbers of the court and contact information for all parties to the proceeding and the individuals notified pursuant to this section; and

(o) A statement that the information contained in the notice is confidential and must not be shared with any individual who does not need the information to exercise rights pursuant to this article 1.2.

(2) If the Indian child's parent or Indian custodian has limited English proficiency and may not understand the contents of the notice provided pursuant to this section, the court shall provide language access services as required by Title VI of the federal "Civil Rights Act of 1964", 42 U.S.C. sec. 2000e et seq., and other applicable federal and state laws. If the court is unable to secure translation or interpretation support, the court shall contact or direct a party to contact the Indian child's tribe or the local office of the federal bureau of Indian affairs for assistance identifying a qualified translator or interpreter.

(3) (a) A hearing that requires notice pursuant to this section must not be held until at least ten days after the latest receipt of the notice by the Indian child's parent, Indian custodian, tribe,

or, if applicable, the federal bureau of Indian affairs. Upon request, the court shall grant the Indian child's parent, Indian custodian, or tribe up to twenty-one additional days after the date upon which notice was received by the Indian child's parent, Indian custodian, or tribe to prepare for participation in the hearing.

(b) This subsection (3) does not prevent a court, during an emergency proceeding before the expiration of the waiting period described in subsection (3)(a) of this section, from reviewing the removal of an Indian child from the Indian child's parent or Indian custodian to determine whether the removal or placement is no longer necessary to prevent imminent physical harm or danger to the Indian child.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1795, § 2, effective August 6.

19-1.2-109. Enrollment of an Indian child with a tribe.

(1) Unless an Indian child's parent objects, the petitioning or filing party or the Indian tribe shall assist in enrolling an Indian child who is in the court's jurisdiction in a tribe with which the child is eligible for enrollment. If the Indian child is eligible to be enrolled in more than one tribe, the court shall determine membership pursuant to section 19-1.2-107.

(2) In accordance with subsection (1) of this section, when the petitioning or filing party, including a county department or a child placement agency, has reason to know that the child is an Indian child, the petitioning or filing party shall, at a minimum, state in writing or orally on the record the relevant tribe or tribes with which the child may be eligible for enrollment to determine if the child is in fact eligible for enrollment. The notification to the relevant tribe or tribes may be done in conjunction with the notice requirements set forth in section 19-1.2-108 (1).

(3) In a child custody proceeding, when the petitioning or filing party has reason to know that the child is an Indian child and that the Indian child is eligible for enrollment in a tribe, the petitioning or filing party shall notify the Indian child and the Indian child's parent of the parent's right to object to the petitioning or filing party's assistance pursuant to subsection (1) of this section.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1796, § 2, effective August 6.

19-1.2-110. Emergency proceeding - emergency removal - termination of emergency - duration.

(1) If an individual or agency takes a child into protective custody, the individual or agency shall, at the commencement of the emergency proceeding, make a good faith effort to:

(a) Determine whether the individual or agency has reason to know that the child is an Indian child pursuant to section 19-1.2-107 (3)(b); and

(b) Contact by telephone, email, facsimile, or other means of immediate communication any tribe of which the child is or may be a member or eligible for membership to determine the child's tribal affiliation. Notification must include the basis for the child's removal; the time, date, and place of the initial hearing; and a statement that the tribe has the right to participate in the proceeding as a party or in an advisory capacity pursuant to section 19-1.2-113.

(2) An emergency removal or placement of an Indian child pursuant to this section terminates immediately when the removal or placement is no longer necessary to prevent imminent physical harm or danger to the Indian child. In such a removal or placement, the court shall:

(a) Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical harm or danger to the Indian child;

(b) Promptly hold a hearing on whether the emergency removal or placement continues to be necessary when new information indicates that the emergency situation has ended;

(c) At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical harm or danger to the Indian child; and

(d) Immediately terminate, or ensure that the individual or agency that took the child into protective custody immediately terminates, the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical harm or danger to the Indian child.

(3) A petition for a court order authorizing the emergency removal or continued emergency placement of an Indian child, and its accompanying documents, must contain a statement of the risk of imminent physical harm or danger to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent the imminent physical harm or danger to the Indian child. The petition, and its accompanying documents, must also contain the following information:

(a) The name, age, and last-known address of the Indian child;

(b) The name and last-known address of the Indian child's parents or Indian custodian, if any;

(c) The steps taken to provide notice to the Indian child's parents, custodian, and tribe about the emergency proceeding;

(d) If the Indian child's parents or Indian custodian is unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate federal bureau of Indian affairs regional director;

(e) The residence and domicile of the Indian child;

(f) If either the residence or domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village;

(g) The tribal affiliation of the Indian child and the child's parents or Indian custodian;

(h) A specific and detailed account of the circumstances that led the individual or agency responsible for the emergency removal of the Indian child to take that action;

(i) If the Indian child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts made to contact the tribe and transfer the Indian child to the tribe's jurisdiction; and

(j) A statement of the efforts that have been taken to assist the Indian child's parents or Indian custodian so that the Indian child may be safely returned to the custody of the parents or Indian custodian.

(4) An emergency removal regarding an Indian child must not be continued for more than thirty days, unless the court determines that restoring the Indian child to the parent or Indian custodian would subject the Indian child to imminent physical harm or danger, and:

(a) The court has approved a motion to transfer the case to a tribal court but has not been able to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; or

(b) Despite diligent efforts, the court has been unable to hold a hearing based on the criteria set forth in section 19-1.2-123. In such a case, the court shall schedule the hearing within seven days after the determination made pursuant to this subsection (4).

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1797, § 2, effective August 6.

19-1.2-111. Active efforts - when required - characteristics.

(1) If there is reason to know that a child who is the subject of a child custody proceeding is an Indian child, active efforts are required and the court shall make an initial determination whether active efforts have been made to prevent removal of the Indian child from the family. If

the Indian child has been removed from the family, the court shall determine whether active efforts have been made to reunite the family.

(2) Active efforts require a higher standard of conduct than reasonable efforts.

(3) Active efforts must:

(a) Be documented in detail in writing or orally on the record;

(b) If the Indian child is alleged to be within the jurisdiction of the court pursuant to section 19-1.2-116, include actively assisting the Indian child's parent or parents or Indian custodian through the steps of a case plan and accessing or developing the resources necessary to satisfy the case plan;

(c) Include providing assistance in a manner consistent with the prevailing social and cultural standards and way of life of the Indian child's tribe;

(d) Be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodian, and tribe; and

(e) Be tailored to the facts and circumstances of the case.

(4) Active efforts may include, as applicable, the following:

(a) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on reunification as the primary and most desirable goal;

(b) Identifying appropriate services and helping the Indian child's parents overcome barriers to reunification, including actively assisting the Indian child's parents with obtaining the identified services;

(c) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, resolution of placement issues, reviews, or other case-management-related meetings;

(d) Conducting or causing to be conducted a diligent search for the Indian child's extended family members and contacting and consulting with the Indian child's extended family members and adult relatives to provide family structure and support for the Indian child and the Indian child's parents;

(e) Offering and employing culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe;

(f) Taking steps to keep the Indian child and the Indian child's siblings together, whenever possible;

(g) Supporting regular family time with the Indian child's parents or Indian custodian in the most natural setting possible, as well as trial home visits during a period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child;

(h) Identifying and making appropriate referrals to community resources, including housing, financial assistance, employment training, transportation, mental health care, health care, substance abuse prevention and treatment, parenting training, transportation, peer support services necessary to maintain the child in the home or to rehabilitate the family so that the child can safely return home, and actively assisting the Indian child's parents or, when appropriate, the Indian child's family, in utilizing and accessing such resources;

(i) Monitoring progress and participation of the Indian child's parents, Indian custodian, or extended family members in the services described in subsections (4)(b), (4)(c), (4)(e), and (4)(h) of this section;

(j) Considering alternative ways to address the needs of the Indian child's parents, Indian custodian, and, when appropriate, the Indian child's family if the services described in this section are unavailable or the optimum services do not exist or are not available;

(k) Providing post-reunification services and monitoring while the Indian child remains in the court's jurisdiction;

(l) Contacting the Indian child's tribe to determine what, if any, tribal resources are available; and

(m) Any other efforts that are appropriate to the Indian child's circumstances.

(5) In a child custody proceeding brought pursuant to article 3 of this title 19, if the court finds that a county department did not provide active efforts to make it possible for the Indian child to safely return home, at a permanency hearing the court shall not change the permanency plan to something other than to reunite the family.

(6) Unless stipulated by the parties and not objected to by the Indian child's tribe, in any proceeding brought pursuant to article 3 of this title 19, if the court finds that a county department did not provide active efforts to make it possible for the Indian child to safely return home, the court shall not set a date for a permanent orders hearing, including, but not limited to, guardianship, allocation of parental responsibilities, or termination of parental rights, until the county department provides active efforts for the number of days that active efforts were not previously provided.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1799, § 2, effective August 6.

19-1.2-112. Right to counsel - appointment of counsel - access to records.

(1) If there is reason to know that a child who is the subject of a child custody proceeding is an Indian child:

(a) The court shall appoint counsel to represent the Indian child in accordance with applicable law; and

(b) The court shall appoint counsel to represent the Indian child's parent or Indian custodian pursuant to section 19-3-202 if the parent or Indian custodian is a respondent in a dependency and neglect action brought pursuant to article 3 of this title 19. In any removal, placement, or termination of parental rights proceeding, outside of a dependency and neglect proceeding, in which the court determines that an Indian child's parent or Indian custodian is indigent, the court shall appoint counsel to the Indian child's parent or Indian custodian through the office of the state court administrator.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1801, § 2, effective August 6.

19-1.2-113. Right to intervene and appear.

(1) Notwithstanding this article 1.2 to the contrary, a tribe, or Indian custodian who is not otherwise a party to a child custody proceeding brought pursuant to this article 1.2, has the right to intervene at any point in a child custody proceeding and a tribe may be represented by an individual authorized by the tribe to act on its behalf, regardless of whether the individual is licensed to practice law.

(2) In accordance with the Colorado rules of civil procedure, an attorney who is not barred from practicing law in Colorado may appear on behalf of a tribe in any child custody proceeding involving an Indian child without associating with local counsel or without paying a fee to appear pro hac vice.

(3) Notwithstanding this article 1.2 to the contrary, pursuant to subsection (1) of this section, a tribe may notify the court, in writing or orally on the record, that the tribe withdraws as a party to the proceeding.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1801, § 2, effective August 6.

19-1.2-114. Right to examine documents - compliance regarding an Indian child.

(1) If there is reason to know that a child who is the subject of a child custody proceeding is an Indian child, each party has the right to timely examine all reports or other documents as outlined in the applicable rules of discovery unless precluded pursuant to state or federal law.

(2) Regardless of whether a tribe is a party in any child custody proceeding involving an Indian child, the Indian child's tribe must have access to all reports or other documents regarding the Indian child. Any reports or other documents regarding the Indian child must be provided, upon request, to the tribe free of cost.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1802, § 2, effective August 6.

19-1.2-115. Qualified expert witnesses.

(1) In a child custody proceeding that requires the testimony of a qualified expert witness, the petitioning or filing party shall seek a qualified expert witness from the Indian child's tribe and may, when appropriate, contact the federal bureau of Indian affairs and request that the tribe or bureau identify one or more individuals who meet the criteria described in subsection (3) or (4) of this section and make a record of that contact either in writing or orally on the record.

(2) At a hearing pursuant to section 19-1.2-123 or 19-1.2-125, if the court has found that there is reason to know that a child is an Indian child, at least one expert witness must be qualified to testify regarding:

(a) Whether the continued custody of the Indian child by the Indian child's parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

(b) The prevailing social and cultural standards and child-rearing practices of the Indian child's tribe.

(3) For the purposes of this section, a qualified expert witness is not required to have knowledge of social and cultural standards of the Indian child's tribe only if such knowledge is plainly irrelevant to the particular circumstances at issue in the proceeding. The Indian child's tribe may designate an individual as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe.

(4) If the Indian child's tribe has not identified a qualified expert witness, the following individuals, in order of priority, may testify as a qualified expert witness:

(a) A member of the Indian child's tribe or another individual who is recognized by the tribe as knowledgeable about tribal customs regarding family organization and child-rearing practices;

(b) An individual who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices in the Indian child's tribe; or

(c) An individual who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices in Indian tribes with cultural similarities to the Indian child's tribe.

(5) An Indian child's tribe must be provided the opportunity to question the qualified expert witness in all hearings involving the Indian child, regardless of whether the Indian child's tribe has intervened pursuant to section 19-1.2-113.

(6) For the purposes of this section, a petitioning or filing party or an employee of the petitioning or filing party may not serve as a qualified expert witness.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1802, § 2, effective August 6.

19-1.2-116. Jurisdiction.

(1) Except as otherwise provided in this section, the court's jurisdiction pursuant to this article 1.2 in a case involving an Indian child is concurrent with the Indian child's tribe.

(2) The Indian child's tribe has exclusive jurisdiction in a case involving an Indian child if:

(a) The Indian child is a ward of a tribal court of the tribe; or

(b) The Indian child resides or is domiciled on the tribe's reservation.

(3) Notwithstanding subsection (2) of this section, the court has temporary emergency jurisdiction over an Indian child who is taken into protective custody pursuant to section 19-1.2-110 or 19-3-201, or part 4 of article 3 of this title 19.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1803, § 2, effective August 6.

19-1.2-117. Determination of domicile and residence - tribal court jurisdiction.

(1) In a child custody proceeding involving an Indian child, the court shall determine and issue an order regarding the Indian child's domicile or residence and whether the Indian child is under a tribal court's jurisdiction.

(2) The petitioning or filing party shall coordinate with the Indian child's tribe as necessary to assist the court in making a determination pursuant to this section. If it is unclear which tribe is the Indian child's tribe, the petitioning or filing party shall coordinate with each tribe with which there is reason to know that the Indian child may be a member or eligible for membership to assist the court in making the determination.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1803, § 2, effective August 6.

19-1.2-118. Motion to transfer to tribal court - objection.

(1) Except as otherwise provided in subsection (5) of this section, the court shall transfer a child custody proceeding brought pursuant to this article 1.2 that involves an Indian child if, at any time during the proceeding, the Indian child's parent, Indian custodian, or tribe petitions the court to transfer the proceeding to the tribal court, unless good cause is shown to deny the transfer.

(2) Upon receipt of a transfer motion, the court shall contact the Indian child's tribe and request a timely response regarding whether the tribe intends to decline the transfer.

(3) (a) If a party objects in writing to the transfer motion, the court shall set a hearing on the objections to the motion. In determining whether there is good cause to deny transfer of jurisdiction to a tribal court, the court shall engage in a fact-specific inquiry, determined on a case-by-case basis as set forth in subsection (4) of this section.

(b) At the hearing, the objecting party has the burden of proof of establishing by clear and convincing evidence that good cause exists to deny the transfer.

(c) If the Indian child's tribe contests the assertion that good cause exists to deny the transfer, the court shall give the tribe's argument substantial weight.

(d) When making a determination whether good cause exists to deny the transfer motion, the court must not consider:

(I) Whether the proceeding is at an advanced stage;

(II) Whether there has been a prior proceeding involving the Indian child in which a transfer motion was not filed;

(III) Whether the transfer could affect the placement of the Indian child;

(IV) The Indian child's cultural connections with the tribe or the tribe's reservation;

(V) The socioeconomic conditions of the Indian child's tribe or any negative perception of the tribe's or the federal bureau of Indian affairs's social services or judicial systems; or

(VI) Whether the transfer serves the best interests of the Indian child.

(4) Absent extraordinary circumstances, good cause to deny transfer to a tribal court must be based on one or both of the following factors:

(a) The Indian child's tribe does not have a tribal court or any other administrative body that is vested with authority over child custody proceedings to which the case can be transferred, and no other tribal court has been designated by the Indian child's tribe to hear child custody proceedings; or

(b) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by any means permitted in the tribal court's rules. Without evidence of undue hardship, travel distance alone is not a basis for denying a transfer motion.

(5) (a) The court shall deny the transfer motion if:

(I) The tribe declines the transfer in writing or orally on the record;

(II) One of the Indian child's parents objects to the transfer; or

(III) After a hearing, the court finds by clear and convincing evidence that good cause exists to deny the transfer.

(b) Notwithstanding subsection (5)(a)(II) of this section, the objection of the Indian child's parent does not preclude the transfer if:

(I) The objecting parent dies or the objecting parent's parental rights are terminated and have not been restored; and

(II) The Indian child's remaining parent, Indian custodian, or tribe files a new transfer motion subsequent to the death or termination of parental rights of the objecting parent.

(6) If the court denies a transfer motion pursuant to this section, the court shall document the basis for the denial in a written order.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1804, § 2, effective August 6.

19-1.2-119. Requirements if transfer to tribal court granted.

(1) Upon granting a motion to transfer pursuant to section 19-1.2-118, the court shall expeditiously:

(a) Notify the tribal court of the pending dismissal of the child custody proceeding;

(b) Transfer all information regarding the proceeding, including pleadings and court records, to the tribal court; and

(c) If the Indian child is alleged to be within the jurisdiction of the court pursuant to section 19-1.2-116, direct the petitioning or filing party to:

(I) Coordinate with the tribal court and the Indian child's tribe to ensure that the transfer of the proceeding and the transfer of custody of the Indian child is accomplished with minimal disruption of services to the Indian child and the Indian child's family; and

(II) Expeditiously provide at no cost to the appropriate tribal agency:

(A) All records and original documents in the petitioning or filing party's possession that are related to the Indian child, including a birth certificate, social security card, certificate of Indian birth, and other similar documents;

(B) Documentation related to the Indian child's eligibility for state and federal assistance; and

(C) The entire case record for the Indian child that the petitioning or filing party possesses.

(2) The court shall dismiss the proceeding with prejudice upon confirmation from the tribal court that the tribal court received the required transferred information.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1805, § 2, effective August 6.

19-1.2-120. Placement preferences - cultural compact - confidentiality.

(1) If the parental rights of an Indian child's parents have not been terminated and the Indian child is in need of placement or continuation in substitute care, the Indian child must be placed in the least restrictive setting that:

(a) Most closely approximates a family, taking into consideration sibling attachment;

(b) Allows the Indian child's special needs, if any, to be met;

(c) Subject to subsection (1)(d)(II)(C) of this section, is in reasonable proximity to the Indian child's home, extended family, or siblings; and

(d) (I) Except as provided in subsection (3) of this section, is in accordance with the order of preference established by the Indian child's tribe; or

(II) If the Indian child's tribe has not established placement preferences, is in accordance with the following order of preference:

(A) The Indian child's noncustodial parent;

(B) A member of the Indian child's extended family;

(C) A foster home licensed, approved, or specified by the Indian child's tribe;

(D) Another member of the Indian child's tribe;

(E) Another Indian family with whom the Indian child has a relationship;

(F) An Indian family from a tribe that is culturally similar or linguistically connected to the Indian child's tribe;

(G) A foster home licensed or approved by a licensing authority in this state and in which one or more of the licensed or approved foster parents is an Indian; or

(H) An institution for children that has a program suitable to meet the Indian child's needs and is approved by an Indian tribe or operated by an Indian organization.

(2) If the parental rights of the Indian child's parents have been terminated or if an Indian child is in need of guardianship pursuant to part 2 of article 14 of title 15 or adoptive placement, except as provided for in subsection (3) of this section, the Indian child must be placed:

(a) In accordance with the order of preference established by the Indian child's tribe; or

(b) If the Indian child's tribe has not established placement preferences, according to the following order of preference:

(I) With a member of the Indian child's extended family;

(II) With other members of the Indian child's tribe;

(III) With a member or citizen of an Indian tribe in which the Indian child is eligible for membership or citizenship but that is not the Indian child's tribe;

(IV) With another Indian family with whom the Indian child has a relationship;

(V) With an Indian family from a tribe that is culturally similar or linguistically connected to the Indian child's tribe; or

(VI) With another Indian family.

(3) (a) A party may file a motion with the court requesting authority to place the Indian child contrary to the placement preferences set forth in subsection (1) or (2) of this section. The motion must detail the reasons the party asserts that good cause exists for placement contrary to the placement preferences set forth in subsection (1) or (2) of this section.

(b) Upon the filing of an objection to a motion filed pursuant to subsection (3)(a) of this section, the court shall set the time for a hearing on the objections.

(c) If the court determines that the moving party has established its burden by clear and convincing evidence that there is good cause to depart from the placement preferences set forth in subsection (1) or (2) of this section, the court may authorize an alternative placement.

(d) The court's determination pursuant to subsection (3)(c) of this section:

(I) Must be in writing and based on one or more of the following factors:

(A) The preferences of the Indian child, if the Indian child is of sufficient age and capacity to understand the decision that is being made;

(B) The presence of a sibling attachment that cannot be maintained through a placement consistent with the placement preferences set forth in subsection (1) or (2) of this section;

(C) Any extraordinary physical, mental, or emotional needs of the Indian child that require specialized treatment services if, despite active efforts, those services are unavailable in the community where families who meet the placement preferences set forth in subsection (1) or (2) of this section reside;

(D) A finding based on the testimony of the child placement agency or the petitioning or filing party that a diligent search has been conducted and that a placement meeting the placement preferences set forth in subsection (1) or (2) of this section is unavailable, as determined by the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or maintains social and cultural ties; or

(E) The placement request of the Indian child's parent, after the Indian child's parent has reviewed the placement options, if any comply with the placement preferences set forth in subsection (1) or (2) of this section;

(II) Must allow the court to retain discretion to find that good cause does not exist even if one or more of the factors in subsection (3)(d)(I) of this section are present;

(III) Must, in applying the placement preferences set forth in subsection (1) or (2) of this section, give weight to the Indian child's parent's request for anonymity if the placement is an adoptive placement to which the Indian child's parent has consented; and

(IV) May not be based:

(A) On the socioeconomic conditions of the Indian child's tribe;

(B) On any perception of the tribe's or federal bureau of Indian affairs's social services or judicial systems;

(C) On the distance between a placement that meets the placement preferences set forth in subsection (1) or (2) of this section that is located on or near a reservation and the Indian child's parent, except if the placement would undermine reunification efforts; or

(D) Solely on the ordinary bonding or attachment between the Indian child and a non-preferred placement arising from time spent in the non-preferred placement.

(4) The court, on the court's own motion or the motion of any party, shall make a determination pursuant to this section regarding the Indian child's placement if the court or the moving party has reason to know that the Indian child was placed contrary to the placement preferences set forth in subsection (1) or (2) of this section without good cause. A motion made pursuant to this subsection (4) may be made in writing or orally on the record.

(5) To ensure that this article 1.2 is fully implemented and that all Indian children have the opportunity to maintain strong connections to their culture, if the household into which an Indian child is placed for adoption or guardianship does not include a parent who is a member of the Indian child's tribe, the court shall require the parties to the adoption to enter a cultural compact at the discretion of the Indian child's tribe, or otherwise develop a plan that documents the parties' agreement regarding how the Indian child will continue to actively participate in the Indian child's cultural learning and activities, and engagement with family members. Each cultural compact or plan must be specific to the Indian child; must consider the Indian child's mental, physical, and emotional needs, including the Indian child's preferences; and must take into account the Indian child's understanding as the Indian child grows and matures. The cultural compact or plan is considered a post-adoption contact agreement in accordance with section 19-5-208 (4.5) and enforceable in accordance with section 19-5-217.

(6) A confidentiality requirement, if any, does not relieve the court or any petitioners in an adoption proceeding from the duty to comply with the placement preferences set forth in this section if the child is an Indian child.

(7) A confidentiality requirement, if any, does not prevent an adult adoptee, adult descendant of an adoptee, or another eligible party from obtaining unredacted copies of adoption records pursuant to section 19-5-305.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1806, § 2, effective August 6. **L. 2026:** (1)(d)(II)(A) amended, (SB 26-169), ch. 311, p. 1801, § 15, effective August 12.

19-1.2-121. Order to vacate judgment.

(1) A petition to vacate an order or a judgment involving an Indian child regarding jurisdiction in accordance with sections 19-1.2-116 and 19-1.2-118, placement, guardianship, or the termination of parental rights may be filed in a pending child custody proceeding involving the Indian child or, if a child custody proceeding is not pending, in any state or local court of competent jurisdiction by:

(a) The Indian child who was alleged to be within the court's jurisdiction pursuant to section 19-1.2-116;

(b) The Indian child's parent or Indian custodian from whose custody the Indian child was removed or whose parental rights were terminated; or

(c) The Indian child's tribe.

(2) (a) The court shall vacate an order or judgment involving an Indian child regarding jurisdiction in accordance with sections 19-1.2-116 and 19-1.2-118, placement, guardianship, or the termination of parental rights if the court determines that any provision of this article 1.2 has been violated.

(b) If the vacated order or judgment resulted in the removal or placement of the Indian child, the court shall order the child returned to the Indian child's parent or Indian custodian as soon as possible, and the court's order must include a transition plan for the physical custody of the child, unless the court determines that a hearing is to be held within twenty-eight days in accordance with 25 U.S.C. sec. 1912 (e) and section 19-1.2-123 to determine if the return of the Indian child is appropriate. The transition plan may include protective custody pursuant to section 19-3-405.

(c) If the vacated order or judgment terminated parental rights, the court shall order the previously terminated parental rights to be restored.

(d) If the state or any other party affirmatively asks the court to reconsider the issues under the vacated order or judgment, the court's findings or determinations must be readjudicated by the court that is reconsidering whether there has been abuse or neglect sufficient to allow the Indian child to be removed pursuant to this article 1.2.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1809, § 2, effective August 6.

19-1.2-122. Determination of whether an Indian child has been improperly removed or retained - remedy.

(1) The court, on the court's own motion or on the motion of any party, shall expeditiously determine whether an Indian child who is asserted to be within the court's jurisdiction pursuant to section 19-1.2-116 has been improperly removed or improperly retained following a visit or temporary relinquishment of custody. A motion pursuant to this section may be made orally or in writing.

(2) If the court finds that the Indian child has been improperly removed or improperly retained, the court shall order the petitioning or filing party to immediately return the Indian child to the Indian child's parent or Indian custodian and dismiss the proceeding, unless the court

determines that doing so would subject the Indian child to substantial and immediate danger or a threat of substantial and immediate danger. In such a case, the court shall hold a hearing within twenty-eight days in accordance with 25 U.S.C. sec. 1912 (e) and section 19-1.2-123 to determine if the return of the Indian child is appropriate.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1810, § 2, effective August 6.

19-1.2-123. Foster care placement.

(1) For a court to order foster care placement in a child custody proceeding involving an Indian child:

(a) The court must find by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that the Indian child's continued custody by the Indian child's parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

(b) The court must determine that the evidence required by subsection (1)(a) of this section shows a causal relationship between the particular conditions in the Indian child's domicile or residence and the likelihood that the continued custody of the Indian child in that domicile or residence will result in serious emotional or physical damage to the Indian child who is the subject of the child custody proceeding.

(2) Without a causal relationship shown pursuant to subsection (1)(b) of this section, if the evidence shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior, such evidence does not by itself constitute the clear and convincing evidence required for a finding that continued custody is likely to result in serious emotional or physical damage to the Indian child.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1811, § 2, effective August 6.

19-1.2-124. Tribal customary adoption.

(1) If the Indian child's parent, Indian custodian, or tribe provides notice to the court and the parties in writing or orally on the record that the Indian child's parent, Indian custodian, or tribe is pursuing a tribal customary adoption as a resolution to the child custody proceeding, the Indian child's parent, Indian custodian, or tribe must secure a motion to transfer the case to tribal court pursuant to section 19-1.2-118 within sixty-three days after receiving the notice. If the Indian

child's parent, Indian custodian, or tribe does not secure a motion to transfer the case within sixty-three days, the court may consider other permanency or placement options pursuant to this article 1.2 as a resolution to the child custody proceeding. Failure to secure the motion to transfer the case within sixty-three days does not prevent the Indian child's parent, Indian custodian, or tribe from filing a motion to transfer the case to a tribal court at a later date.

(2) Upon the request of the Indian child's tribe or another party to the case in which the tribal customary adoption was issued, the court shall certify a tribal customary adoption order and treat the order in accordance with the full faith and credit provisions set forth in section 19-1.2-131.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1811, § 2, effective August 6.

19-1.2-125. Termination of parental rights - tribal customary adoption exemption.

(1) Upon the filing of a motion to terminate the parent-child legal relationship, the court shall make a finding, subject to the procedures described in section 19-1.2-107 (2) and (3), regarding whether there is reason to know that the child is an Indian child.

(2) (a) If there is a finding that there is reason to know that the child is an Indian child, in addition to the statutory criteria outlined in section 19-3-604 and part 1 of article 5 of this title 19, the court shall make findings, supported by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that the parents' continued custody of the Indian child is likely to result in serious emotional or physical damage to the child.

(b) The court may not enter an order terminating parental rights of an Indian child unless:

(I) The court has offered the parties the opportunity to participate in mediation;

(II) Active efforts to reunite the Indian family did not eliminate the necessity for termination based on serious emotional or physical damage to the Indian child; and

(III) The court has considered and eliminated any less drastic alternatives to termination, including, but not limited to, allocation of parental responsibilities, guardianship, and tribal customary adoption.

(3) The evidence required pursuant to this section must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that continued custody of the Indian child by the Indian child's parent or parents will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not, by itself, establish a causal relationship as required by this section.

(4) A petitioning or filing party filing a motion to terminate parental rights of an Indian child shall document in the motion what efforts have been made to explore tribal customary adoption pursuant to section 19-1.2-124.

(5) If requested by the tribe, the termination order must include a provision that the petitioning or filing party maintain connections between the Indian child and the Indian child's tribe.

(6) The rights of one parent may be terminated without affecting the rights of the other parent.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1811, § 2, effective August 6.

19-1.2-126. Voluntary consent - foster care placement, relinquishment of parental rights, or adoption - requirements - when not valid.

(1) When a parent or Indian custodian voluntarily consents to a foster care, pre-adoptive, or adoptive placement or to terminate parental rights, the consent is not valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child is not valid.

(2) A parent or Indian custodian may withdraw consent to a foster care placement pursuant to state law at any time, and, upon such withdrawal, the Indian child must be returned to the parent or Indian custodian.

(3) In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the Indian child's parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination of parental rights or adoption, as the case may be, and the Indian child must be returned to the Indian child's parent.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1812, § 2, effective August 6.

19-1.2-127. Tribal-state agreements - purpose - requirements.

(1) (a) The state department shall continue to make good faith efforts to follow and revise tribal-state child welfare agreements with the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe. The state department shall revise a tribal-state child welfare agreement upon the request of, and in conjunction with, the requesting Indian tribe.

(b) The state department may also enter into a tribal-state child welfare agreement with any Indian tribe outside of Colorado that has a significant number of member children or membership-eligible children residing in this state.

(2) The purposes of a tribal-state child welfare agreement are to promote the continued existence and integrity of the Indian tribe as a political entity and to protect the vital interests of Indian children in securing and maintaining political, cultural, and social relationships with their tribe and family.

(3) A tribal-state child welfare agreement may include agreements regarding default jurisdiction over cases in which the state courts and tribal courts have concurrent jurisdiction; the transfer of cases between state courts and tribal courts; the assessment, removal, placement, custody, and adoption of Indian children; and any other child welfare services provided to Indian children.

(4) A tribal-state child welfare agreement must:

(a) Provide for the cooperative delivery of child welfare services to Indian children in Colorado, including the utilization, to the extent available, of services provided by the Indian tribe or an organization whose mission is to serve the American Indian or Alaska Native population to implement the terms of the tribal-state child welfare agreement; and

(b) If services provided by the Indian tribe or an organization whose mission is to serve the American Indian or Alaska Native population are unavailable, provide for the state department's use of community services and resources developed specifically for Indian families and that have the demonstrated capacity to provide culturally relevant and effective services to Indian children.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1813, § 2, effective August 6.

19-1.2-128. Collateral attack.

(1) After the entry of a final decree of adoption of an Indian child, the Indian child's parent may withdraw consent upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate the decree.

(2) Upon a finding that consent was obtained through fraud or duress, the court shall vacate the decree of adoption and order the return of the Indian child to the Indian child's parent.

(3) An adoption that has been effective for at least two years shall not be invalidated pursuant to this section unless otherwise permitted by state law.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1814, § 2, effective August 6.

19-1.2-129. Report.

(1) The state department shall compile any information that relates to the implementation of this article 1.2 and is required pursuant to 45 CFR 1355.44 concerning the adoption and foster care analysis and reporting system.

(2) (a) On or before July 1, 2027, and every odd-numbered year thereafter, the judicial department shall provide the following information for the prior two-year period to the state department:

(I) The number of Indian children involved in dependency and neglect proceedings;

(II) The dates out-of-home placement were ordered for Indian children in protective custody;

(III) The ratio of Indian children to non-Indian children in protective custody; and

(IV) The number of cases that were transferred to a tribal court pursuant to sections 19-1.2-118 and 19-1.2-119.

(b) On or before September 15, 2027, and every odd-numbered year thereafter, the state department shall compile the following information for the prior two-year period:

(I) Which tribes the Indian children who were in protective custody were members of or eligible for membership in;

(II) The number of Indian children in foster care;

(III) The number of Indian children placed in adoptive homes from the child welfare system; and

(IV) The number of available placements and common barriers to recruitment and retention of appropriate placements.

(c) No later than December 1, 2027, and every even-numbered year thereafter, the state department shall report the findings of the information compiled pursuant to subsections (2)(a) and (2)(b) of this section to the house of representatives health and human services committee,

the house of representatives judiciary committee, the senate health and human services committee, and the senate judiciary committee, or their successor committees.

(3) Notwithstanding the requirement in section 24-1-136 (11)(a)(I), the report required pursuant to this section continues indefinitely.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1814, § 2, effective August 6.

Editor's note: Subsection (3) was originally numbered as (2) in HB 25-1204 but was renumbered on revision for ease of location.

19-1.2-130. Conflict of laws.

(1) Except as provided in section 19-5-305, if any provision of this article 1.2 is found to provide a lower standard of protection to the rights of an Indian child or the Indian child's parent, Indian custodian, or tribe than the federal "Indian Child Welfare Act of 1978":

(a) The higher standard of protection in the federal "Indian Child Welfare Act of 1978" controls; and

(b) The conflicting provision does not render any remaining provisions of this article 1.2 inoperative that provide a higher standard of protection than the federal "Indian Child Welfare Act of 1978".

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1815, § 2, effective August 6.

19-1.2-131. Full faith and credit.

The court shall give full faith and credit to the public acts, records, and judicial proceedings of an Indian tribe applicable to an Indian child custody proceeding, including, but not limited to, tribal customary adoptions, to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity. By granting full faith and credit pursuant to this section, a tribal court order is enforceable pursuant to sections 13-53-102 and 13-53-103.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1815, § 2, effective August 6.

19-1.2-132. Rules.

The department of human services and the judicial department may adopt rules as necessary to implement this article 1.2.

Source: L. 2025: Entire article added, (HB 25-1204), ch. 338, p. 1815, § 2, effective August 6.

ARTICLE 1.5

Task Force Study to Recodify Code

19-1.5-101 to 19-1.5-106. (Repealed)

Editor's note: (1) This article was added in 1994 and was not amended prior to its repeal in 1997. For the text of this article prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 19-1.5-106 provided for the repeal of this article, effective July 1, 1997. (See L. 94, p. 1479.)

ARTICLE 2

The Colorado Juvenile Justice System

19-2-101 to 19-2-1305. (Repealed)

Source: L. 2021: Entire article repealed, (SB 21-059), ch. 136, p. 557, § 1, effective October 1.

Editor's note: (1) This title 19 was repealed and reenacted in 1987, and this article 2 was subsequently amended with relocations in 1996, effective January 1, 1997. For amendments to this article 2 prior to its repeal in 2021, consult the 2020 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 2 was relocated to article 2.5 of this title 19. Former C.R.S. section numbers are

shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 2, see the comparative tables located in the back of the index.

(2) (a) Changes by HB 21-1090 to § 19-2-104 (1)(a)(I) and (5) were harmonized with SB 21-059 and relocated to § 19-2.5-103 (1)(a)(I) and (5), respectively, effective October 1, 2021. For the law in effect from May 20, 2021, until the effective date of the relocation, see L. 2021, p. 901.

(b) (I) Changes by SB 21-066 to § 19-2-303 (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9) were harmonized with SB 21-059 and relocated to § 19-2.5-402 (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9), respectively, effective October 1, 2021. For the law in effect from April 29, 2021, until the effective date of the relocation, see L. 2021, p. 254.

(II) Changes by HB 21-1108 to § 19-2-303 (4)(c)(III) were harmonized with SB 21-066. All changes were subsequently harmonized with SB 21-059 and relocated to § 19-2.5-402 (4)(c)(III), effective October 1, 2021. For the law in effect from September 7, 2021, until the effective date of the relocation, see L. 2021, p. 891.

(c) Changes by SB 21-066 to § 19-2-202 were harmonized with SB 21-059 and relocated to § 19-2.5-1401, effective October 1, 2021. For the law in effect from April 29, 2021, until the effective date of the relocation, see L. 2021, p. 254.

(d) Changes by SB 21-071 to § 19-2-212 IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3) were harmonized with SB 21-059 and relocated to § 19-2.5-1404 IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3336.

(e) Changes by SB 21-071 to § 19-2-503 (3) were harmonized with SB 21-059 and relocated to § 19-2.5-204 (3), effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3333.

(f) (I) Changes by SB 21-071 to § 19-2-508 (3)(a)(VII)(C), (4)(e)(I), and (5) were harmonized with SB 21-059 and relocated to § 19-2.5-305 (3)(a)(VII)(C), (4)(e)(I), and (5), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3333.

(II) Changes by HB 21-1187 to § 19-2-508 (3)(b)(I) were harmonized with SB 21-059 and relocated to § 19-2.5-305 (3)(b)(I), effective July 1, 2024.

(g) Changes by SB 21-071 to § 19-2-509 IP(1), (2), (3), (4), (5), (6), (7), (8), and (10) were harmonized with SB 21-059 and relocated to § 19-2.5-306 IP(1), (2), (3), (4), (5), (6), (7), (8), and (9), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3334.

(h) Changes by HB 21-1187 to § 19-2-906 (2) were harmonized with SB 21-059 and relocated to § 19-2.5-1102 (2), effective July 1, 2024.

(i) Changes by HB 21-1214 to § 19-2-927 (9) were harmonized with SB 21-059 and relocated to § 19-2.5-910 (9), effective October 1, 2021. For the law in effect from September 7, 2021, until the effective date of the relocation, see L. 2021, p. 3029.

(j) Changes by SB 21-071 to § 19-2-1201 (4) and (5) were harmonized with SB 21-059 and relocated to § 19-2.5-1514 (4) and (5), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3335.

(k) Changes by SB 21-071 to § 19-2-1202 IP(1) and (1)(b) were harmonized with SB 21-059 and relocated to § 19-2.5-1405 IP(1) and (1)(b), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3335.

(l) Changes by SB 21-071 to § 19-2-1303 (4) were harmonized with SB 21-059 and relocated to § 19-2.5-704 (4), effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3336.

(3) (a) Section 19-2-103 (7) was repealed in HB 21-1315. That repeal was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the repeal of § 19-2-103 (7) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of Colorado 2021. (L. 2021, p. 3113.)

(b) Section 19-2-104 (9) was added in SB 21-271, effective March 1, 2022. However, that section was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021.

(c) Section 19-2-114 (1)(a), (1)(b), (2), and (3) was amended in HB 21-1315. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-114 (1)(a), (1)(b), (2), and (3) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of Colorado 2021. (L. 2021, p. 3106.)

(d) Section 19-2-115 was added in HB 21-1315. That section was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For § 19-2-115 in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of Colorado 2021. (L. 2021, p. 3115.)

(e) Section 19-2-303 (7) was amended in SB 21-066, effective July 1, 2023. However, that section was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021.

(f) Section 19-2-508 IP(3)(a)(VII) was amended in SB 21-071. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-508 IP(3)(a)(VII) in SB 21-071 in effect from July 6, 2021, to October 1, 2021, see chapter 463, Session Laws of Colorado 2021. (L. 2021, p. 3333.)

(g) Section 19-2-518 (1)(d) was repealed and reenacted in HB 21-1091. That repeal and reenactment was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the repeal and reenactment of § 19-2-518 (1)(d) in HB 21-1091 in effect from May 24, 2021, to October 1, 2021, see chapter 175, Session Laws of Colorado 2021. (L. 2021, p. 954.)

(h) Section 19-2-706 (2)(b) was repealed in HB 21-1315. That repeal was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the repeal of § 19-2-706 (2)(b) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of Colorado 2021. (L. 2021, p. 3108.)

(i) Section 19-2-905 (4) was amended in HB 21-1315. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-905 (4) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of Colorado 2021. (L. 2021, p. 3111.)

(j) Section 19-2-907 (6) was repealed in HB 21-1315. That repeal was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the repeal of § 19-2-907 (6) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of Colorado 2021. (L. 2021, p. 3112.)

(k) Section 19-2-925 IP(2)(a), (2)(a)(VII), (2)(a)(VIII), and (2)(a)(IX) was amended in HB 21-1315. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-925 IP(2)(a), (2)(a)(VII), (2)(a)(VIII), and (2)(a)(IX) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of Colorado 2021. (L. 2021, p. 3113.)

(l) Section 19-2-925.6 IP(1), (3)(a), (4), and (6) was amended in HB 21-1315. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-925.6 IP(1), (3)(a), (4), and (6) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of Colorado 2021. (L. 2021, p. 3110.)

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PART 1

GENERAL PROVISIONS

19-2.5-101. Legislative declaration.

(1) (a) The general assembly finds that the intent of this article 2.5 is to protect, restore, and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law and, in certain cases, will also provide the opportunity to bring together affected victims, the community, and juvenile offenders for restorative purposes.

(b) The general assembly further finds that, while holding paramount the public safety, the juvenile justice system must take into consideration the best interests of the juvenile, the victim, and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society.

(2) The general assembly finds that the public has the right to safe and secure homes and communities and that when a delinquent act occurs, safety and security is compromised; and the result is harm to the victim, the community, and the juvenile offender. The general assembly finds that the juvenile justice system should seek to repair such harm and that victims and communities should be provided with the opportunity to elect to participate actively in a restorative process that would hold the juvenile offender accountable for the offense.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 557, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-102 (1) and (2) as it existed prior to 2021.

ANNOTATION

Law reviews. For note, "In re Gault and the Colorado Children's Code", see 44 Den. L. J. 644 (1967).

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

Design of the Colorado Children's Code. The code was designed to benefit youthful offenders. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

Construction of the Colorado Children's Code. The code should not be construed to diminish the rights of youthful

offenders. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

Procedural safeguards to curb administrative abuse. Procedural safeguards in article 2 were established to curb possible abuse inherent in informal administrative practices in an area involving both the parents' and the child's rights. P.F.M. v. Dist. Court, 184 Colo. 393, 520 P.2d 742 (1974).

The Colorado Children's Code requires balancing. Because the code is for the benefit and best interests of all Colorado's children, a balancing effect must take place. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

There is a very fundamental difference between a criminal proceeding and a delinquency proceeding, and the clear legislative intent is that the handling of juvenile delinquents should be oriented towards rehabilitation and reformation, and not punishment as such, even though the actions of the child if committed by an adult would justify a criminal proceeding. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967).

But juvenile cases must accord due process. There is no constitutional requirement that proceedings in juvenile cases shall be conducted according to the criminal law, or that proceedings need take any particular form, so long as the essentials of due process and fair treatment are accorded. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

19-2.5-102. Definitions.

In addition to the terms defined in section 19-1-103, as used in this article 2.5, unless the context otherwise requires:

(1) "Adjudication" means a determination by the court that it has been proven beyond a reasonable doubt to the trier of fact that a juvenile has committed a delinquent act or that a juvenile has pled guilty to committing a delinquent act. In addition, when a previous conviction must be pled and proven as an element of an offense or for purposes of sentence enhancement, "adjudication" means conviction.

(2) "Adjudicatory trial" is defined in section 19-1-103.

(3) "Adult" is defined in section 19-1-103.

(4) "Basic identification information" is defined in section 19-1-103.

(5) "Behavioral health" has the same meaning as set forth in section 27-60-100.3.

(6) "Child" means a person under eighteen years of age.

(7) "Commit" is defined in section 19-1-103.

(8) Repealed.

(9) "Cost of care" is defined in section 19-1-103.

(10) "County department" is defined in section 19-1-103.

(11) "Crossover youth plan" means the portion of the annual plan described in section 19-2.5-302 and devised in each judicial district by the juvenile services planning committee that outlines identification and notification of dually identified crossover youth as described in section 19-2.5-302.

(12) "Delinquent act" is defined in section 19-1-103.

(13) "Detention" is defined in section 19-1-103.

(14) "Determinate period" means that the department of human services may not transfer legal or physical custody of a juvenile until the juvenile has completed the period of commitment imposed by the court, unless otherwise ordered by the court; except that the department of human services may release the juvenile on parole prior to completion of the determinate period, pursuant to section 19-2.5-1203.

(15) "Diagnostic and evaluation center" means a facility for the examination and study of persons committed to the custody of the department of human services.

(16) "Director" means the executive director of the department of public safety.

(17) (a) "Diversion" means a decision made by a person with authority or a delegate of that person that results in specific official action of the legal system not being taken in regard to a specific juvenile or child and in lieu thereof providing or referring the juvenile or child to an individually designed program or activity, if necessary, provided by district attorneys' offices, governmental units, or nongovernmental units. The goal of diversion is to prevent further involvement of the juvenile or child in the formal legal system.

(b) Diversion of a juvenile or child may take place either at the prefiling level as an alternative to the filing of a petition pursuant to section 19-2.5-502 or postfiling as an alternative to adjudication. Services may include restorative justice practices as defined in subsection (45) of this section.

(18) "Division of youth services" or "division" means the division of youth services, created in section 19-2.5-1501.

(19) "Dually identified crossover youth" means youth who are currently involved in the juvenile justice system and the child welfare system or have a history in the child welfare system that includes, but is not limited to, a family assessment response service plan or an open case.

(20) Repealed.

(21) "Gang", as used in sections 19-2.5-305 and 19-2.5-1504, means a group of three or more individuals with a common interest, bond, or activity characterized by criminal or delinquent conduct, engaged in either collectively or individually.

(22) "Governmental unit", as used in sections 19-2.5-402, 19-2.5-1502, and 19-2.5-1519, means any county, city and county, city, town, judicial district attorney's office, or school district.

(23) "Guardian ad litem" is defined in section 19-1-103.

(24) "Halfway house" means a group care facility for juveniles who have been placed on probation or parole pursuant to the terms of this article 2.5.

(25) Repealed.

(26) "Indian child" is defined in section 19-1-103.

(27) "Intellectual and developmental disability" means a disability that is manifested before the person reaches his or her twenty-second birthday, that constitutes a substantial disability to the affected individual, and that is attributable to an intellectual disability or other neurological conditions when those conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability. Unless otherwise specifically stated, the federal definition of "developmental disability", 42 U.S.C. sec. 15002 (8), does not apply.

(28) "Juvenile" is defined in section 19-1-103.

(29) "Juvenile community review board" means any board appointed by a board of county commissioners for the purpose of reviewing community placements pursuant to this article 2.5. A juvenile community review board, if practicable, includes but is not limited to a representative from a county department of human or social services, a local school district, a local law enforcement agency, a local probation department, a local bar association, the division of youth services, and private citizens.

(30) "Juvenile court" or "court" is defined in section 19-1-103.

(31) "Juvenile delinquent" means a juvenile who has been found guilty of a delinquent act.

(32) "Mental capacity" means a juvenile's capacity to meet all of the following criteria:

(a) Appreciate the charges or allegations against the juvenile;

(b) Appreciate the nature of the adversarial process, which includes having a factual and rational understanding of the participants in the proceeding and their roles, including the judge, defense counsel, prosecutor, and, if applicable, the guardian ad litem and the jury;

(c) Appreciate the range and nature of allowable dispositions that may be imposed by the court;

(d) Have the ability to communicate to counsel information known to the juvenile regarding the allegations against the juvenile, as well as information relevant to the proceeding at issue; and

(e) Understand and appreciate the right to testify and to voluntarily exercise the right.

(33) "Mental health disorder" means a substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability and significantly interferes with adaptive behavior. "Mental health disorder" does not include acute intoxication from alcohol or other substances, any condition manifested only by antisocial behavior, or any substance abuse impairment resulting from recent use or withdrawal. However, substance abuse that results in a long-term, substantial disorder of thought, mood, or cognitive ability may constitute a mental health disorder.

(34) "Mental health hospital placement prescreening" means a face-to-face mental health examination conducted by a mental health professional to determine whether a child should be placed in a facility for evaluation pursuant to section 27-65-106. The prescreening may include consultation with other mental health professionals and review of all available records on the child.

(35) "Office of alternate defense counsel" means the office of alternate defense counsel created and existing pursuant to section 21-2-101.

(36) "Office of the state public defender" means the office of state public defender created and existing pursuant to section 21-1-101.

(37) "Parent" is defined in section 19-1-103.

(38) "Peace officer" has the same meaning as set forth in section 16-2.5-101.

(39) "Physical custodian", as used in sections 19-2.5-203 and 19-2.5-501, means a guardian, whether or not appointed by court order, with whom the juvenile has resided.

(40) "Reasonable efforts" is defined in section 19-1-103.

(41) "Receiving center" means a facility used by the department of human services to provide temporary detention and care for juveniles pending placement in a training school, camp, or other facility.

(42) "Repeat juvenile offender" is described in section 19-2.5-1125 (2).

(43) "Residential community placement" means any placement for residential purposes permitted pursuant to this title 19, except in an institutional facility directly operated by, or a secure facility under contract with, the department of human services and except while a juvenile is under the jurisdiction of the juvenile parole board.

(44) Repealed.

(45) (a) "Restorative justice" means those practices that emphasize repairing the harm to the victim and community caused by delinquent acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include but need not be limited to apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.

(b) Any statements made during the restorative justice process are confidential and must not be used against the juvenile, or as a basis for charging or prosecuting the juvenile, unless the juvenile commits a chargeable offense during the process.

(c) Nothing precludes a person from reporting child abuse or neglect when required pursuant to section 19-3-304 or a mental health provider from complying with a duty to warn pursuant to section 13-21-117 (2).

(46) "Screening team" means the person or persons designated, pursuant to rule 3.7 of the Colorado rules of juvenile procedure, by the chief judge in each judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court to make recommendations to the juvenile court concerning whether a juvenile taken into temporary custody should be released or admitted to a detention or shelter facility pursuant to section 19-2.5-305.

(47) "Sentencing hearing" means a hearing to determine what sentence must be imposed on a juvenile delinquent or what other order of disposition must be made concerning a juvenile delinquent, including commitment. A sentencing hearing may be part of the proceeding that includes the adjudicatory trial, or it may be held at a time subsequent to the adjudicatory trial.

(48) "Staff secure facility" means a group facility or home at which each juvenile is continuously under staff supervision and at which all services, including education and treatment, are provided on site. A staff secure facility may or may not be a locked facility.

(49) "Standardized mental health disorder screening" means the mental health disorder screening conducted using the juvenile standardized screening instruments and the procedures adopted pursuant to section 16-11.9-102.

(50) "Status offense" has the same meaning as defined in federal law in 28 CFR 31.304, as amended.

(51) "Temporary holding facility" is defined in section 19-1-103.

(52) "Training school" means an institution providing care, education, treatment, and rehabilitation for juveniles in a closed setting and includes a regional center established in part 3 of article 10.5 of title 27.

(53) "Victim", as used in this article 2.5, means any party immediately and directly aggrieved by the juvenile or youth; that party's spouse; the party's parent, sibling, or child who is living with the party; a victim compensation board that has paid a victim compensation claim; a person or entity that has suffered losses because of a contractual relationship with such party, including an insurer or because of liability under section 14-6-110; or, in the absence of any of the above, the state.

(54) "Youth" is defined in section 19-1-103.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 558, § 2, effective October 1; (20) repealed, (HB 21-1315), ch. 461, p. 3118, § 29, effective October 1. **L. 2022:** (34) amended, (HB 22-1256), ch. 451, p. 3229, § 29, effective August 10. **L. 2023:** (8), (25), and (44) repealed, (HB 23-1012), ch. 205, p. 1043, § 1, effective August 7.

Editor's note: This section is similar to former § 19-2-103 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021.

19-2.5-103. Jurisdiction.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings:

(a) Concerning any juvenile ten years of age or older who has violated:

(I) Any federal or state law, except nonfelony state traffic, game and fish, and parks and recreation laws or rules; the offense specified in section 18-13-122, concerning the illegal possession or consumption of ethyl alcohol or marijuana by an underage person or illegal possession of marijuana paraphernalia by an underage person; the offenses specified in section 18-18-406 (5)(b)(I) and (5)(b)(II), concerning marijuana and marijuana concentrate; the offenses specified in section 18-18-434, concerning natural medicine and natural medicine product; and the civil infraction in section 18-7-109 (3), concerning exchange of a private intimate image or intimate digital depiction by a juvenile;

(II) Any county or municipal ordinance except traffic ordinances, the penalty for which may be a jail sentence of more than ten days; or

(III) Any lawful order of the court made pursuant to this title 19;

(b) Concerning a juvenile to whom section 19-2.5-802 applies; except that, after filing charges in the juvenile court but prior to the time that the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to section 19-2.5-801. Upon such filing or indictment in the district court, the juvenile court no longer has jurisdiction over proceedings concerning such charges.

(2) The juvenile court has limited jurisdiction in matters to which section 19-2.5-801 applies.

(3) The fact that a juvenile has been prosecuted or convicted in the county court for a nonfelony violation pursuant to title 42 is not a bar to a subsequent or parallel proceeding pursuant to this title 19 for delinquent acts arising out of the same criminal episode; nor are proceedings pursuant to this title 19 a bar to a subsequent or parallel prosecution in the county court for a nonfelony violation pursuant to title 42 for the same delinquent acts arising from the same criminal episode.

(4) Notwithstanding any other provision of this section to the contrary, the juvenile court may exercise jurisdiction over a juvenile who is under sixteen years of age and who has violated a traffic law or ordinance if the juvenile's case is transferred to the juvenile court from the county court. Such a transfer is subject to approval by the juvenile court.

(5) Notwithstanding any other provision of this section to the contrary, the juvenile court and the county court have concurrent jurisdiction over a juvenile who is under eighteen years of age and who is charged with a violation of section 18-13-122, 18-18-406 (5)(b)(I) and (5)(b)(II), 18-18-428, 18-18-429, 18-18-430, 18-18-434, or 42-4-1301; except that, if the juvenile court accepts jurisdiction over such a juvenile, the county court jurisdiction terminates.

(6) The juvenile court may retain jurisdiction over a juvenile until all orders have been fully complied with by such person, or any pending cases have been completed, or the statute of limitations applicable to any offense that may be charged has run, regardless of whether such person has attained the age of eighteen years, and regardless of the age of such person.

(7) This section does not confer any jurisdiction upon the court over a person for any offense committed after the person attains the age of eighteen years.

(8) Notwithstanding any other provision of this section to the contrary, the juvenile court may exercise jurisdiction over a juvenile to determine the legal custody of a juvenile or to appoint a guardian of the person or legal custodian of any child who comes within the juvenile court's jurisdiction pursuant to section 19-1-104.

(9) If a juvenile is charged with a civil infraction and is not charged with an additional offense that would constitute a criminal offense if charged against an adult, the county court has jurisdiction over the civil infraction.

Source: L. 2021: (1)(a)(I) and (5) amended, (HB 21-1090), ch. 157, p. 901, § 5, effective May 20; entire article added with relocations, (SB 21-059), ch. 136, p. 564, § 2, effective October 1; (9) added, (SB 21-271), ch. 462, p. 3220, § 388, effective March 1, 2022. **L. 2023:** (1)(a)(I) and (5) amended, (SB 23-290), ch. 249, p. 1420, § 36, effective July 1. **L. 2025:** (1)(a)(I) amended, (SB 25-288), ch. 339, p. 1833, § 5, effective August 6.

Editor's note: (1) This section is similar to former § 19-2-104 as it existed prior to 2021.

(2) Subsections (1)(a)(I) and (5) were numbered as 19-2-104 (1)(a)(I) and (5) in HB 21-1090 (see L. 2021, p. 901). Those provisions were harmonized with subsections (1)(a)(I) and (5) of this section as they appear in SB 21-059.

ANNOTATION

Law reviews. For article, "Prosecution of Juveniles in Colorado Municipal Courts", see 21 Colo. Law. 1151 (1992). For article, "New Juvenile Justice Laws Increase Options for Youth", see 42 Colo. Law. 37 (Apr. 2013).

Annotator's note. Since § 19-2.5-103 is similar to § 19-2-104 as it existed prior to the 2021 amendments relocating repealed article 2 of title 19 to this article 2.5, relevant cases decided under former provisions similar to that section have been included in the annotations to this section.

Age at which acts are committed is determinative factor as to the applicability of the Colorado Children's Code. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989).

A juvenile's age at the time of an offense is a matter of jurisdiction. People in Interest of P.K., 2015 COA 121, 411 P.3d 963.

When a range of dates on a delinquency petition charge an offense, both dates must fall within the jurisdiction of the juvenile court. If not, the juvenile court lacks jurisdiction over the delinquency petition and any admission of the petition by the juvenile. People in Interest of P.K., 2015 COA 121, 411 P.3d 963.

Juvenile court may retain jurisdiction over juvenile who was adjudicated delinquent until any restitution order is fully complied with, even though it may subject him to the court's jurisdiction

indefinitely into his adult years. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

This section is inapplicable where there has been no adjudication concerning the petitioner in the juvenile court. Jaramillo v. Dist. Court, 173 Colo. 459, 480 P.2d 841 (1971).

No new trial where court terminates jurisdiction. A new trial cannot be held upon reversal where the trial court, at a hearing subsequent to its order adjudging respondent a delinquent child, terminated its jurisdiction pursuant to this section. People in Interest of J.S.C. v. J.S.C., 30 Colo. App. 381, 493 P.2d 671 (1972).

Since a person under age 18 can only be charged with an offense in the manner permitted by the Colorado Children's Code, the county court had no jurisdiction to entertain or to dispose of the merits of the proceeding involving an offense alleged against a juvenile and was without authority to go further than merely dismissing the case without prejudice for lack of jurisdiction. People in Interest of C.O., 870 P.2d 1266 (Colo. App. 1994).

Prosecution of juveniles under municipal ordinance does not conflict with Colorado Children's Code and, although municipalities are not prohibited from adopting same procedures as the Children's Code, municipalities are not required to follow such procedures. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Colorado Children's Code does not require that juvenile proceedings in municipal courts be civil in nature as Children's Code and ordinances of municipality on juvenile proceedings do not conflict. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Intent of general assembly that Colorado Children's Code apply only to juvenile proceedings in juvenile court, and not to municipal court proceedings involving prosecution of juveniles under municipal ordinances. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Juvenile court to take judicial notice of municipal ordinances. A court of the juvenile division of the district court should take judicial notice of those municipal ordinances within the contemplation of the juvenile code, when the municipalities are within the judicial district where the juvenile court sits. People v. Hight, 198 Colo. 299, 599 P.2d 885 (1979).

Juveniles to receive same trial rights as adults. The juvenile court's assumption of jurisdiction carries with it the same trial duties as to juveniles who have violated municipal ordinances, as a municipal court has to adults who violated the same ordinances. People v. Hight, 198 Colo. 299, 599 P.2d 885 (1979).

Delinquency proceeding and child in need of supervision proceeding compared. In delinquency proceedings, the child stands charged with activity which would constitute a crime if done by an adult. In contrast, a child in need of supervision proceeding determines whether the child is a truant, a runaway, or a danger to himself or others. People in Interest of Y.D.M., 197 Colo. 403, 593 P.2d 1356 (1979).

Juvenile court lacks exclusive jurisdiction. Where the violation charged is of a municipal ordinance that does not carry a jail sentence, the general assembly has not intended by the Colorado Children's Code to give sole and exclusive jurisdiction to the juvenile court. Wigent v. Shinsato, 43 Colo. App. 83, 601 P.2d 653 (1979).

Application of former subsection (9)(c) (now subsection (4)). Although subsection (9)(c) (now subsection (4)) gives the juvenile court jurisdiction over a traffic offender under 16 years of age whose case has been transferred from county court, this provision obviously does not apply to a 16 year old who holds a valid Colorado driver's license. People v. Maynes, 39 Colo. 153, 562 P.2d 756 (1977).

The intent of the Colorado Children's Code is to restrict the institution of felony charges in a criminal proceeding against one under 18 years of age. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970); D.W. v. Dist. Court, 193 Colo. 194, 564 P.2d 949 (1976).

The juvenile court has exclusive original jurisdiction of proceedings concerning any delinquent child, which proceeding is to be distinguished from a true criminal proceeding. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967); I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

It has jurisdiction over a petition in delinquency alleging vehicular homicide, which is not excluded by the Colorado Children's Code as a "traffic offense". I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

But not over child leaving home to be married. The mere fact that a minor child left the home of her mother and was taken by respondent to a neighboring state and was married does not show her to be a delinquent under the statute, such as to give the court jurisdiction. Spencer v. People in Interest of Spencer, 133 Colo. 196, 292 P.2d 971 (1956).

The district court still retains original jurisdiction in all criminal cases. This is so because a delinquency proceeding is not a criminal case. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967).

The district attorney may not directly file charges in district court where the identical charges were initially filed in juvenile court and a transfer hearing is pending. J.D.C. v. Dist. Court 18th Jud. Dist., 910 P.2d 684 (Colo. 1996) (decided prior to amendment of subsection (1)(b) specifically authorizing direct filing under such circumstances).

Exception to juvenile court's exclusive jurisdiction in cases where prosecution directly files charges. Under the plain language of subsection (1)(b) of this section and §§ 19-2-517 (2) and 19-2-518 (2), a prosecutor has discretion to proceed charging alleged juvenile offenders who are eligible to be charged as adults by means of a direct filing in district court until such time as the juvenile court actually conducts a transfer hearing. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Because the conducting of a transfer hearing is the only event that vests the juvenile court with exclusive jurisdiction

and the juvenile court had not conducted a transfer hearing before the prosecution directly filed the information, the district court had jurisdiction. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

When a juvenile is charged in Denver district court as a result of a direct file and the offense that permitted the direct file is dismissed, the Denver district court no longer has subject matter jurisdiction over the additional charge that was not eligible for direct file. The Denver juvenile court has exclusive jurisdiction over that charge. People v. Sandoval, 2016 COA 57, 383 P.3d 92.

Defendant's conviction in the Denver district court, therefore, is a nullity and must be vacated. People v. Sandoval, 2016 COA 57, 383 P.3d 92.

Jurisdiction not affected by removing case from docket. A trial court order removing a parental rights termination case from the docket of cases maintained by the court did not affect the court's continuing statutory jurisdiction over the child involved. People in Interest of T.A.F. v. B.F., 624 P.2d 349 (Colo. App. 1980).

This section allows the juvenile court's jurisdiction to continue until the juvenile completes any sentence imposed, regardless of whether the juvenile reaches 18 years of age prior to completion of the sentence. Thus, where the 18-year-old defendant escaped while serving a juvenile sentence, he remained under the continuing jurisdiction of the juvenile court and was a "juvenile" for purposes of § 18-8-210.1, the juvenile custody and confinement statute, and subject to the provisions of § 18-8-208, the felony escape statute. People v. Young, 908 P.2d 1147 (Colo. App. 1995).

Applied in People in Interest of Maddox v. Dist. Court, 198 Colo. 208, 597 P.2d 573 (1979).

19-2.5-104. Venue.

(1) (a) Proceedings in cases brought pursuant to this article 2.5 must be commenced in the county in which the alleged violation of the law, ordinance, or court order took place; except that the court may order a change of venue based upon written findings that a change of venue is necessary to ensure that the juvenile receives a fair trial, in which case venue must be transferred to an appropriate jurisdiction prior to the findings of fact. When the court in which the petition was filed is in a county other than where the juvenile resides, such court may transfer venue to the court of the county of the juvenile's residence for the purposes of supervision after sentencing and entry of any order for payment of restitution. A transfer of venue may not be rejected for any reason except where venue would be improper.

(b) For purposes of determining proper venue, a juvenile who is placed in the legal custody of a county department of human or social services is deemed for the entire period of placement to reside in the county in which the juvenile's legal custodian is located, even if the juvenile is physically residing in a residential facility located in another county. If a juvenile is placed in the

legal custody of a county department of human or social services, the court shall not transfer venue during the period of placement to any county other than the county in which the juvenile's legal custodian is located.

(2) In determining proper venue, section 18-1-202 applies.

(3) A court transferring venue pursuant to this section shall transmit all documents and legal social records, or certified copies of such documents, to the receiving court. The receiving court shall then proceed with the case as if the petition had been originally filed or the adjudication had been originally made in such court.

(4) Upon transfer of venue, the receiving court shall set a date not more than thirty-five days following the date upon which the change of venue is ordered for the juvenile and the juvenile's parent or guardian to appear.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 565, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-105 as it existed prior to 2021.

ANNOTATION

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

No authority for transfer to certain counties. There is no statutory authority for transfer of a juvenile case to a county which is neither the county where the offense occurred nor the county of the accused juvenile's residence. People v. Dist. Court, 191 Colo. 28, 549 P.2d 1317 (1976).

Motion for change of venue untimely in delinquency hearing where merits already adjudicated. A change of venue is properly a pretrial motion to have the merits of the action adjudicated in the correct forum and county. Accordingly, such a motion is untimely in a juvenile delinquency hearing if the merits have already been adjudicated in their entirety, which occurs with the determination that the allegations in the original petition are true and the finding that the child is a juvenile delinquent. People in Interest of Maddox v. Dist. Court, 198 Colo. 208, 597 P.2d 573 (1979).

19-2.5-105. Representation of petitioner.

In all matters pursuant to this article 2.5, the district attorney shall represent the petitioner.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 566, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-106 as it existed prior to 2021.

ANNOTATION

Annotator's note. The following annotations include a case decided under a former provision similar to this section.

Any person proceeded against in court is entitled to counsel of his or her own choosing, and the selection of such counsel cannot be dictated by those who instigate the action. Selby v. Jacobucci, 142 Colo. 52, 349 P.2d 567 (1960).

In a proceeding following a complaint filed by parents of an allegedly delinquent minor 17 years of age, who had selected her own counsel to represent her, an order of the trial court incorporating the parents' request that such counsel be prohibited from appearing or representing such minor was in excess of its jurisdiction. Selby v. Jacobucci, 142 Colo. 52, 349 P.2d 567 (1960).

19-2.5-106. Victim's right to attend dispositional, review, and restitution proceedings.

The victim of any delinquent act, or a relative of the victim, if the victim has died, has the right to attend all dispositional, review, and restitution proceedings resulting from the adjudication of such act. The victim or the victim's relative has the right to appear at the proceedings personally or with counsel and to adequately and reasonably express the victim's views concerning the act, the juvenile, the need for restitution, and the type of dispositional orders that the court should issue. When issuing such orders, the court shall consider the statements made by the victim, or the victim's relative, and shall make a finding, on the record, when appropriate, as to whether the juvenile would pose a threat to public safety if granted probation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 566, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-112 as it existed prior to 2021.

19-2.5-107. Parental accountability - legislative intent.

(1) (a) The parent, guardian, or legal custodian of any juvenile subject to proceedings pursuant to this article 2.5 is required to attend all proceedings that may be brought pursuant to this article 2.5 concerning the juvenile. The court may impose contempt sanctions against the parent, guardian, or legal custodian for failure, without good cause, to attend any proceeding concerning the juvenile; except that, if the juvenile's legal custodian is a county department of human or social services or the state department of human services, the legal custodian need not attend any proceeding at which the juvenile's guardian ad litem is present.

(b) For any juvenile adjudicated pursuant to this article 2.5, the court may specify its expectations for the juvenile's parent, guardian, or legal custodian, so long as the parent, guardian, or legal custodian is a party to the delinquency proceedings.

(2) (a) The general assembly determines that families play a significant role in the cause and cure of delinquent behavior of children. It is therefore the intent of the general assembly that parents cooperate and participate significantly in the assessment and treatment planning for their children.

(b) Any treatment plan developed pursuant to this article 2.5 may include requirements to be imposed on the juvenile's parent, so long as the parent is a party to the delinquency proceedings. These requirements may include, but are not limited to, the following:

(I) Maximum parent involvement in the sentencing orders;

(II) Participation by the parent in parental responsibility training;

(III) Cooperation by the parent in treatment plans for the juvenile;

(IV) Performance of public service by the parent;

(V) Cost of care reimbursement by the parent;

(VI) Supervision of the juvenile; and

(VII) Any other provisions the court deems to be in the best interests of the juvenile, the parent's other children, or the community.

(c) Any parent who is a party to the delinquency proceedings and who fails to comply with any requirements imposed on the parent in a treatment plan may be subject to contempt sanctions.

(d) The court has discretion to exempt the parent from participation in the juvenile's treatment.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 566, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-113 as it existed prior to 2021.

ANNOTATION

Although a parent may be held in contempt pursuant to this section, the court is not permitted to impose a suspended jail sentence against a parent to attempt to prevent a failure to comply with the court's order regarding the juvenile's treatment plan. People v. J.M., 22 P.3d 545 (Colo. App. 2000) (decided under former law).

19-2.5-108. Effect of proceedings - definition.

(1) An adjudication or proceeding pursuant to this article 2.5 is not equivalent to an adult conviction of a criminal offense and must not impose any civil disability upon a juvenile or disqualify or prejudice the juvenile from holding any position under the state personnel system or submitting any governmental or military service application or receiving any governmental or military service appointment or from holding public office.

(2) (a) An employer, whether a public entity or private individual or entity, shall not ask an applicant for employment of any age to disclose information related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the applicant was subject to the process and jurisdiction of the juvenile court and an applicant of any age is not required to disclose such information in response to any employer inquiry.

(b) Nothing in this section limits public access to information as set forth in section 19-1-304 (1)(b.5) or (5).

(c) The provisions of this subsection (2) do not apply to the screening of applicants who have direct contact with vulnerable persons pursuant to section 27-90-111 or the screening of applicants required by licensed child care centers pursuant to section 26-6-905 or 26.5-5-309.

(d) The provisions of this subsection (2) do not apply to any law enforcement agency of the state or to any political subdivision.

(e) As used in this subsection (2), a "condition of employment" means hiring, promotion, termination, participating in an apprenticeship training program, or a training program that leads to employment.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1. **L. 2022:** Entire section amended, (HB 22-1383), ch. 365, p. 2604, § 3, effective August 10.

Editor's note: This section is similar to former § 19-2-111 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 22-1383, see section 1 of chapter 365, Session Laws of Colorado 2022.

19-2.5-109. Saving clause.

The repeal of article 2 of this title 19 and the enactment of this article 2.5, effective October 1, 2021, do not affect the validity of any actions or proceedings initiated or in existence prior to such effective date and brought pursuant to the legislative provisions in place prior to such effective date.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1; entire section amended, (SB 21-266), ch. 423, p. 2800, § 15, effective October 1.

19-2.5-110. Outstanding balances owed by juveniles - report - repeal. (Repealed)

Source: L. 2021: Entire section added, (HB 21-1315), ch. 461, p. 3119, § 31, effective October 1.

Editor's note: Subsection (3) provided for the repeal this section, effective June 30, 2025. (See L. 2021, p. 3119.)

PART 2

INVESTIGATIONS AND LAW ENFORCEMENT

19-2.5-201. Preliminary investigation.

(1) Whenever it appears to a law enforcement officer or any other person that a juvenile is or appears to be within the court's jurisdiction, as provided in section 19-2.5-103, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the district attorney, who shall determine whether the interests of the juvenile or of the community require further action.

(2) Upon the district attorney's request, the matter may be referred to any agency for an investigation and recommendation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-510 as it existed prior to 2021.

19-2.5-202. Consent to search.

In determining the voluntariness of a juvenile's consent to a search or seizure, the court shall consider the totality of the circumstances.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-506 as it existed prior to 2021.

ANNOTATION

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

This section and former § 19-2-209 (4) (now § 19-2-803 (4)) contain proper test to measure validity of consent to search given by juvenile in noncustodial setting. People in Interest of S.J., 778 P.2d 1384 (Colo.

1989); People in Interest of R.A., 937 P.2d 731 (Colo. 1997).

19-2.5-203. Statements - definitions.

(1) A statement or admission of a juvenile made as a result of the custodial interrogation of the juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile are not admissible in evidence against the juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation and the juvenile and the juvenile's parent, guardian, or legal or physical custodian were advised of the juvenile's right to remain silent and that any statements made may be used against the juvenile in a court of law, of the juvenile's right to the presence of an attorney during such interrogation, and of the juvenile's right to have counsel appointed if the juvenile so requests at the time of the interrogation; except that, if a public defender or counsel representing the juvenile is present at such interrogation, such statements or admissions may be admissible in evidence even though the juvenile's parent, guardian, or legal or physical custodian was not present.

(2) (a) Notwithstanding subsection (1) of this section, statements or admissions of a juvenile may be admissible in evidence, notwithstanding the absence of a parent, guardian, or legal or physical custodian, if the court finds that, under the totality of the circumstances, the juvenile made a knowing, intelligent, and voluntary waiver of rights and:

(I) The juvenile is eighteen years of age or older at the time of the interrogation or the juvenile misrepresents his or her age as being eighteen years of age or older and the law enforcement official acts in good-faith reliance on such misrepresentation in conducting the interrogation;

(II) The juvenile is emancipated from the parent, guardian, or legal or physical custodian; or

(III) The juvenile is a runaway from a state other than Colorado and is of sufficient age and understanding.

(b) For the purposes of this subsection (2), "emancipated juvenile" means a juvenile over fifteen years of age and under eighteen years of age who has, with the real or apparent assent of the juvenile's parents, demonstrated independence from the juvenile's parents in matters of care, custody, and earnings. The term may include, but is not limited to, any such juvenile who has the sole responsibility for the juvenile's own support, who is married, or who is in the military.

(3) Notwithstanding subsection (1) of this section, statements or admissions of a juvenile are not inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the juvenile was accompanied by a responsible adult who was a custodian of the juvenile or assuming the role of a parent at the time.

(4) For the purposes of this section, "physical custodian" is defined in section 19-2.5-102.

(5) Notwithstanding subsection (1) of this section, the juvenile and the juvenile's parent, guardian, or legal or physical custodian may expressly waive the requirement that the parent, guardian, or legal or physical custodian be present during the juvenile's interrogation. This express waiver must be in writing and must be obtained only after full advisement of the juvenile and the juvenile's parent, guardian, or legal or physical custodian of the juvenile's rights prior to the taking of the custodial statement by a law enforcement official. If said requirement is expressly waived, statements or admissions of the juvenile are not inadmissible in evidence by reason of the absence of the juvenile's parent, guardian, or legal or physical custodian during interrogation. Notwithstanding the requirements of this subsection (5), a county department of human or social services and the state department of human services, as legal or physical custodian, may not waive said requirement.

(6) Notwithstanding subsection (1) of this section, statements or admissions of a juvenile are not inadmissible into evidence by reason of the absence of a parent, guardian, or legal or physical custodian, if the juvenile makes any deliberate misrepresentations affecting the applicability or requirements of this section and a law enforcement official, acting in good faith and in reasonable reliance on such deliberate misrepresentation, conducts a custodial interrogation of the juvenile that does not comply with the requirements of subsection (1) of this section.

(7) (a) Notwithstanding any provisions of this section to the contrary, if the juvenile asserts that statements made during the custodial interrogation are inadmissible because a responsible adult had an interest adverse to the juvenile, the prosecution, as part of its burden of proof at a hearing on a motion to suppress the statements, must show by a preponderance of the evidence that the person interrogating the juvenile reasonably believed that the responsible adult did not have any interests adverse to those of the juvenile and that the responsible adult was able to provide protective counseling to the juvenile concerning the juvenile's rights during the interrogation.

(b) For purposes of this subsection (7):

(I) "Protective counseling" means an ongoing opportunity to offer guidance and advice concerning the juvenile's right to remain silent and to obtain retained or appointed counsel associated with the custodial interrogation; and

(II) "Responsible adult" means a parent, guardian, legal or physical custodian, or other responsible adult who was a custodian of the juvenile or who assumed the role of a parent at the time of the interrogation.

(8) (a) A statement or admission by a juvenile made as a result of the juvenile's custodial interrogation by a law enforcement official or agent is presumptively inadmissible against the juvenile at trial if the law enforcement official or agent knowingly communicated any untruthful information or belief to obtain the statement or admission, unless the prosecution establishes at an evidentiary hearing prior to trial, by a preponderance of the evidence and based on the totality

of the circumstances, that the statement or admission was made voluntarily despite the untruthful information or belief used to obtain the statement or admission or that the law enforcement official in good faith reasonably believed the information or belief was true at the time it was used. In assessing the totality of the circumstances, the court shall consider all evidence presented concerning the juvenile's vulnerability to any untruthful information or belief used during the custodial interrogation.

(b) A law enforcement official or agent shall electronically record all juvenile custodial interrogations pursuant to section 16-3-601 without regard to the nature of the offense that the law enforcement official or agent reasonably believes is being investigated.

(c) Law enforcement agencies are encouraged to adopt and follow national model policies that are included in P.O.S.T. rules concerning law-enforcement-conducted interrogations involving a juvenile.

(d) As used in this subsection (8):

(I) "Agent" means a person who acts with the motive of assisting law enforcement efforts to obtain a confession, as shown by the totality of the circumstances.

(II) "Untruthful information or belief" means any untruthful information or belief knowingly used or communicated to a juvenile who is the subject of a custodial interrogation. "Untruthful information or belief" may include but is not limited to statements regarding evidence or unauthorized statements regarding potential leniency by a law enforcement official, prosecutor, judge, juror, or any other juvenile officer.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1. **L. 2023:** (8) added, (HB 23-1042), ch. 221, p. 1146, § 1, effective August 7.

Editor's note: This section is similar to former § 19-2-511 as it existed prior to 2021.

ANNOTATION

Law reviews. For article, "Confessions and the Juvenile Offender", see 11 Colo. Law. 96 (1982). For comment, "Fourth Amendment Protection in the School Environment: The Colorado Supreme Court's Application of the Reasonable Suspicion Standard in State v. P.E.A.", 61 U. Colo. L. Rev. 153 (1990). For article, "Family Law and Juvenile Delinquency", see 37 Colo. Law. 61 (Oct. 2008).

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

Constitutional source of rights. Rights set out in this section of the Colorado Children's Code find genesis in the fifth amendment privilege against self-incrimination and in the sixth amendment right to counsel. People v. Knapp, 180 Colo. 280, 505 P.2d 7 (1973).

Section does not diminish fifth amendment protections but instead provides for additional protection. People v. Blankenship, 119 P.3d 552 (Colo. App. 2005).

Section provides for due process. The specific procedures in this section grant to juveniles all that is required under the due process clauses of the United States and the Colorado constitutions. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Subsection (2)(a)(III) does not confer a fundamental right to a runaway from another state when he or she is of sufficient age and understanding and has waived his or her right to remain silent or to have an attorney present. People v. Blankenship, 119 P.3d 552 (Colo. App. 2005).

The clear purpose in enacting former subsection (3)(c)(I) (now subsection (1)) is to afford a special protection to a juvenile who is in police custody because of alleged criminal acts. People v. Maes, 194 Colo. 235, 571 P.2d 305 (1977); People in Interest of R.L.N., 43 Colo. App. 542, 605 P.2d 491 (1980).

Former subsection (3)(c)(I) (now subsection (1)) of this section provides an additional and necessary assurance that the juvenile's fifth amendment right against self-incrimination and his sixth amendment right to counsel will be fully afforded to him. People v. Maes, 194 Colo. 235, 571 P.2d 305 (1977); People v. Lee, 630 P.2d 583 (Colo. 1981).

Former subsection (3)(c)(I) (now subsection (1)) was enacted to safeguard the privilege against self-incrimination, the same privilege protected by Miranda, and the "fruit of the poisonous tree" doctrine on the inadmissibility of evidence obtained by unconstitutional police action applies to its violation. People v. Saiz, 620 P.2d 15 (Colo. 1980).

The purpose of former subsection (3)(c)(I) (now subsection (1)) is to provide a child with parental guidance during police interrogation and to ensure that any waiver of the child's fifth amendment right against self-incrimination and sixth amendment right to counsel will be made knowingly and intelligently. People in Interest of G.L., 631 P.2d 1118 (Colo. 1981).

Legislative purpose of subsection (1), barring admission of statements made during police interrogation of minor unless minor's parents, guardian, legal custodian, or attorney are present, is to provide minor with an opportunity to consult with such person before deciding whether to assert or waive fifth amendment rights. People v. Raibon, 843 P.2d 46 (Colo. App. 1992).

Subsection (1) does not condition the admissibility of a juvenile's statements to law enforcement on more than his or her parent's presence during a Miranda advisement and interrogation. The plain language of subsection (1) requires only that

a parent be present during the advisement and interrogation. It is unnecessary for a trial court to examine a parent's motivation. People in the Interest of A.L.-C., 2016 CO 71, 382 P.3d 842.

Subsection (1) only requires a juvenile's parent to be present during a custodial interrogation of the juvenile but does not require that the parent be attentive. People in Interest of L.E.R-N., 2025 COA 16, __ P.3d __.

Factual findings as to "custody" and "interrogation" are necessary predicates to any application of this section. Where magistrate failed to make findings on question of whether juvenile was in custody and being interrogated, matter was remanded to the district court for development of further evidence. People in Interest of R.A., 937 P.2d 731 (Colo. 1997).

Protection afforded statements and admissions of child applies to searches. The same test is applicable to the validity of the search whether the consenting party is an adult or a juvenile with the one exception noted in former subsection (3) (now subsection (1)) of this section. That is, a parent, guardian, or legal custodian of the child must be present and freely and intelligently give his consent. Although this subsection (3) refers specifically to "statements and admissions", and requires that the interrogating officer afford both the juvenile and his parent, guardian, or legal custodian full fifth amendment protection, the juvenile is entitled to comparable protection in connection with the waiver of his fourth amendment rights. People v. Reyes, 174 Colo. 377, 483 P.2d 1342 (1971).

Search properly conducted in accordance with safeguards arising out of fourth amendment to constitution of United States is not inconsistent with this section. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Defendant's consent to search was voluntary and not the result of coercion. Defendant's parents provided guidance and advice before, during, and after the interrogation. The parents' position that they approved of DNA testing was consistent throughout. There is no requirement that the defendant's parents be present during the sample collection. People v. Lehmkuhl, 117 P.3d 98 (Colo. App. 2004).

The language, "acts which if committed by an adult", which appears almost verbatim in former subsection (3)(c)(I) (now subsection (1)), was intended to define, by analogy, a general type of conduct for which a child might be taken into custody and for which he might be adjudicated a delinquent. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977).

The words "at the time of the interrogation" refer to the request for appointment of counsel and do not refer to all the rights listed. People v. Hayhurst, 194 Colo. 292, 571 P.2d 721 (1977).

Department of institutions not "legal custodian". The department of institutions, into whose control an adjudicated delinquent has been placed, is not a "legal custodian" for the purposes of former subsection (3)(c)(I) (now subsection (1)). People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

This section is to be strictly construed. People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979).

Former subsection (1) (now § 19-2-507) dovetails with requirement of former subsection (3)(c)(I) (now subsection (1)). Former subsection (1) (now § 19-2-507), requiring prompt notification to the parent, guardian, or legal custodian of a child taken into temporary custody, dovetails with the requirement of former subsection (3)(c)(I) (now subsection (1)) that a parent, guardian, or legal custodian be present during interrogation. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977).

The warnings incorporated in a Miranda advisement have been codified in the juvenile context by this section, together with the requirement that the juvenile be accompanied by a parent, guardian, or custodian during the advisement and interrogation. People v. T.C., 898 P.2d 20 (Colo. 1995).

The standard of review for determining custody for this section's purpose is the same standard for determining custody in Miranda cases. People v. Howard, 92 P.3d 445 (Colo. 2004).

In determining whether a juvenile is in custody for purposes of this section, a court must consider whether a reasonable person in the juvenile's position would consider himself or herself significantly deprived of his or her liberty. In deciding whether a reasonable person would believe himself or herself to be deprived of his or her freedom of action, the court must consider the totality of circumstances. The factors the court should consider are: The time, place, and purpose of the encounter; the persons present during the interrogation; the words spoken by the officer to the defendant; the officer's tone of voice and general demeanor; the length and mood of the interrogation; whether any limitation of movement or other form of restraint was placed on the defendant during the interrogation; the officer's response to any questions asked by the defendant; whether directions were given to the defendant during the interrogation; and the defendant's verbal or nonverbal response to such directions. People v. Howard, 92 P.3d 445 (Colo. 2004).

Additional factor required when determining whether a juvenile is in custody. When considering the totality of the circumstances, the court must also consider the age of the juvenile. People v. N.A.S., 2014 CO 65, 329 P.3d 285.

A police officer's subjective view that the individual under question is a suspect, if undisclosed, has no bearing on whether the suspect is in custody. People v. Howard, 92 P.3d 445 (Colo. 2004).

Not in custody for Miranda purposes. People v. Howard, 92 P.3d 445 (Colo. 2004).

This section does not require, in every case, a repetitive advisement of rights immediately before any statement is taken. People v. Hayhurst, 194 Colo. 292, 571 P.2d 721 (1977).

Parent not required to be present when juvenile makes voluntary statements to police after police ended interrogation with

parent because of request for counsel. People v. Rivas, 13 P.3d 315 (Colo. 2000).

Trial court did not err in denying defendant's motion to suppress statements made during a phone conversation with a victim who was a minor. First, the standards for determining whether a party's consent is voluntary for purposes of the eavesdropping and wiretapping statutes are less stringent than the standards applicable to questions of voluntariness arising in the context of alleged violations of constitutional rights. Second, the victim was not in custody when he agreed to the recording of the conversation but rather his consent was given in an effort to assist in the apprehension and prosecution of defendant. People v. Richardson, 2014 COA 50, 350 P.3d 905.

Limitations of former subsection (3)(c)(I) (now subsection (1)). Former subsection (3)(c)(I) (now subsection (1)) does not require that a juvenile be warned that his statements "will" be used against him or that a juvenile be advised that he has the right to terminate the questioning at any time. People in Interest of M.R.J., 633 P.2d 474 (Colo. 1981).

Factors in determining voluntariness of confession. In determining whether a juvenile's confession is voluntary, the primary factors to be considered are the juvenile's age, experience, background, and intelligence, his capacity to understand the warnings given him, the nature of his fifth amendment rights, and the consequences of waiving those rights. People in Interest of M.R.J., 633 P.2d 474 (Colo. 1981).

And prosecution to prove voluntariness by preponderance. Once the issue of voluntariness has been raised, the prosecution has the burden of establishing by a preponderance of the evidence that the statements were made voluntarily. People in Interest of M.R.J., 633 P.2d 474 (Colo. 1981).

Confession obtained during custodial interrogation properly determined voluntary despite fact that waiver of parental attendance was not in writing. The juvenile and his parents waived their right to consult with an attorney and orally waived their right to parental attendance at the interrogation, and the interviewing detective's "soft technique", if any, did not constitute improper coercion. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd, 48 P.3d 543 (Colo. 2002).

The remedy for a violation of this section is suppression of the statements obtained. However, that remedy applies only to statements made as a result of custodial interrogation. People v. T.C., 898 P.2d 20 (Colo. 1995).

Section is applicable even when a juvenile lies to police about his age. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

General assembly did not provide for an exception for juveniles who lie about their age to the police and claim to be adults. Nor is there a "good faith" exception for cases in which the police reasonably but mistakenly believe that their suspect is an adult. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

This interpretation is consistent with the way civil law protects juveniles from being bound by legal decisions they make even if they lie about their age. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

Admissibility governed by circumstances surrounding interrogation. Whether statements obtained during custodial interrogation are admissible depends upon the totality of the circumstances surrounding the interrogation. People in Interest of M.R.J., 633 P.2d 474 (Colo. 1981).

Interrogation conducted via telephone not custodial since police officer could not exercise immediate control over juvenile. Juvenile not entitled to protection of subsection (1). People in Interest of J.C., 844 P.2d 1185 (Colo. 1993).

Statements inadmissible unless special protection provided. Statements and admissions made to the police by a juvenile in the course of a criminal investigation are not admissible in evidence against a juvenile unless the special protection contemplated by former subsection (3)(c)(I) (now subsection (1)) of this section is provided. People v. Maes, 194 Colo. 235, 571 P.2d 305 (1977).

And simply reciting required warnings does not sever illegal connection. Simply reciting the warnings required by this section does not sever the connection between illegal questioning and subsequently incriminating statements. People v. Saiz, 620 P.2d 15 (Colo. 1980).

If the adult appearing with the juvenile has interests that are objectively hostile to those of the juvenile and cannot aid the juvenile in making a knowing, intelligent, and voluntary waiver of his or her constitutional rights, the juvenile is deprived of the protections of this section. People v. Legler, 969 P.2d 691 (Colo. 1998).

Child's confession, obtained without compliance with this section, was inadmissible, and the court should have granted the child's motion to suppress the confession. People in Interest of L.B., 33 Colo. App. 1, 513 P.2d 1069 (1973).

Minor's statements suppressed when gained through police urgings following his expressed desire to stop interrogation. Where a minor defendant responded to one of the officer's questions by stating, "I ain't going to say nothing no more", but the officers continued to urge defendant to tell the truth, a statement gained by those urgings was suppressed. People v. Saiz, 42 Colo. App. 469, 600 P.2d 97 (1979).

Where the police were actively involved in the continued urging of minor defendant "to tell the truth", the fact that the defendant's parents made similar requests did not absolve the police of any wrongdoing, or allow them to disregard defendant's exercise of his right to cut off questioning. People v. Saiz, 42 Colo. App. 469, 600 P.2d 97 (1979).

Tainted fruit doctrine does not require the automatic suppression of later statements made by the defendant or by witnesses whose identity was derived from the defendant's initial, unwarned statement. Although the lack of a Miranda warning creates a presumption of compulsion, the

presumption can be rebutted and the initial statement shown to be voluntary in light of the totality of the circumstances. People v. T.C., 898 P.2d 20 (Colo. 1995).

Thus, fruits doctrine does not require suppression of properly obtained second confession where, although first confession was suppressed for lack of the written parental attendance waiver required under subsection (5), first confession nevertheless was voluntary. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd on other grounds, 48 P.3d 543 (Colo. 2002).

Physical evidence which is fruit of statement improperly obtained from juvenile is inadmissible. People v. Saiz, 42 Colo. App. 469, 600 P.2d 97 (1979).

It is implicit that a child involved in the commission of an offense should be afforded protective counseling concerning his legal rights from one whose interests are not adverse to those of the child, to the end that any statements made by the child be given voluntarily, knowingly, and intelligently. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976); People v. Legler, 969 P.2d 691 (Colo. 1998).

Counselors of a school for boys cannot be considered the neutral counselors contemplated by former subsection (3)(c)(I) (now subsection (1)). People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Purpose of parental presence at interrogation. The statutory requirement of the presence of a parent or guardian at the interrogation of a child by law enforcement officers is designed to provide parental guidance and assistance to the child and thereby to provide at least some minimal assurance that a child's waiver of his right against self-incrimination is knowingly and intelligently made. People in Interest of L.B., 33 Colo. App. 1, 513 P.2d 1069 (1973).

Subsection (5) requires police to advise a juvenile of the right to have a parent present during custodial interrogation and acquire an express waiver of that right from the juvenile prior to conducting an interrogation of the juvenile without the presence of a parent. People v. Barrow, 139 P.3d 636 (Colo. 2006).

The "full advisement" requirement of subsection (5) is not satisfied by merely showing the minor defendant a form signed by his parent indicating that she granted permission for the interview to proceed outside her presence. People v. Barrow, 139 P.3d 636 (Colo. 2006).

Subsection (5) requires that a waiver of the right to parental attendance must be express, in writing, and obtained after a Miranda advisement; however, it does not require that the writing be signed. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd, 48 P.3d 543 (Colo. 2002).

Although subsection (5) does not require a signature on the written waiver of parental attendance, the written waiver must in some manner be attributable to the person against whom it is to be enforced. A signature on the document obviously is the most direct means to demonstrate this, but it is not the only way for one to acknowledge or ratify the document. People v. Grant, 30 P.3d 667

(Colo. App. 2000), aff'd, 48 P.3d 543 (Colo. 2002).

Detective complied with this section by informing both the juvenile and his guardian verbally that the juvenile had the right to have his guardian present during police questioning. The signed waiver form also indicated the right to have the guardian present. People v. Barrios, 2019 CO 10, 433 P.3d 1218.

Even though the detective minimized the potential offenses and there was a lack of actual consultation between the juvenile and his guardian, the juvenile legally waived his right to have his guardian present during the interrogation. Under the totality of the circumstances, those concerns did not undermine the reliability of the waiver. People v. Barrios, 2019 CO 10, 433 P.3d 1218.

Where parent is himself incarcerated, his ability to guide and advise the child is hobbled and restrained by his own circumstances to such an extent that his mere physical presence does not satisfy the requirements of this section concerning confessions of a child. People in Interest of L.B., 33 Colo. App. 1, 513 P.2d 1069 (1973).

A child's confession is inadmissible where the child receives inadequate guidance because the parent is present but also incarcerated, or where a counselor or caseworker is substituted for the parent. People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979).

Because parent must be in position to freely advise. To effectively provide the guidance and advice contemplated by this section, the parent must be in a position to give advice freely, and a parent who is himself incarcerated is in no such position. People in Interest of L.B., 33 Colo. App. 1, 513 P.2d 1069 (1973).

Where interest of parents is obviously adverse to interests of minor, they are disqualified to act under the provisions of this section. People in Interest of P.L.V., 176 Colo. 342, 490 P.2d 685 (1971); People v. Hayhurst, 194 Colo. 292, 571 P.2d 721 (1977).

The fact that the father was upset with his son's possible involvement in a crime does not mean that their interests were necessarily adverse. People v. Hayhurst, 194 Colo. 292, 571 P.2d 721 (1977).

A pending investigation against a parent does not create a per se rule that the parent's interests are hostile or adverse to those of a child who comes under police investigation. People v. White, 64 P.3d 864 (Colo. App. 2002).

Out-of-state runaways are not afforded the protections of this section. Statements from a juvenile who is a runaway from another state are admissible if the juvenile is of sufficient age and understanding. Sufficient age and understanding refers to the juvenile's ability to understand his or her constitutional rights and to make a knowing, intelligent, and voluntary waiver. People v. Blankenship, 30 P.3d 698 (Colo. App. 2000).

There is a rational basis under subsection (2) for distinguishing between out-of-state runaways and in-state runaways. Parents of in-state runaways

presumably live in state and can be contacted more easily and be present for an interrogation with less difficulty. People v. Blankenship, 119 P.3d 552 (Colo. App. 2005).

Runaway is defined as an unmarried person under the age of 18 and who ran away from home or is otherwise beyond parental control. People v. Blankenship, 30 P.3d 698 (Colo. App. 2000).

Counsel appointed if person appearing with juvenile is neutral or hostile. The only effective means of implementing the purposes of this statute in situations where person appearing with juvenile is neutral or hostile to the juvenile's interests is to appoint counsel. People v. Maes, 194 Colo. 235, 571 P.2d 305 (1977).

Former subsection (3)(c)(I) (now subsection (1)) provides for the presence of an attorney, or the public defender, at the interrogation. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Appointed counsel must be present at confession. Appointment of counsel does not alleviate the necessity for compliance with this section where counsel was not present at the time of the confession. People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979).

But right to counsel held waived. Child's execution of financial eligibility form and interview by member of public defender's office did not constitute an unambiguous invocation of the right to counsel. Under totality of the circumstances, statement by juvenile's mother to police concerning public defender representation simply indicated mother's concern over legal representation in light of financial circumstances, and was not a clear assertion of right to counsel. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd on other grounds, 48 P.3d 543 (Colo. 2002).

Guardian ad litem appointed for custody purposes may be representative for juvenile's interests in criminal interrogation. Attorney guardian ad litem who was familiar with the juvenile and his familial and criminal background was qualified to appropriately serve the interests of the juvenile. Fact that the guardian was originally appointed to represent juvenile in custodial proceeding was not dispositive of whether guardian could also adequately represent juvenile defendant during custodial interrogation. People v. S.M.D., 864 P.2d 1103 (Colo. 1994).

Trial court properly found that juvenile was emancipated, therefore absence of the juvenile's parent at custodial interrogation did not require the court to suppress the juvenile's statement. The trial court appropriately found that the juvenile was emancipated where the juvenile had been on his own for three months and had not been receiving financial support from his mother. People v. Lucas, 992 P.2d 619 (Colo. App. 1999).

Trial court properly held that juvenile was emancipated even though legal and physical custody of the juvenile had been placed with the department of human services. The language of this section implicitly recognizes that a juvenile may be emancipated from the custody of someone other than the parent, including the state.

People v. Lucas, 992 P.2d 619 (Colo. App. 1999).

Application of former subsection (3)(c)(I) (now subsection (1)). Read in context, the limitations of former subsection (3)(c)(I) (now subsection (1)) apply only when a child is in temporary custody or under detention, as those terms are used in the Colorado Children's Code. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977); People v. L.A., 199 Colo. 390, 609 P.2d 116 (Colo. 1980); People in Interest of G.L., 631 P.2d 1118 (Colo. 1981).

Although not expressly so limited, it is clear that former subsection (3)(c)(I) (now subsection (1)) concerns questioning of a child while in temporary custody or under detention. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977).

The requirements of former subsection (3)(c)(I) (now subsection (1)) do not apply to interrogation of a child by a law enforcement official concerning traffic offenses which could not result in the child's being adjudicated a delinquent. People v. Maynes, 39 Colo. 158, 562 P.2d 756 (1977).

The exclusionary rule of former subsection (3)(c)(I) (now subsection (1)) does not apply to a child's statement made to a treating physician when that statement is not the result of an interrogation by a law enforcement official. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

Under Miranda and former subsection (3)(c)(I) (now subsection (1)), the decisive stage for the warnings is custodial interrogation, i.e., questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. People v. Lee, 630 P.2d 583 (Colo. 1981).

Subsection (1) applies only to consent searches and not to searches incident to a lawful arrest. People in Interest of S.J.F., 736 P.2d 29 (Colo. 1987).

Subsection (1) is inapplicable to a search consented to by a minor in a noncustodial setting. People in Interest of S.J., 778 P.2d 1384 (Colo. 1989).

Subsection (1) does not require that parents, irrespective of the rules of evidence, be permitted to testify concerning all statements made by their child during an interrogation at which they were present. People v. Raibon, 843 P.2d 46 (Colo. App. 1992).

Physical custodians under subsection (1) must be limited to the adult or adults with whom the child resided immediately prior to the arrest and custodial interrogation. If an adult is functioning as a current physical custodian for the child at the time of the interrogation, a protective relationship sufficient to satisfy the legislative purposes presumptively exists. People v. Legler, 969 P.2d 691 (Colo. 1998).

Principal and security officer did not act as agents of the police. Whether or not an individual conducting a search is an agent of the police and thus "a law enforcement official" under subsection (1) is determined by the totality of the circumstances. The fact that the police officer supplied information to the school principal with the intent of initiating a search and that he was present on

school premises during the investigation do not support a finding that the principal and security officer acted as agent of "a law enforcement official". People in Interest of P.E.A., 754 P.2d 382 (Colo. 1988); People in Interest of F.M., 754 P.2d 390 (Colo. 1988).

This section does not apply to admission of paternity by minor. People in Interest of R.L.N., 43 Colo. App. 542, 605 P.2d 491 (1980).

Applied in People v. Salazar, 189 Colo. 429, 541 P.2d 676 (1975); D.W. v. Dist. Court, 193 Colo. 194, 564 P.2d 949 (1976); People v. Cunningham, 194 Colo. 228, 570 P.2d 1086 (1977); People v. L.A., 199 Colo. 390, 609 P.2d 116 (1980); People v. Trujillo, 624 P.2d 924 (Colo. App. 1980).

19-2.5-204. Issuance of a lawful warrant taking a juvenile into custody.

(1) A lawful warrant taking a juvenile into custody may be issued pursuant to this section by any judge of a court of record or by a juvenile magistrate upon receipt of an affidavit relating facts sufficient to establish probable cause to believe that a delinquent act has been committed and probable cause to believe that a particular juvenile committed that act. Upon receipt of such affidavit, the judge or magistrate shall issue a lawful warrant commanding any peace officer to take the juvenile named in the affidavit into custody and to take the juvenile without unnecessary delay before the nearest judge of the juvenile court or magistrate pursuant to section 19-2.5-305 (4)(e)(I).

(2) Upon filing of a petition in the juvenile court, the district attorney may request a warrant to issue that authorizes the taking of a juvenile into temporary custody. If a warrant is requested, the petition must be accompanied by a verified affidavit relating facts sufficient to establish probable cause that the juvenile has committed the delinquent act set forth in the petition.

(3) A warrant for the arrest of a juvenile for violation of the conditions of probation or of a bond may be issued by any judge of a court of record or juvenile magistrate upon the report of a juvenile probation officer or upon the verified complaint of any person, establishing to the satisfaction of the judge or juvenile magistrate probable cause to believe that a condition of probation or of a bond has been violated and that the arrest of the juvenile is reasonably necessary. The warrant may be executed by any juvenile probation officer or by a peace officer authorized to execute warrants in the county in which the juvenile is found. If the warrant is for a juvenile found in contempt of court in a truancy proceeding, the court shall follow the procedures set forth in section 22-33-108 (7).

Source: L. 2021: (3) amended, (SB 21-071), ch. 463, p. 3333, § 1, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 569, § 2, effective October 1.

Editor's note: (1) This section is similar to former § 19-2-503 as it existed prior to 2021.

(2) Subsection (3) was numbered as 19-2-503 (3) in SB 21-071 (see L. 2021, p. 3333). That provision was harmonized with subsection (3) of this section as it appears in SB 21-059.

19-2.5-205. Search warrants - issuance - grounds.

(1) A search warrant authorized by this section may be issued by any judge of a court of record or by a juvenile magistrate.

(2) A search warrant may be issued pursuant to this section to search for and seize any property:

(a) That is stolen or embezzled; or

(b) That is designed or intended for use as a means of committing a delinquent act; or

(c) That is or has been used as a means of committing a delinquent act; or

(d) The possession of which is illegal; or

(e) That would be material evidence in a subsequent criminal prosecution or delinquency adjudication in this state or in another state; or

(f) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or

(g) That is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 570, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-504 as it existed prior to 2021.

19-2.5-206. Search warrants - application.

(1) A search warrant shall issue only on affidavit sworn to or affirmed before the judge or juvenile magistrate and relating facts sufficient to:

(a) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(b) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(c) Establish the grounds for issuance of the warrant or probable cause to believe that such grounds exist; and

(d) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant must be attached to the search warrant filed with the court.

(3) The supreme court may establish rules for procedures governing application for and issuance of search warrants consistent with this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 570, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-505 as it existed prior to 2021.

19-2.5-207. Fingerprinting - juvenile under arrest - ordered by court - definition.

(1) For purposes of this section, "juvenile" means any juvenile who is charged with committing, summoned, or held in detention for committing a delinquent act that constitutes a felony, a class 1 misdemeanor, or a misdemeanor pursuant to section 42-4-1301 or a crime, the underlying factual basis of which included an act of domestic violence, as defined in section 18-6-800.3 (1), as if committed by an adult.

(2) (a) Any juvenile detained pursuant to this article 2.5 must be fingerprinted by the entity authorized by the court or the local law enforcement agency to obtain fingerprints, except for juvenile detention centers and alternative service programs, otherwise known as "SB 91-94 programs", described in section 19-2.5-606. Such entity or local agency shall forward a set of the juvenile's fingerprints to the Colorado bureau of investigation in the form and manner prescribed by the bureau.

(b) Any fingerprints required by this section to be forwarded to the Colorado bureau of investigation must be forwarded within twenty-four hours after completion of the fingerprinting, excluding Saturdays, Sundays, and legal holidays.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 571, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-503.5 (1), (2), and (4) as it existed prior to 2021.

19-2.5-208. Petty tickets - summons - contracts - data.

(1) (a) If a law enforcement officer contacts a juvenile ten years of age or older for a delinquent act that would be a petty offense if committed by an adult or a municipal ordinance violation, the officer may issue the juvenile a petty ticket that requires the juvenile to go through an assessment process or procedure as designated by the municipal, county, or district court, including assessment by a law enforcement officer, assessment officer, or a screening team, referred to in this section as the "screening entity". When a petty ticket is issued, an assessment officer or screening team officer shall offer a petty offense contract to the juvenile and the juvenile's parent or legal guardian if:

(I) The juvenile has no prior adjudication or non-traffic conviction in a municipal, county, juvenile, or district court;

(II) The alleged offense would be a class 1, class 2, or unclassified petty offense;

(III) The juvenile admits to the offense; and

(IV) The petty offense contract is in the best interests of the juvenile.

(b) If the juvenile is otherwise eligible for a petty offense contract pursuant to this subsection (1), but the screening entity finds that the issuance of a petty offense contract is not in the best interests of the juvenile, the screening entity shall state the reasons in writing. The screening entity shall provide a copy of the written statement to the juvenile and shall maintain a copy of the written statement. If there is no agreement resulting in a signed contract pursuant to this section, the prosecuting attorney may file a petition of delinquency.

(2) Every contract entered into pursuant to this section must be in writing and contain the following:

(a) Consent to the contract terms by the juvenile and the juvenile's parent or legal guardian;

(b) An agreement to pay restitution, when applicable;

(c) An agreement to perform useful community service, when applicable;

(d) An agreement to attend school unless the juvenile is in a certified home study program or is otherwise legally excused from such attendance;

(e) A requirement of restorative justice practices, when appropriate;

(f) A requirement that the juvenile not commit a delinquent act during the term of the contract; and

(g) Any other conditions determined appropriate by the screening entity.

(3) The term of the contract may not exceed ninety-one days; except that the contract may be extended for an additional thirty-five days for good cause.

(4) Upon the successful completion of the contract to the satisfaction of the screening entity, the juvenile is released from any further obligation, and the prosecuting attorney shall not file a petition in delinquency for the admitted act. The completed contract remains confidential except to the ticketing agency, the screening and supervisory entity, the juvenile, and the juvenile's parent or legal guardian.

(5) (a) If a juvenile fails to comply with a written condition of the contract within a specific time designated in the contract, the prosecuting attorney may file charges with the court. The contract and any statements contained in the contract or made by the juvenile to the screening entity administering the contract must not be used against the juvenile.

(b) If there is no agreement resulting in a signed contract, any statement made by the juvenile to the screening entity administering the assessment must not be used against the juvenile.

(c) Notwithstanding subsections (5)(a) and (5)(b) of this section, statements or admissions of a juvenile contained in the contract or made by the juvenile to the screening entity are admissible into evidence, if the juvenile makes any deliberate misrepresentations affecting the applicability or requirements of this section.

(6) (a) Each law enforcement agency that issues petty offense tickets pursuant to this section shall maintain annual data on the number of tickets issued and the age, ethnicity, gender, and final disposition for each ticket.

(b) The data collected pursuant to subsection (6)(a) of this section is public and must be made available upon request.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 571, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-302.5 as it existed prior to 2021.

19-2.5-209. Taking juvenile into custody.

(1) A juvenile may be taken into temporary custody by a law enforcement officer without order of the court when there are reasonable grounds to believe that the juvenile has committed a delinquent act.

(2) A juvenile may be taken into temporary custody by a law enforcement officer executing a lawful warrant taking a juvenile into custody issued pursuant to section 19-2.5-204.

(3) A juvenile probation officer may take a juvenile into temporary custody:

(a) Under the circumstances stated in subsection (1) of this section; or

(b) If the juvenile has violated the conditions of probation and is under the continuing jurisdiction of the juvenile court.

(4) A juvenile may be detained temporarily by an adult other than a law enforcement officer if the juvenile has committed or is committing a delinquent act in the presence of such adult. Any person detaining a juvenile shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said juvenile.

(5) The taking of a juvenile into temporary custody pursuant to this section is not an arrest, nor does it constitute a police record.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 573, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-502 as it existed prior to 2021.

ANNOTATION

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

Phrase, "acts which if committed by an adult," was intended to define general type of conduct for which child might be taken into custody and for which he might be adjudicated delinquent. The phrase does not create limitation on power of state, but merely establishes general category of behavior for which children may be

adjudicated delinquent. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Section 19-2-511 is applicable even when a juvenile lies to police about his age. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

General assembly did not provide for an exception for juveniles who lie about their age to the police and claim to be adults. Nor is there a "good faith" exception for cases in which the police reasonably but mistakenly believe that their suspect is an adult. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

This interpretation is consistent with the way civil law protects juveniles from being bound by legal decisions they make even if they lie about their age. Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

Grounds for custody include violation of statute. Child may be taken into temporary custody if he violates statute or ordinance which makes specific behavior by children unlawful, even though such behavior if committed by adult is not unlawful. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Jurisdiction to order removal of life-sustaining devices. A juvenile court has jurisdiction in a shelter hearing to order the removal of all extraordinary life-sustaining devices from a child in the temporary custody of the department of social services if in the doctor's opinion the legal standard of cerebral death has been met. Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979).

Applied in People ex rel. Thompson v. Purcell, 70 Colo. 399, 201 P. 881(1921); People v. L.A., 199 Colo. 390, 609 P.2d 116 (1980); Griffin v. Pate, 644 P.2d 51 (Colo. App. 1981).

PART 3

DETENTION

19-2.5-301. Legislative declaration.

The general assembly declares that the placement of children and juveniles in a detention facility exacts a negative impact on the mental and physical well-being of the child or juvenile, and such detention may make it more likely that the child or juvenile will reoffend. Children and juveniles who are detained are more likely to penetrate deeper into the juvenile justice system than similar children or juveniles who are not detained, and community-based alternatives to detention should be based on the principle of using the least-restrictive setting possible and returning a child or juvenile to his or her home, family, or other responsible adult whenever possible consistent with public safety. It is the intent of the general assembly in adopting section 19-2.5-304 and amending sections 19-2.5-303, 19-2.5-305, and 19-2.5-1404 to limit the use of

detention to only those children and juveniles who pose a substantial risk of serious harm to others or that are a flight risk from prosecution.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 573, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-211.5 as it existed prior to 2021.

19-2.5-302. Local juvenile services planning committee - creation - duties - identification and notification of dually identified crossover youth.

(1) If all of the boards of commissioners of each county or the city council of each city and county in a judicial district agree, there may be created in the judicial district a local juvenile services planning committee that is appointed by the chief judge of the judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court, from persons recommended by the boards of commissioners of each county or the city council of each city and county within the judicial district. The committee, if practicable, must include, but need not be limited to, a representative from a county department of human or social services, a local school district, a local law enforcement agency, a local probation department, the division of youth services, private citizens, the district attorney's office, the public defender's office, a community mental health representative, and a representative of the concerns of municipalities. The committee, if created, shall meet as necessary to develop a plan for the allocation of resources for local juvenile services within the judicial district for the fiscal year. The committee is strongly encouraged to consider programs with restorative justice components when developing the plan. The state department of human services shall approve the plan. A local juvenile services planning committee may be consolidated with other local advisory boards pursuant to section 24-1.7-103.

(1.5) If all of the boards of commissioners for Douglas, Elbert, and Lincoln counties agree, on and after November 1, 2024, there is created in the twenty-third judicial district a local juvenile services planning committee that is appointed initially by the administrative judge of the twenty-third judicial district from persons recommended by the boards of commissioners of such counties. After January 7, 2025, the chief judge of the twenty-third judicial district shall appoint members of the committee. If practicable, the committee must include the members identified in subsection (1) of this section. The committee has the duties specified in subsection (1) of this section.

(2) The plan must provide for the management of dually identified crossover youth. The plan must contain descriptions and processes to include:

(a) A process for the identification of dually identified crossover youth at the earliest reasonable point of contact;

(b) A method for collaborating and exchanging information with other judicial districts, including with the collaborative management program described in section 24-1.9-102 and consistent with the data-sharing policies of the collaborative management program;

(c) A process for promptly communicating information about the youth's crossover status between the child welfare and juvenile justice systems and to notify each other of the new involvement in the respective system or information that may aid in the identification of dually identified crossover youth. The following parties should be notified of a youth's status as a dually identified crossover youth if applicable: Public defenders, district attorneys, local juvenile services planning committee coordinators, human or social services department representatives, probation representatives, juvenile court representatives, parents, and guardians ad litem.

(d) A process for identifying the appropriate services or placement-based assessment for a dually identified crossover youth;

(e) A process for sharing and gathering information in accordance with applicable laws, rules, and county policy;

(f) A process for the development of a single case management plan and identification of the lead agency for case management purposes and the engagement of dually identified crossover youth and their caregivers;

(g) A process that facilitates the sharing of assessments and case planning information and includes policies around sharing information with other judicial districts;

(h) A process for a multidisciplinary group of professionals to consider decisions that include youth and community safety, placement, provision of needed services, alternatives to detention and commitment, probation, parole, permanency, education stability, and case closure; and

(i) A requirement that dually identified crossover youth placed in a secure detention facility who are deemed eligible for release by the court be placed in the least restrictive setting whenever possible to reduce the disparity between dually identified crossover youth and nondually identified crossover youth in secure detention.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 574, § 2, effective October 1. **L. 2024:** (1.5) added, (HB 24-1212), ch. 8, p. 20, § 2, effective February 27.

Editor's note: This section is similar to former § 19-2-211 as it existed prior to 2021.

19-2.5-303. Duty of officer - screening teams - notification - release or detention.

(1) When a juvenile is taken into temporary custody and not released pending charges, the officer shall notify the screening team for the judicial district in which the juvenile is taken into custody. The screening team shall notify the juvenile's parent, guardian, or legal custodian without unnecessary delay and inform the juvenile's parent, guardian, or legal custodian that, if the juvenile is placed in detention or a temporary holding facility, all parties have a right to a prompt hearing to determine whether the juvenile is to be detained further. Such notification may be made to a person with whom the juvenile is residing if a parent, guardian, or legal custodian cannot be located. If the screening team is unable to make such notification, the notification may be made by any law enforcement officer, juvenile probation officer, detention center counselor, or detention facility staff in whose physical custody the juvenile is placed.

(2) (a) If the law enforcement officer does not release the juvenile to the care of the juvenile's parents, legal guardian, kin, or other responsible adult, the screening team shall administer a validated detention screening instrument developed or adopted pursuant to section 19-2.5-1404. The law enforcement officer, screening team, or juvenile court shall not remove the juvenile from the custody of the parent or legal guardian pursuant to this section unless the screening team or the juvenile court:

(I) (A) First finds that a validated detention screening instrument selected or adopted pursuant to section 19-2.5-1404 has been administered and the juvenile scored as detention-eligible; or

(B) There are grounds to override the results of the detention screening instrument based on the criteria developed in accordance with section 19-2.5-1404; and

(II) Finds that the juvenile poses a substantial risk of serious harm to others or a substantial risk of flight from prosecution and finds that community-based alternatives to detention are insufficient to reasonably mitigate that risk. Flight from prosecution is distinguished from simple failure to appear and must generally be evidenced by a demonstrated record of repeat, recent willful failures to appear at a scheduled court appearance.

(b) The screening team shall administer the detention screening instrument for each juvenile under consideration for detention. The detention screening instrument must be administered by a screener who has completed training to administer the detention screening instrument.

(c) Any information concerning a juvenile that is obtained during the administration of the detention screening instrument must be used solely for the purpose of making a recommendation to the court regarding the continued detention of the juvenile. The information is not subject to subpoena or other court process, for use in any other proceeding, or for any other purpose.

(d) Court records and division of youth services records must include data on detention screening scores and, if the score does not mandate detention, the explanation for the override placing the juvenile in detention.

(e) A juvenile who must be taken from the juvenile's home but who does not require physical restriction must be given temporary care with a grandparent, kin, or other suitable person; in a temporary shelter facility designated by the court; or with the county department of human or social services and must not be placed in detention.

(f) The screening team and the juvenile court shall use the results from the detention screening instrument in making a release determination. The court is encouraged to take into consideration the juvenile's educational progress and ability to achieve credits toward graduation. Release options include allowing a juvenile to return home with no supervision, or with limited supervision such as a location monitoring device, or a referral to a preadjudication alternative to detention or service program established pursuant to section 19-2.5-606.

(3) (a) The juvenile must be released to the care of the juvenile's parents, kin, or other responsible adult, unless a determination has been made in accordance with subsection (2) of this section that the juvenile's substantial risk of serious harm to others requires that the juvenile be detained. The court may make reasonable orders as conditions of release pursuant to section 19-2.5-305 (5). In addition, the court may provide that any violation of such orders may subject the juvenile to contempt sanctions of the court. The parent, kin, or other person to whom the juvenile is released is required to sign a written promise, on forms supplied by the court, to bring the juvenile to the court at a time set or to be set by the court. Failure, without good cause, to comply with the promise subjects the juvenile's parent or any other person to whom the juvenile is released to contempt sanctions of the court.

(b) Parents or legal guardians of a juvenile released from detention pursuant to this section shall complete the relative information form described in section 19-2.5-1404 (1)(b)(VIII) no later than the next hearing on the matter.

(4) (a) Except as required in subsection (4)(b) of this section, a law enforcement officer shall not detain a juvenile any longer than is reasonably necessary to obtain basic identification information and to contact the juvenile's parents, guardian, or legal custodian.

(b) If the juvenile is not released as required in subsection (3) of this section, the juvenile must be taken directly to the court or to the place of detention, a temporary holding facility, a temporary shelter designated by the court, or a preadjudication service program established pursuant to section 19-2.5-606 without unnecessary delay.

(5) (a) As an alternative to taking a juvenile into temporary custody pursuant to subsections (1), (3), and (4) of this section, a law enforcement officer may, if authorized by the establishment of a policy that permits such service by order of the chief judge of the judicial district or the presiding judge of the Denver juvenile court, which policy is established after consultation

between such judge and the district attorney and law enforcement officials in the judicial district, serve a written promise to appear for juvenile proceedings based on any act that would constitute a felony, misdemeanor, or petty offense upon the juvenile and the juvenile's parent, guardian, or legal custodian.

(b) A promise to appear served pursuant to subsection (5)(a) of this section must state any charges against the juvenile and the date, time, and place where the juvenile is required to answer such charges. The promise to appear must also state:

(I) That the juvenile has the right to have the assistance of counsel;

(II) That counsel can be appointed for the juvenile if the juvenile and the juvenile's parent, guardian, or legal custodian lack adequate resources to retain counsel or the juvenile's parent, guardian, or legal custodian refuses to retain counsel for the juvenile;

(III) That, to determine if the juvenile is eligible for court-appointed counsel, or to apply for court-appointed counsel, the juvenile's parent, guardian, or legal custodian is advised to call the office of the state public defender, visit the state public defender's office, or visit the state public defender's internet website;

(IV) That, to avoid delay in obtaining counsel, the juvenile's parent, guardian, or legal custodian is advised to apply for court-appointed counsel at least five days, excluding Saturdays, Sundays, and legal holidays, before the juvenile's promised date of appearance; and

(V) The contact information for the local office of the state public defender, including the office's telephone number and address, and the address of the internet website of the office of the state public defender.

(c) Repealed.

(d) The juvenile shall sign the promise to appear. The promise to appear must be served upon the juvenile's parent, guardian, or legal custodian by personal service or by certified mail, return receipt requested. The date established for the juvenile and the juvenile's parent, guardian, or legal custodian to appear must not be earlier than seven days nor later than thirty-five days after the promise to appear is served upon both the juvenile and the juvenile's parent, guardian, or legal custodian.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 575, § 2, effective October 1. **L. 2022:** (5)(c) repealed, (SB 22-018), ch. 191, p. 1274, § 6, effective July 15. **L. 2024:** (2)(f) amended, (HB 24-1216), ch. 314, p. 2114, § 2, effective August 7.

Editor's note: This section is similar to former § 19-2-507 as it existed prior to 2021.

ANNOTATION

Section provides for due process. The specific procedures in this section grant to juveniles all that is required under the due process clauses of the United States and the Colorado constitutions. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982) (decided under former law).

19-2.5-304. Limitations on detention.

(1) Detention is not permitted for the following:

(a) Juveniles who have not committed, or have not been accused of committing, a delinquent act unless otherwise found in contempt of court;

(b) Delinquent and nondelinquent juveniles who have been placed in the legal custody of a county department of human or social services pursuant to a petition in dependency or neglect and are solely awaiting out-of-home placement;

(c) Juveniles who at admission require medical care, are intoxicated, or are under the influence of drugs, to an extent that custody of the juvenile is beyond the scope of the detention facility's medical service capacity;

(d) Juveniles who are solely assessed as suicidal or exhibit behavior placing them at imminent risk of suicide; and

(e) Juveniles who have not committed a delinquent act but present an imminent danger to self or others or appear to be gravely disabled as a result of a mental health disorder or an intellectual and developmental disability.

(2) A juvenile court shall not order a juvenile who is ten years of age and older but less than thirteen years of age to detention unless the juvenile has been arrested for a felony or weapons charge pursuant to section 18-12-102, 18-12-105, 18-12-106, or 18-12-108.5. A preadjudication service program created pursuant to section 19-2.5-606 shall evaluate a juvenile described in this subsection (2). The evaluation may result in the juvenile:

(a) Remaining in the custody of a parent or legal guardian;

(b) Being placed in the temporary legal custody of kin, for purposes of a kinship foster care home or noncertified kinship care placement, as defined in section 19-1-103, or other suitable person under such conditions as the court may impose;

(c) Being placed in a temporary shelter facility; or

(d) Being referred to a local county department of human or social services for assessment for placement.

(3) A juvenile shall not be placed in detention solely:

(a) Due to lack of supervision alternatives, service options, or more appropriate facilities;

(b) Due to the community's inability to provide treatment or services;

(c) Due to a lack of supervision in the home or community;

(d) In order to allow a parent, guardian, or legal custodian to avoid legal responsibility;

(e) Due to a risk of the juvenile's self-harm;

(f) In order to attempt to punish, treat, or rehabilitate the juvenile;

(g) Due to a request by a victim, law enforcement, or the community;

(h) In order to permit more convenient administrative access to the juvenile;

(i) In order to facilitate further interrogation or investigation; or

(j) As a response to technical violations of probation unless the results of a detention screening instrument indicate that the juvenile poses a substantial risk of serious harm to others or if the applicable graduated responses system adopted pursuant to section 19-2.5-1108 allows for such a placement.

(4) The placement of a juvenile in a state-owned psychiatric residential treatment facility, as defined in section 26-6-903, is not considered detention for the purposes of this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 578, § 2, effective October 1. **L. 2025:** (4) added, (HB 25-1172), ch. 155, p. 627, § 2, effective August 6.

Editor's note: This section is similar to former § 19-2-507.5 as it existed prior to 2021.

19-2.5-305. Detention and shelter - hearing - time limits - findings - review - guardian ad litem appointed - confinement with adult offenders - restrictions.

(1) Unless placement is prohibited pursuant to section 19-2.5-304, when a juvenile is placed in a detention facility, in a temporary holding facility, or in a temporary shelter facility designated by the court, the screening team shall promptly notify the court, the district attorney, and the local office of the state public defender. The screening team shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the county, the person

with whom the juvenile has been residing and inform such person of the right to a prompt hearing to determine whether the juvenile is to be detained further. The court shall hold the detention hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays. For a juvenile being held in detention on a warrant for violating a valid court order on a status offense, the court shall hold the detention hearing within twenty-four hours, excluding Saturdays, Sundays, and legal holidays.

(2) A juvenile who is detained for committing a delinquent act must be represented at the detention hearing by counsel. If the juvenile has not retained his or her own counsel, the court shall appoint the office of the state public defender or, in the case of a conflict, the office of alternate defense counsel to represent the juvenile. This appointment continues if the court appoints the office of the state public defender or the office of alternate defense counsel pursuant to section 19-2.5-605 (2)(a) unless:

(a) The juvenile retains his or her own counsel; or

(b) The juvenile makes a knowing, intelligent, and voluntary waiver of the right to counsel, as described in section 19-2.5-605 (2)(c).

(2.5) The court shall, at the juvenile's detention hearing, appoint a guardian ad litem for a juvenile detained pursuant to this article 2.5. An appointment made pursuant to this subsection (2.5) terminates upon the release of the juvenile from detention unless the court also finds a basis for the appointment pursuant to section 19-1-111 (2)(a).

(3) (a) (I) A juvenile taken into custody pursuant to this article 2.5 and placed in a detention or temporary shelter facility or a temporary holding facility is entitled to a hearing within forty-eight hours after such placement, excluding Saturdays, Sundays, and legal holidays, to determine if the juvenile should be detained. The time of the detention hearing must allow defense counsel sufficient time to consult with the juvenile before the detention hearing. This consultation may be performed by secure electronic means if the conditions under which the electronic consultation is held allow the consultation to be confidential. The time in which the hearing must be held may be extended for a reasonable time by order of the court upon good cause shown.

(II) The law enforcement agency that arrested the juvenile shall promptly provide to the court and to defense counsel the affidavit supporting probable cause for the arrest and the arrest report, if the arrest report is available, and the screening team shall promptly provide to the court and to defense counsel results from the detention risk screening prepared pursuant to the juvenile's arrest. Upon completion of the detention hearing, the defense shall return any materials received pursuant to this subsection (3)(a)(II) unless the appointment is continued at the conclusion of the hearing.

(III) The only purposes of a detention hearing are to determine if a juvenile should be detained further and to define conditions under which the juvenile may be released, if release is appropriate. A detention hearing must not be combined with a preliminary hearing or a first

advisement. Due to the limited scope of a detention hearing, the representation of a juvenile by appointed counsel at a detention hearing does not, by itself, create a basis for disqualification in the event that such counsel is subsequently appointed to represent another individual whose case is related to the juvenile's case.

(IV) With respect to this section, the court may further detain the juvenile only if the court finds from the information provided at the hearing that:

(A) Probable cause exists to believe that the juvenile committed the delinquent act charged;

(B) On and after thirty-five days after the screening instrument has been developed or adopted pursuant to section 19-2.5-1404, the validated detention screening instrument has been administered and the juvenile scored as detention-eligible; or there are grounds to override the result of the detention screening instrument based on the criteria developed in accordance with section 19-2.5-1404; and

(C) The juvenile poses a substantial risk of serious harm to others or a substantial risk of flight from prosecution and community-based alternatives to detention are insufficient to reasonably mitigate that risk. Flight from prosecution is distinguished from simple failure to appear and must generally be evidenced by a demonstrated record of repeat, recent willful failures to appear at a scheduled court appearance.

(V) A court shall not order further detention for a juvenile who is ten years of age and older but less than thirteen years of age unless the juvenile has been arrested or adjudicated for a felony or weapons charge pursuant to section 18-12-102, 18-12-105, 18-12-106, or 18-12-108.5. The court shall receive any information having probative value regardless of its admissibility under the rules of evidence. In determining whether a juvenile requires detention, the court shall consider the results of the detention screening instrument. There is a rebuttable presumption that a juvenile poses a substantial risk of serious harm to others if:

(A) The juvenile is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406; or

(B) The juvenile is alleged to have used, or possessed and threatened to use, a firearm during the commission of any felony offense against a person, as such offenses are described in article 3 of title 18; or

(C) The juvenile is alleged to have committed possessing a dangerous or illegal weapon, as described in section 18-12-102; possession of a defaced firearm, as described in section 18-12-103; unlawfully carrying a concealed weapon, as described in section 18-12-105; unlawfully carrying a concealed weapon on school, college, or university grounds, as described in section 18-12-105.5; prohibited use of weapons, as described in section 18-12-106; illegal discharge of a firearm, as described in section 18-12-107.5; or illegal possession of a handgun by a juvenile, as described in section 18-12-108.5.

(VI) Notwithstanding subsection (3)(a)(IV) of this section, there is no presumption pursuant to subsection (3)(a)(V) of this section that a juvenile poses a substantial risk of serious harm to others if the item in the possession of the juvenile is alleged to be a BB gun, a pellet gun, or a gas gun.

(VII) Except as provided in subsection (3)(a)(IX) of this section, at the conclusion of the hearing, the court shall enter one of the following orders, while ensuring efforts are made to keep the juvenile with a parent, guardian, or legal custodian:

(A) That the juvenile be released to the custody of a parent, guardian, legal custodian, kin, or other suitable person without the posting of bond;

(B) That the juvenile be placed in a temporary shelter facility;

(C) That an unsecured personal recognizance bond be set and that the juvenile be released accordingly;

(D) That no bail be set and that the juvenile be detained without bail upon a finding that the juvenile poses a substantial risk of serious harm to others. A juvenile who is detained without bail must be tried on the charges in the petition filed pursuant to subsection (3)(a)(IX) of this section within the time limits set forth in section 19-2.5-904, unless the juvenile is deemed to have waived the time limit for an adjudicatory trial pursuant to section 19-2.5-610 (4).

(E) That no bail be set and that, upon the court's finding that the juvenile poses a substantial risk of serious harm to others, the juvenile be placed in a preadjudication service program established pursuant to section 19-2.5-606. This subsection (3)(a)(VII)(E) does not apply to any case in which the juvenile's alleged offense is one of the offenses described in subsection (3)(a)(V) of this section.

(VIII) A preadjudication service program created pursuant to section 19-2.5-606 shall evaluate a juvenile described in subsection (8) of this section. The evaluation may result in the juvenile:

(A) Remaining in the custody of a parent, guardian, or legal custodian; or

(B) Being placed in the temporary legal custody of kin, for purposes of a kinship foster care home or noncertified kinship care placement, as defined in section 19-1-103, or other suitable person under such conditions as the court may impose; or

(C) Being placed in a temporary shelter facility; or

(D) Being referred to a local county department of human or social services for assessment for placement.

(IX) When the court orders further detention of the juvenile or placement of the juvenile in a preadjudication service program after a detention hearing, the district attorney shall file a petition

alleging the juvenile to be a delinquent within seventy-two hours after the detention hearing, excluding Saturdays, Sundays, and legal holidays. The juvenile must be held or must participate in a preadjudication service program pending a hearing on the petition. Upon a showing of good cause, the court may extend such time for the filing of charges.

(X) Following the detention hearing, if the court orders that the juvenile be released and, as a condition of such release, requires the juvenile to attend school, the court shall notify the school district in which the juvenile is enrolled of such requirement.

(XI) If the court orders further detention of a juvenile pursuant to this section, the order must contain specific findings as follows:

(A) Whether placement of the juvenile out of the juvenile's home would be in the juvenile's and the community's best interests;

(B) Whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the home, whether it is reasonable that such efforts not be provided due to the existence of an emergency situation that requires the immediate removal of the juvenile from the home, or whether such efforts not be required due to the circumstances described in section 19-1-115 (7); and

(C) Whether procedural safeguards to preserve parental rights have been applied in connection with the removal of the juvenile from the home, any change in the juvenile's placement in a community placement, or any determination affecting family time of the juvenile.

(b) (I) If it appears that a juvenile being held in detention or temporary shelter may have an intellectual and developmental disability, as described in article 10.5 of title 27, the court or detention personnel shall refer the juvenile to the nearest case management agency, as defined in section 25.5-6-1702, for an eligibility determination. If it appears that a juvenile being held in a detention or temporary shelter facility pursuant to this article 2.5 may have a mental health disorder, as provided in section 27-65-106, the intake personnel or other appropriate personnel shall contact a mental health professional to do a mental health hospital placement prescreening on the juvenile. The court must be notified of the contact and may take appropriate action. If a mental health hospital placement prescreening is requested, it must be conducted in an appropriate place accessible to the juvenile and the mental health professional. A request for a mental health hospital placement prescreening must not extend the time within which a detention hearing must be held pursuant to this section. If a detention hearing has been set but has not yet occurred, the mental health hospital placement prescreening must be conducted prior to the hearing; except that the prescreening must not extend the time within which a detention hearing must be held.

(II) If a juvenile has been ordered detained pending an adjudication, disposition, or other court hearing, and the juvenile subsequently appears to have a mental health disorder, as described in section 27-65-106, the intake personnel or other appropriate personnel shall contact

the court with a recommendation for a mental health hospital placement prescreening. A mental health hospital placement prescreening must be conducted at any appropriate place accessible to the juvenile and the mental health professional within twenty-four hours after the request, excluding Saturdays, Sundays, and legal holidays.

(III) When the mental health professional finds, as a result of the prescreening, that the juvenile may have a mental health disorder, the mental health professional shall recommend to the court that the juvenile be evaluated pursuant to section 27-65-106.

(IV) Nothing in this subsection (3)(b) precludes the use of procedures for an emergency mental health hold pursuant to section 27-65-106 (1)(a).

(c) (I) A juvenile taken to a detention or temporary shelter facility or a temporary holding facility pursuant to section 19-2.5-209 as the result of an allegedly delinquent act that constitutes any of the offenses described in subsection (3)(a)(V) of this section must not be released from such facility if a law enforcement agency has requested that a detention hearing be held to determine whether the juvenile's substantial risk of serious harm to others requires that the juvenile be detained. A juvenile must not be released from detention except after a hearing, reasonable advance notice of which has been given to the district attorney, alleging new circumstances concerning the juvenile's further detention.

(II) Following a detention hearing held in accordance with subsection (3)(c)(I) of this section, a juvenile who is to be tried as an adult for criminal proceedings pursuant to a direct filing or transfer must not be held at any adult jail or pretrial facility unless the district court finds, after a hearing held pursuant to subsection (3)(c)(IV), (3)(c)(V), or (3)(c)(VI) of this section, that an adult jail is the appropriate place of confinement for the juvenile.

(III) In determining whether an adult jail is the appropriate place of confinement for the juvenile, the district court shall consider the following factors:

(A) The juvenile's age;

(B) Whether, in order to provide physical separation from adults, the juvenile would be deprived of contact with other people for a significant portion of the day or would not have access to recreational facilities or age-appropriate educational opportunities;

(C) The juvenile's current emotional state, intelligence, and developmental maturity, including any emotional and psychological trauma, and the risk to the juvenile caused by placement in an adult jail, which risk may be evidenced by mental health or psychological assessments or screenings made available to the district attorney and to defense counsel;

(D) Whether detention in a juvenile facility will adequately serve the need for community protection pending the outcome of the criminal proceedings;

(E) Whether detention in a juvenile facility will negatively impact the functioning of the juvenile facility by compromising the goals of detention to maintain a safe, positive, and secure environment for all juveniles within the facility;

(F) The relative ability of the available adult and juvenile detention facilities to meet the juvenile's needs, including the juvenile's need for mental health and educational services;

(G) Whether the juvenile presents an imminent risk of serious harm to others within a juvenile facility;

(H) The juvenile's physical maturity; and

(I) Any other relevant factors.

(IV) After charges are filed directly in district court against a juvenile pursuant to section 19-2.5-801 or a juvenile is transferred to district court pursuant to section 19-2.5-802, the division of youth services may petition the district court to transport the juvenile to an adult jail. The district court shall hold a hearing on the place of pretrial detention for the juvenile as soon as practicable, but no later than twenty-one days after the receipt of the division's petition to transport. The district attorney, sheriff, or juvenile may file a response to the petition and participate in the hearing. The juvenile remains in a juvenile detention facility pending hearing and decision by the district court.

(V) If a juvenile is placed in the division of youth services and is being tried in district court, the division of youth services may petition the court for an immediate hearing to terminate juvenile detention placement if the juvenile's placement in a juvenile detention facility presents an imminent danger to the other juveniles or to staff at the detention facility. In making its determination, the court shall review the factors set forth in subsection (3)(c)(III) of this section.

(VI) If, after the initial hearing, the district court determines that an adult jail is the appropriate place of confinement for the juvenile, the juvenile may petition the court for a review hearing. The juvenile may petition for a review hearing within thirty days after the initial confinement decision or within thirty days after any subsequent review hearing. Upon receipt of the petition, the court may set the matter for a hearing if the juvenile has alleged facts or circumstances that, if true, would warrant reconsideration of the juvenile's placement in an adult jail based upon the factors set forth in subsection (3)(c)(III) of this section and the factors previously relied upon by the court. The court shall, upon petition of the juvenile, hold a hearing to review whether continuing to permit the juvenile to be held in an adult jail or to have sight or sound restriction serves the interest of justice. The juvenile shall not be held in any adult jail or lockup, or be permitted to have sight or sound contact with adult inmates, for more than one hundred eighty consecutive days, unless the court, in writing, determines there is good cause for an extension or the juvenile expressly waives this limitation.

(VII) If the court must determine that it is in the interest of justice to detain a juvenile pursuant to the factors set forth in subsection (3)(c)(III) of this section, the court shall hold a hearing at least every thirty days, or at least every forty-five days in a rural jurisdiction, to review whether it is still in the interest of justice to continue to detain the juvenile in an adult jail. The review hearings may occur by paper if the juvenile does not petition the court for a review hearing.

(VIII) The maximum amount of time that a juvenile charged as an adult may be detained in an adult jail is one hundred eighty days, unless the court determines, in writing, that there is good cause for an extension, or the juvenile expressly waives the one-hundred-eighty-day limit. If the court holds a good cause hearing to establish the juvenile's continued detention in the adult jail, the court shall proceed with holding thirty- and forty-five-day review hearings as required by subsection (3)(c)(VII) of this section.

(4) (a) A jail shall not receive a juvenile for detention following a detention hearing pursuant to this section unless the juvenile has been ordered by the court to be held for criminal proceedings as an adult pursuant to a transfer or unless the juvenile is to be held for criminal proceedings as an adult pursuant to a direct filing. A juvenile under the age of fourteen and, except upon order of the court, a juvenile fourteen years of age or older, shall not be detained in a jail, lockup, or other place used for the confinement of adult offenders. The exception for detention in a jail applies only if the juvenile is being held for criminal proceedings as an adult pursuant to a direct filing or transfer.

(b) Whenever a juvenile is held pursuant to a direct filing or transfer in a facility where adults are held, the juvenile must be physically segregated from the adult offenders.

(c) (I) When a juvenile who is to be held for criminal proceedings as an adult pursuant to a direct filing or transfer of charges, as provided in sections 19-2.5-801 and 19-2.5-802, respectively, is received at a jail or other facility for the detention of adult offenders, the official in charge of the jail or facility, or the official's designee, shall, as soon as practicable, contact the person designated pursuant to section 22-32-141, by the school district in which the jail or facility is located to request that the school district provide educational services for the juvenile for the period during which the juvenile is held at the jail or facility. The school district shall provide the educational services in accordance with section 22-32-141. The official, in cooperation with the school district, shall provide an appropriate and safe environment to the extent practicable in which the juvenile may receive educational services.

(II) Notwithstanding subsection (4)(c)(I) of this section, if either the official in charge of the jail or facility or the school district determines that an appropriate and safe environment cannot be provided for a specific juvenile, the official and the school district are exempt from the requirement to provide educational services to the juvenile until such time as an environment that is determined to be appropriate and safe by both the official and the school district can be provided. If the school district will not be providing educational services to a juvenile because of

the lack of an appropriate and safe environment, the official in charge of the jail or facility shall notify the juvenile, the juvenile's parent or legal guardian, the juvenile's defense attorney, and the court having jurisdiction over the juvenile's case.

(III) The official in charge of the jail or facility for the detention of adult offenders, or the official's designee, in conjunction with each school district that provides educational services at the jail or facility, shall annually collect nonidentifying data concerning:

(A) The number of juveniles held at the jail or facility who are awaiting criminal proceedings as an adult pursuant to a direct filing or transfer of charges, pursuant to sections 19-2.5-801 and 19-2.5-802, respectively, for the year;

(B) The length of stay of each of the juveniles in the jail or facility;

(C) The number of the juveniles in the jail or facility who received educational services pursuant to this subsection (4)(c);

(D) The number of days on which school districts provided educational services to the juveniles in the jail or facility and the number of hours for which school districts provided the educational services each day;

(E) The number of juveniles in the jail or facility who were exempt from receiving educational services pursuant to section 22-32-141 (2)(c), (2)(e), (2)(f), and (2)(g);

(F) The number of juveniles in the jail or facility who had previously been determined pursuant to section 22-20-108 to be eligible for special education services and had an individualized education program; and

(G) The number of juveniles in the jail or facility who, while receiving educational services at the jail or facility, were determined to be eligible for special education services pursuant to section 22-20-108 and had subsequently received an individualized education program.

(IV) The official in charge of the jail or facility shall submit the information collected pursuant to subsection (4)(c)(III) of this section to the division of criminal justice in the department of public safety. The division of criminal justice shall make the information available to a member of the public upon request.

(d) The official in charge of a jail or other facility for the detention of adult offenders shall immediately inform the court that has jurisdiction of the juvenile's alleged offense when a juvenile who is or appears to be under eighteen years of age is received at the facility, except for a juvenile ordered by the court to be held for criminal proceedings as an adult.

(e) (I) Any juvenile arrested and detained for an alleged violation of any article of title 42, or for any alleged violation of a municipal or county ordinance, and not released on bond, must be taken before a judge with jurisdiction of such violation within forty-eight hours for the fixing of bond and conditions of bond pursuant to subsection (3)(a)(VII) of this section. A juvenile may be

detained in a jail, lockup, or other place used for the confinement of adult offenders only for processing for no longer than six hours and during such time must be placed in a setting that is physically segregated by sight and sound from the adult offenders, and in no case may the juvenile be detained in such place overnight. After six hours, the juvenile may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time pursuant to this subsection (4), Saturdays, Sundays, and legal holidays are included.

(II) A sheriff or police chief who violates subsection (4)(e)(I) of this section may be subject to a civil fine of no more than one thousand dollars. The decision to fine must be based on prior violations of subsection (4)(e)(I) of this section by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with subsection (4)(e)(I) of this section.

(f) The official in charge of a jail, lockup, or other facility for the confinement of adult offenders that receives a juvenile for detention should, wherever possible, take such measures as are reasonably necessary to restrict the confinement of any such juvenile with known past or current affiliations or associations with any gang so as to prevent contact with other inmates at such jail, lockup, or other facility. The official should, wherever possible, also take such measures as are reasonably necessary to prevent recruitment of new gang members from among the general inmate population. For purposes of this subsection (4)(f), "gang" is defined in section 19-2.5-102.

(g) A person who is eighteen years of age or older who is being detained for a delinquent act or criminal charge over which the juvenile court has jurisdiction, or for which charges are pending in district court pursuant to a direct filing or transfer if the person has not already been transferred to the county jail pursuant to subsection (3)(c)(IV) of this section, must be detained in the county jail in the same manner as if such person is charged as an adult.

(h) A juvenile court shall not order a juvenile offender who is under eighteen years of age at the time of sentencing to enter a secure setting or secure section of an adult jail or lockup as a disposition for an offense or as a means of modifying the juvenile offender's behavior.

(5) A juvenile has the right to bond as limited by this section.

(6) Except for a juvenile described in section 19-2.5-304 (2), the court may also issue temporary orders for legal custody pursuant to section 19-1-115.

(7) Any law enforcement officer, employee of the division of youth services, or another person acting under the direction of the court who in good faith transports any juvenile, releases any juvenile from custody pursuant to a written policy of a court, releases any juvenile pursuant to any written criteria established pursuant to this title 19, or detains any juvenile pursuant to court order or written policy or criteria established pursuant to this title 19 is immune from civil

or criminal liability that might otherwise result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person is presumed.

(8) (a) A juvenile who allegedly commits a status offense or is convicted of a status offense must not be held in a secure area of a jail or lockup.

(b) A sheriff or police chief who violates subsection (8)(a) of this section may be subject to a civil fine of no more than one thousand dollars. The decision to fine must be based on prior violations of subsection (8)(a) of this section by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with subsection (8)(a) of this section.

Source: L. 2021: (3)(a)(VII)(C), (4)(e)(I), and (5) amended, (SB 21-071), ch. 463, p. 3333, § 2, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 579, § 2, effective October 1; (3)(b)(I) amended, (HB 21-1187), ch. 83, p. 326, § 8, effective July 1, 2024. **L. 2022:** (3)(b)(I), (3)(b)(II), (3)(b)(III), and (3)(b)(IV) amended, (HB 22-1256), ch. 451, p. 3230, §§ 30, 31, effective August 10. **L. 2023:** (3)(c)(VI) amended and (3)(c)(VII) and (3)(c)(VIII) added, (HB 23-1145), ch. 39, p. 156, § 1, effective March 23; (3)(a)(XI)(C) amended, (HB 23-1027), ch. 284, p. 1681, § 10, effective June 1; (2.5) added, (HB 23-1307), ch. 442, p. 2587, § 3, effective June 7.

Editor's note: (1) This section is similar to former § 19-2-508 as it existed prior to 2021.

(2) (a) Subsections (3)(a)(VII)(C), (4)(e)(I), and (5) were numbered as 19-2-508 (3)(a)(VII)(C), (4)(e)(I), and (5) in SB 21-071 (see L. 2021, p. 3333). Those provisions were harmonized with subsections (3)(a)(VII)(C), (4)(e)(I), and (5) of this section as they appear in SB 21-059.

(b) Subsection (3)(b)(I) was numbered as 19-2-508 (3)(b)(I) in HB 21-1187 (see L. 2021, p. 326). That provision was harmonized with subsection (3)(b)(I) of this section as it appears in SB 21-059, effective July 1, 2024.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023. For the legislative declaration in HB 23-1307, see section 1 of chapter 442, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "New Juvenile Justice Laws Increase Options for Youth", see 42 Colo. Law. 37 (Apr. 2013).

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

This section does not violate constitutional guarantees of due process to juveniles. Juveniles do not have an absolute constitutional right to bail and the presumption statute does not impermissibly shift the burden of proof from the state to the juvenile with respect to establishing whether secure detention is warranted. Instead, the statute merely requires the juvenile to introduce some evidence to overcome the presumption of dangerousness created by the statute. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Detention hearing required whether placement is in shelter or detention facility. The term "detention hearing", in the context of subsection (2), refers to a situation where a child is placed in a shelter facility as well as a situation where a child is placed in a detention facility. In both situations the child is removed from the custody of the parents, and both the statute and due process require a prompt hearing to determine whether the welfare of the child or of the community require that the "detention" continue. P.F.M. v. Dist. Court, 184 Colo. 393, 520 P.2d 742 (1974).

Hearing requirement is not jurisdictional. It would be contrary to the purposes of the Colorado Children's Code and possibly to the best interests of the children involved to hold that the hearing requirement of subsection (2) is jurisdictional. P.F.M. v. Dist. Court, 184 Colo. 393, 520 P.2d 742 (1974).

Shelter hearing is a preadjudicatory stage of the case and is not intended to resolve the rights of natural parents to the legal custody of their child. S.L. v. Dist. Court, 676 P.2d 12 (Colo. 1984); W.H. v. Juvenile Court, 735 P.2d 191 (Colo. 1987).

Shelter or detention hearing distinguished from a dependency or neglect adjudicatory hearing. W.H. v. Juvenile Court, 735 P.2d 191 (Colo. 1987).

The applicable test for deciding whether to continue a child's shelter or "detention" at the preadjudication shelter hearing is whether temporary protective custody is necessary for protection of the child's welfare and best interest. W.H. v. Juvenile Court, 735 P.2d 191 (Colo. 1987).

Subsection (1) is applicable only to juveniles who require physical restriction, it is not applicable to a juvenile who is detained because he has allegedly committed a felony offense and who does require physical restriction. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

"Legal custodian" does not encompass a state agency or employee thereof to which a delinquent child has been committed. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

"Order". Section 19-1-103 does not define "order" as that word is used in former subsection (6)(a) (now subsection (4)(a)). However, court order has been broadly defined in case law as any direction of a

court not contained or included in a judgment. Hence, a directive issued by a juvenile court judge to a director of a juvenile detention center and warden of a county jail defining standards for placing a juvenile in the county jail was an order satisfying the requirements of former subsection (6)(a). C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

The evidence presented by a juvenile to overcome the presumption of dangerousness created by this section need not implicate constitutional protections against self-incrimination. Evidence that one does not constitute a danger to himself or others need not focus on the particular events giving rise to the person's detention. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

This section and the handgun statute (§ 18-12-108.5) were adopted to secure the safety of juveniles and the communities in which they reside. The Colorado Children's Code has consistently evidenced a legislative intent to accomplish both such purposes. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Detention of juveniles possessing deadly weapons prior to the conclusion of formal adjudicatory proceedings serves a legitimate state objective in view of the relationship between possession of a deadly weapon by a juvenile and the risk of imminent and serious harm to the community or the juvenile. Trial court's findings that confinement of juveniles in certain secure detention facilities constituted punishment did not resolve the issue of the facial validity of the statute creating a presumption of dangerousness. A court must consider the legislative purposes giving rise to the statute, the relationship between the statutory provisions and the purposes, and the procedures authorized by the statute. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Presumption statute does not violate fundamental fairness doctrine in light of the facts that the statute does not reflect a punitive legislative purpose, it limits the length of detention to a maximum of 67 days, and it establishes procedural safeguards. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Juvenile courts cannot delegate power to detain to executive branch. The Colorado Children's Code gives the juvenile courts the power to detain 14- and 15-year-old children in an adult detention facility, but the court cannot delegate its judicial power to the executive branch. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

Juvenile court's directive not unconstitutional delegation of court's power. Juvenile court judge's directive that no child be detained in the county jail at the request of a policeman, deputy sheriff, state patrolman, or other peace officer or the district attorney, unless the child has been taken to the juvenile detention center and the staff had requested in writing both that the child be detained at the jail instead of the detention center and the reasons therefor was not an unconstitutional delegation of juvenile court's power. C.C.C. v. Dist. Court, 188 Colo. 437, 535 P.2d 1117 (1975).

Child does not have an absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. Dist. Court, 623 P.2d 1253 (Colo. 1981).

Court's discretion to detain subordinated to right to bail. The trial court has discretion under subsection (3) to detain a juvenile, but under former subsection (7) (now subsection (5)) its discretion is subordinated to a juvenile's right to bail. L.O.W. v. Dist. Court, 623 P.2d 1253 (Colo. 1981).

And bail denied only where detention necessary to protect child or others. A trial court may detain a juvenile without bail only after giving due weight to the presumption that a juvenile should be released pending a dispositional hearing except in narrowly defined circumstances where the state establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm which the child is likely to inflict. L.O.W. v. Dist. Court, 623 P.2d 1253 (Colo. 1981).

Section 19-2-509 governs over this section with regard to conflicting speedy trial requirements because that section is the more specific statute. People in Interest of G.S.S., 2019 COA 4M, 467 P.3d 1131, rev'd on other grounds, 2020 CO 32, 462 P.3d 592.

Court properly recalculated speedy trial period pursuant to § 19-2-509 to run from date that the juvenile entered a not guilty plea. Juvenile was originally held without bail. The juvenile was later committed to the department of youth corrections in another case. The court later vacated the no-bond hold and released the juvenile on the charges in this case. As the juvenile was not detained because of this case, the speedy trial provisions of subsection (3)(a)(IV)(D) did not apply. People ex rel. T.A., 91 P.3d 473 (Colo. App. 2004).

Allegations of negligence alone are not sufficient to overcome the grant of immunity and presumption of good faith afforded to law enforcement officers under subsection (7). Young v. Jefferson County Sheriff, 2014 CO 1, 318 P.3d 458.

Applied in People v. Salazar, 189 Colo. 429, 541 P.2d 676 (1975); People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

19-2.5-306. Conditions of release - personal recognizance bond.

(1) Unless the district attorney consents, a juvenile charged or accused of having committed a delinquent act that constitutes a felony or a class 1 misdemeanor shall not be released without an unsecured personal recognizance bond, if:

(a) The juvenile has been found guilty of a delinquent act constituting a felony or class 1 misdemeanor within one year prior to the juvenile's detention;

(b) The juvenile is currently at liberty on another bond of any type; or

(c) The juvenile has a delinquency petition alleging a felony pending in any district or juvenile court for which probable cause has been established.

(2) In lieu of an unsecured personal recognizance bond, a juvenile who the court determines poses a substantial risk of serious harm to others may be placed in a preadjudication service program established pursuant to section 19-2.5-606.

(3) An application for the revocation or modification of the conditions of an unsecured personal recognizance bond must be made in accordance with section 16-4-109; except that the presumption described in section 19-2.5-305 (3)(a)(V) must continue to apply for the purposes of this section.

(4) (a) In determining the conditions of release for the juvenile, the judge or magistrate fixing the same shall consider the criteria set forth in section 16-4-103. If the juvenile is a pregnant or postpartum juvenile who has complied with the notice requirement set forth in section 19-2.5-1118.5, the judge or magistrate shall consider the juvenile's pregnancy or postpartum status in determining the conditions of release.

(a.5) The judge or magistrate is encouraged to take into consideration the juvenile's educational progress and ability to achieve credits toward graduation.

(b) In setting, modifying, or continuing an unsecured personal recognizance bond, it must be a condition that the released juvenile appear at any place and upon any date to which the proceeding is transferred or continued. Further conditions of the unsecured personal recognizance bond must be that the released juvenile not commit any delinquent acts or harass, intimidate, or threaten any potential witnesses. Except as described in subsection (9) of this section, the judge or magistrate may set any other conditions or limitations on the juvenile's release as are reasonably necessary for the protection of the community. A juvenile who is ordered held at the detention hearing or pursuant to an order entered at any time after the initial detention hearing and who remains in custody or detention must be tried on the charges within sixty days after the entry of the court order detaining the juvenile or within sixty days after the juvenile's entry of a plea, whichever date is earlier; except that, if the juvenile requests a jury trial pursuant to section 19-2.5-610, section 19-2.5-610 (4) applies.

(5) Repealed.

(6) The court shall not order that any personal recognizance bond be secured by monetary or property conditions of the juvenile, the juvenile's parent, guardian, legal custodian, or other responsible adult.

(7) The parent, guardian, legal custodian, or any other responsible adult for a juvenile released on a personal recognizance bond pursuant to this section may petition the court to revoke the bond and remand the juvenile into custody if the parent, guardian, legal custodian, or other responsible adult determines that he or she is unable to control the juvenile. The court shall

apply the presumption specified in section 19-2.5-305 (3)(a)(V) in determining whether to revoke the personal recognizance bond.

(8) A juvenile may be released on an unsecured personal recognizance bond, or as otherwise provided in this section regardless of whether the juvenile appears in court pursuant to a summons or a warrant.

(9) A judge or magistrate may only impose an unsecured personal recognizance bond without monetary or property conditions to secure the juvenile's future appearance. A judge or magistrate shall not impose a bond with secured monetary or property conditions for a juvenile.

Source: L. 2021: IP(1), (2), (3), (4), (6), (7), and (8) amended, (5) repealed, and (9) added, (SB 21-071), ch. 463, p. 3334, § 3, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 588, § 2, effective October 1. **L. 2023:** (4)(a) amended, (HB 23-1187), ch. 246, p. 1347, § 8, effective August 7. **L. 2024:** (4)(a.5) added, (HB 24-1216), ch. 314, p. 2115, § 3, effective August 7.

Editor's note: (1) This section is similar to former § 19-2-509 (1) to (8) as it existed prior to 2021.

(2) Subsections IP(1), (2), (3), (4), (5), (6), (7), (8), and (9) were numbered as 19-2-509 IP(1), (2), (3), (4), (5), (6), (7), (8), and (10) in SB 21-071 (see L. 2021, p. 3334). Those provisions were harmonized with subsections IP(1), (2), (3), (4), (5), (6), (7), (8), and (9) of this section as they appear in SB 21-059.

ANNOTATION

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

Child does not have an absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

Court's discretion to detain subordinated to right to bail. The trial court has discretion under subsection (3) to detain a juvenile, but under former subsection (7) (now subsection (5)) its discretion is subordinated to a juvenile's right to bail. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

And bail denied only where detention necessary to protect child or others. A trial court may detain a juvenile without bail only after giving due weight to the presumption that a juvenile should be released pending a dispositional hearing except in narrowly defined circumstances where the state

establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm which the child is likely to inflict. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

Section 19-2-509 (4)(b) is a bail statute and not a speedy trial statute. As such, the remedy for a violation of subsection (4)(b) corresponds to a bail right and not a speedy trial right, and the remedy for a violation of subsection (4)(b) is for the court to immediately hold a bail hearing and order the juvenile's release. People in Interest of G.S.S., 2020 CO 32, 462 P.3d 592.

Court properly recalculated speedy trial period pursuant to this section to run from date that the juvenile entered a not guilty plea. Juvenile was originally held without bail. The juvenile was later committed to the department of youth corrections in another case. The court later vacated the no-bond hold and released the juvenile on the charges in this case. As the juvenile was not detained because of this case, the speedy trial provisions of § 19-2-508 (3)(a)(IV)(D) did not apply. People ex rel. T.A., 91 P.3d 473 (Colo. App. 2004).

Court violated juvenile's statutory speedy trial rights by not holding the adjudicatory trial within sixty days of the entry of the no-bond hold order when juvenile did nothing to delay the setting or occurrence of a trial within the sixty-day speedy trial period. Juvenile's requested continuances of the detention and dispositional hearings did not toll, waive, or extend the speedy trial clock when counsel's actions on behalf of juvenile were designed to get juvenile released, not to delay a trial date. People in Interest of G.S.S., 2019 COA 4M, 467 P.3d 1131, rev'd on other grounds, 2020 CO 32, 462 P.3d 592.

Juvenile is entitled to dismissal when a violation of speedy trial occurs, regardless of whether the speedy trial period has been established by a no-bond hold order or entry of a not guilty plea. People in Interest of G.S.S., 2019 COA 4M, 467 P.3d 1131, rev'd on other grounds, 2020 CO 32, 462 P.3d 592.

PART 4

DIVERSION

19-2.5-401. Diversion.

As an alternative to a petition filed pursuant to section 19-2.5-502, an adjudicatory trial pursuant to part 9 of this article 2.5, or disposition of a juvenile delinquent pursuant to section 19-2.5-1103, the district attorney may agree to allow a juvenile to participate in a diversion program established in accordance with section 19-2.5-402.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 589, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-704 as it existed prior to 2021.

19-2.5-402. Juvenile diversion program - authorized - report - allocation of money - legislative declaration - definitions.

(1) (a) In order to more fully implement the stated objectives of this title 19, the general assembly declares its intent to establish a juvenile diversion program that integrates restorative justice practices to provide community-based alternatives to the formal court system to reduce juvenile crime and recidivism and improve positive juvenile outcomes, change juvenile offenders' behavior and attitudes, promote juvenile offenders' accountability, recognize and support the rights of victims, heal the harm to relationships and the community caused by juvenile crime, and reduce the costs within the juvenile justice system.

(b) Research has shown that court involvement for juveniles not identified as a risk of harm to others is harmful, and most low-risk juveniles grow out of their behavior and stop reoffending without system intervention.

(c) The goals of the diversion programs are to:

(I) Prevent further involvement of a juvenile in the formal legal system;

(I.5) Consider a juvenile who demonstrates behaviors or symptoms consistent with an intellectual and developmental disability, a mental or behavioral health issue, or lack of mental capacity, and divert the juvenile out of the juvenile justice system and into a community treatment program;

(II) Provide an eligible juvenile with cost-effective alternatives to adjudication that require the least amount of supervision and restrictive conditions necessary consistent with public safety and the juvenile's risk of reoffending;

(III) Serve the best interest of a juvenile while emphasizing acceptance of responsibility and repairing any harm caused to victims and communities;

(IV) Reduce recidivism and improve positive outcomes for each juvenile through the provision of services, if warranted, that address the juvenile's specific needs and are proven effective; and

(V) Ensure appropriate services are available for all eligible juveniles.

(2) The division of criminal justice of the department of public safety, referred to in this section as the "division of criminal justice", is authorized to establish and administer a juvenile diversion program that seeks to divert juveniles from the juvenile justice system and integrate restorative justice practices. To effectuate the program, the division shall allocate money within each judicial district and may contract with district attorneys' offices, governmental units, and nongovernmental agencies for reasonable and necessary expenses and services to serve each judicial district to divert juveniles and provide services, if warranted, for each eligible juvenile through community-based programs providing an alternative to entry into the formal legal system, a petition filed pursuant to section 19-2.5-502, or an adjudicatory hearing pursuant to section 19-2.5-907.

(3) For purposes of this section:

(a) "Director" means the executive director of the department of public safety.

(b) "Diversion" is defined in section 19-2.5-102.

(c) "Governmental unit" means any county, city and county, city, town, district or judicial attorney's office, or school district.

(d) "Nongovernmental agency" means a person, private nonprofit agency, corporation, association, or other nongovernmental agency.

(d.5) "Restorative justice" has the same meaning as set forth in section 19-1-103.

(e) "Services" may include, but are not limited to, provision of diagnostic needs assessments, general counseling and counseling during a crisis situation, behavioral health services, services for juveniles with developmental disabilities, specialized tutoring, job training and placement, restitution programs, community service, constructive recreational activities, day reporting and day treatment programs, and follow-up activities.

(4) District attorneys' offices or the office's designees shall:

(a) On and after January 1, 2021, conduct a risk screening using a risk screening tool selected pursuant to section 24-33.5-2402 (1)(c), as it existed prior to its repeal in 2022, for all juveniles referred to the district attorney pursuant to section 19-2.5-201, unless the juvenile is currently committed or on parole, a determination has already been made to divert the juvenile, or the district attorney declines to file charges, dismisses the case, or charges the juvenile with a class 1 or class 2 felony. The district attorney's office shall conduct the risk screening or contract with an alternative agency that has been formally designated by the district attorney's office to conduct the screening, in which case the results of the screening must be made available to the district attorney's office. The entity conducting the screening shall make the results of the risk screening available to the juvenile and the juvenile's family. All individuals using the risk screening tool must receive training on the appropriate use of the tool. The risk screening tool is for informing decisions about diversion. The risk screening tool and any information obtained

from a juvenile in the course of any screening, including any admission, confession, or incriminating evidence, obtained from a juvenile in the course of any screening or assessment in conjunction with proceedings pursuant to this section or made in order to participate in a diversion or restorative justice program is not admissible into evidence in any adjudicatory hearing in which the juvenile is accused and is not subject to subpoena or any other court process for use in any other proceeding or for any other purpose.

(a.5) Use the results of the risk screening to inform eligibility for participation in a juvenile diversion program and the level and intensity of supervision for juvenile diversion;

(b) Repealed. / (Deleted by amendment, L. 2021.)

(b.5) Consider the use of diversion to prevent a juvenile who demonstrates behaviors or symptoms consistent with an intellectual and developmental disability, a mental health or behavioral health issue, or a lack of mental capacity from further involvement in formal delinquency proceedings.

(c) Not deny diversion to a juvenile based on the juvenile's:

(I) Ability to pay;

(II) Previous or current involvement with the state or county departments of human or social services;

(III) Age, race or ethnicity, gender, gender identity, gender expression, or sexual orientation;

(IV) Legal representation; or

(V) Behaviors or symptoms consistent with an intellectual and developmental disability, a mental health or behavioral health issue, or a lack of mental capacity, unless the behaviors or symptoms are so severe that the juvenile cannot understand or participate in diversion.

(c.5) In a case in which a juvenile demonstrates behaviors or symptoms that are so severe that the juvenile cannot understand or participate in diversion, consider all available alternatives, including, but not limited to, referral to the state department or a collaborative management program in lieu of adjudication if it is likely that a juvenile would be found incompetent and unlikely to be restored in the foreseeable future.

(d) Align the juvenile diversion program's policies and practices with evidence-based practices and with the definition of "diversion" pursuant to section 19-2.5-102;

(e) Collect and submit data to the division of criminal justice pursuant to subsection (5) of this section; and

(f) Establish and make public any eligibility criteria for participation in a juvenile diversion program and use the results of the risk screening to make decisions on eligibility criteria.

(4.5) Diversion programs may use the results of an approved validated assessment tool to inform:

(a) The level and intensity of supervision for juvenile diversion;

(b) The length of supervision for juvenile diversion; and

(c) What services, if any, may be offered to the juvenile. Professionals involved with the juvenile's needs, treatment, and service planning, including district attorneys, public defenders, probation, behavioral health treatment providers, providers who offer services to juveniles for developmental disabilities, and state and local governmental entities, such as the state department of human services and county departments of human or social services, nongovernmental agencies, and individuals collaborating to provide appropriate diversion services.

(5) (a) The division of criminal justice, in collaboration with district attorneys or diversion program directors who accept formula money and programs providing juvenile diversion services, shall establish minimum data collection requirements and outcome measures that each district attorney's office, governmental unit, and nongovernmental agency shall collect and submit annually for all juveniles referred to the district attorney pursuant to section 19-2.5-201. The data summary must include, at a minimum:

(I) Demographic data on age, race or ethnicity, gender, sexual orientation, and gender identity;

(II) Risk screening conducted;

(III) Risk level as determined by the risk screening or, if a screening was not completed, the reason why a screening was not completed;

(IV) Offense;

(V) Diversion status;

(VI) Service participation and whether the service was provided by community partners or in-house;

(VII) Program completion data;

(VIII) Referral to restorative justice services;

(IX) Child welfare involvement; and

(X) Identifying data necessary to track the long-term outcomes of diverted juveniles.

(b) Notwithstanding the requirements of section 19-1-303 to the contrary, on or before August 1, 2021, and continuing every August 1 thereafter, each district attorney shall report to the division of criminal justice the name and demographic data for any juvenile who was granted juvenile diversion for a ticket, summons, or offense since the date of the previous report. The

demographic data must include age, race and ethnicity, gender, sexual orientation, and gender identity. The reports must cover the state fiscal years from July 1 through June 30.

(c) On or before August 1, 2021, and every August 1 thereafter, each agency that receives diversion money pursuant to subsection (7) of this section shall report on the number of juveniles who were screened for eligibility for diversion since the date of the previous report but subsequently rejected. The report must include, at a minimum, demographic data such as age, race and ethnicity, gender, sexual orientation, and gender identity. The reports must cover the state fiscal years from July 1 through June 30.

(d) For the purposes of this subsection (5), when collecting demographic data from a youth, district attorneys' offices, governmental units, and nongovernmental agencies shall provide the youth with an option to decline to disclose demographic information.

(6) (a) In collaboration with the division of criminal justice in the department of public safety, each program providing services pursuant to this section shall develop objectives and report progress toward such objectives as required by rules promulgated by the director.

(b) The director shall regularly monitor these diversion programs to ensure that progress is being made to accomplish the objectives of this section. The division of criminal justice shall offer technical assistance to district attorneys' offices, governmental units, nongovernmental agencies, and diversion programs to support the uniform collection and reporting of data and to support program development and adherence to program requirements. The division of criminal justice shall provide annual program-level reports to district attorneys' offices and submit a consolidated statewide report annually to the governor and to the judiciary committees of the senate and the house of representatives, the health and human services committee of the senate, and the public health care and human services committee of the house of representatives, or any successor committees. Notwithstanding section 24-1-136 (11)(a)(I), these reports continue indefinitely.

(7) The formula established by the division of criminal justice in the department of public safety must be used to allocate money within each judicial district in the state of Colorado for juvenile diversion programs. The division of criminal justice in the department of public safety shall review the formula every three years. The division of criminal justice shall prioritize funding for programs that include restorative justice practices. The division of criminal justice may contract with district attorneys' offices, governmental units, and nongovernmental agencies for reasonable and necessary expenses for services to serve each judicial district to utilize in diverting juveniles and to provide services, if warranted, for eligible juveniles through community-based programs that provide an alternative to entry into the formal legal system, a petition filed pursuant to section 19-2.5-502, or an adjudicatory hearing held pursuant to section 19-2.5-907.

(8) (a) The director may implement a behavioral or mental health screening program to screen juveniles who participate in the juvenile diversion program. If the director chooses to implement a behavioral or mental health screening program, the director shall use the mental health screening tool selected pursuant to section 24-33.5-2402 (1)(b), as it existed prior to its repeal in 2022, and conduct the screening in accordance with procedures established pursuant to that section.

(b) Prior to implementation of a behavioral or mental health screening program pursuant to this subsection (8), if implementation of the program would require an increase in appropriations, the director shall submit to the joint budget committee a request for funding in the amount necessary to implement the behavioral or mental health screening program. If implementation of the behavioral or mental health screening program would require an increase in appropriations, implementation of the program is conditional upon approval of the funding request.

(9) (a) The division of criminal justice in the department of public safety shall review, and approve if appropriate, any assessment instrument for use pursuant to subsection (4.5) of this section.

(b) The division of criminal justice in the department of public safety shall reevaluate any instrument approved pursuant to subsection (9)(a) of this section at least once every three years.

Source: L. 2021: (1)(a), (2), (4), (5), and (6)(a) amended and (3)(d.5), (4.5), and (9) added, (SB 21-066), ch. 64, p. 254, § 2, effective April 29; (4)(c)(III) amended, (HB 21-1108), ch. 156, p. 891, § 20, effective September 7; entire article added with relocations, (SB 21-059), ch. 136, p. 590, § 2, effective October 1; (4)(b) repealed, (SB 21-066), ch. 64, p. 259, § 6, effective October 1; (7) amended, (SB 21-066), ch. 64, p. 259, § 7, effective July 1, 2023. **L. 2022:** (4)(a) and (8)(a) amended, (HB 22-1211), ch. 79, p. 393, § 5, effective December 31. **L. 2024:** (1)(c)(I.5), (4)(b.5), (4)(c)(V), and (4)(c.5) added and (3)(e), (4)(c)(III), (4)(c)(IV), and (4.5)(c) amended, (SB 24-006), ch. 30, p. 94, § 1, effective March 22.

Editor's note: (1) This section is similar to former § 19-2-303 as it existed prior to 2021.

(2) (a) Subsections (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9) were numbered as § 19-2-303 (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9) in SB 21-066 (see L. 2021, p. 254). Those provisions were harmonized with subsections (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9) of this section, respectively, as they appear in SB 21-059.

(b) Subsection (4)(c)(III) was numbered as § 19-2-303 (4)(c)(III) in HB 21-1108 and SB 21-066. Those amendments were harmonized. Effective October 1, 2021, those amendments were harmonized with subsection (4)(c)(III) of this section as it appears in SB 21-059.

Cross references: For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of Colorado 2021.

19-2.5-403. Juvenile diversion cash fund - creation.

(1) Fifty percent of the money collected pursuant to section 18-4-509 (2)(a) must be transmitted to the state treasurer, who shall credit the same to the juvenile diversion cash fund, which fund is created and referred to in this section as the "fund". The money in the fund is subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of the juvenile diversion program pursuant to section 19-2.5-402.

(2) The division of criminal justice of the department of public safety, referred to in this section as the "division of criminal justice", is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of implementing the juvenile diversion program pursuant to section 19-2.5-402. All private and public money received through gifts, grants, or donations must be transmitted to the state treasurer, who shall credit the same to the fund.

(3) Any money in the fund not expended for the purpose of the juvenile diversion program may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of money in the fund must be credited to the fund.

(4) Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year must remain in the fund and must not be credited or transferred to the general fund or another fund.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 593, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-303.5 as it existed prior to 2021.

PART 5

INITIATION OF PROCEEDINGS

19-2.5-501. Summons - issuance - contents - service - legislative declaration.

(1) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons must also state, in a separate box, in bold, and in capitalized letters, the following text, inserting the telephone number and address of the local office of the state public defender and the internet website address of the state public defender, as indicated:

1. YOU HAVE THE RIGHT TO HAVE YOUR OWN LAWYER HELP YOU AT YOUR HEARING.

2. YOU MAY BE ELIGIBLE FOR THIS LAWYER AT NO CHARGE.

3. TO FIND OUT IF YOU ARE ELIGIBLE, YOU OR YOUR PARENT, GUARDIAN, OR LEGAL CUSTODIAN SHOULD CALL THE OFFICE OF THE STATE PUBLIC DEFENDER AT _____, VISIT THE OFFICE OF THE STATE PUBLIC DEFENDER AT _____, OR VISIT THE STATE PUBLIC DEFENDER'S WEBSITE AT _____.

4. YOU ARE MORE LIKELY TO HAVE A FREE LAWYER PRESENT AT YOUR HEARING IF YOU OR YOUR PARENT, GUARDIAN, OR LEGAL CUSTODIAN CALLS OR VISITS THE OFFICE OF THE STATE PUBLIC DEFENDER AT LEAST FIVE DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, BEFORE YOUR HEARING.

(2) A summons must not issue to any juvenile or respondent who appears voluntarily, or waives service, or has promised in writing to appear at the hearing, but any such person must be provided with a copy of the petition and summons upon appearance or request.

(3) (a) The court may, when the court determines that it is in the best interests of the juvenile, join the juvenile's parent or guardian and the person with whom the juvenile resides, if other than the juvenile's parent or guardian, as a respondent to the action and shall issue a summons requiring the parent or guardian and the person with whom the juvenile resides, if other than the juvenile's parent or guardian, to appear with the juvenile at all proceedings pursuant to this article 2.5 that involve the juvenile. If the juvenile's parent or guardian cannot be found, the

court, in its discretion, may proceed with the case without the presence of the parent or guardian. For the purposes of this section and section 19-2.5-611, "parent" is defined in section 19-1-103. This subsection (3) does not apply to any person whose parental rights have been terminated pursuant to the provisions of this title 19 or the parent of an emancipated minor. For the purposes of this section, "emancipated minor" has the same meaning as set forth in section 13-21-107.5.

(b) The general assembly declares that every parent or guardian whose juvenile is the subject of a juvenile proceeding pursuant to this article 2.5 shall attend any such proceeding.

(c) A parent or legal guardian of a juvenile who is the subject of a juvenile proceeding shall complete the relative information form described in section 19-2.5-1404 (1)(b)(VIII) no later than seven business days after the hearing or prior to the juvenile's next hearing, whichever occurs first.

(4) The summons must require the person or persons having the physical custody of the juvenile, if other than a parent or guardian, to appear and to bring the juvenile before the court at a time and place stated not more than thirty-five days after issuance of the summons.

(5) The court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on the party's own behalf or on the juvenile's behalf.

(6) If it appears that the welfare of the juvenile or of the public requires that the juvenile be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the juvenile into custody at once.

(7) The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear. The payments must not exceed the amount allowed to witnesses for travel by the district court.

(8) (a) A summons issued pursuant to this section may be served in the same manner as the summons in a civil action or by mailing the summons to the juvenile's last-known address by certified mail with return receipt requested not less than seven days prior to the time the juvenile is requested to appear in court. Service by mail is complete upon return of the receipt signed by the juvenile, the juvenile's parents, guardian, legal custodian, physical custodian, or spousal equivalent as defined in section 19-1-103.

(b) Service upon the parent, guardian, legal custodian, or physical custodian who has physical care of a juvenile of a summons that contains wording commanding the parent, guardian, legal custodian, or physical custodian to produce the juvenile in court constitutes valid service compelling the attendance of both the juvenile and the juvenile's parent, guardian, legal custodian, or physical custodian in court. In addition, service of a summons as described in this

subsection (8)(b) compels the juvenile's parent, guardian, legal custodian, or physical custodian either to make all necessary arrangements to ensure that the juvenile is available to appear before the court or to appear in court and show good cause for the juvenile's failure to appear.

(9) If the juvenile's parents, guardian, or other legal custodian required to be summoned pursuant to subsection (4) of this section cannot be found within the state, the fact of the juvenile's presence in the state confers jurisdiction on the court as to any absent parent, guardian, or legal custodian.

(10) When the residence of the person to be served outside the state is known, a copy of the summons and petition must be sent by certified mail with postage prepaid to such person at the person's place of residence with a return receipt requested. Service of summons is deemed complete seven days after return of the requested receipt.

(11) Repealed.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 594, § 2, effective October 1. **L. 2022:** (11) repealed, (SB 22-018), ch. 191, p. 1274, § 7, effective July 15.

Editor's note: This section is similar to former § 19-2-514 as it existed prior to 2021.

ANNOTATION

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

Parents named as parties in a juvenile delinquency proceeding do not have a due process right to participate in the adjudicative proceedings. Few due process rights are implicated in the child's delinquency proceedings beyond notice of the charges when custody is not an issue. People ex rel. J.P.L., 214 P.3d 1072 (Colo. App. 2009).

This section deals solely with jurisdiction over the person, and does not concern itself with jurisdiction of the subject matter. Davis v. Dist. Court, 161 Colo. 559, 423 P.2d 846 (1967).

"Legal custodian" does not encompass a state agency or employee thereof to which a delinquent child has been committed. People v. McAnally, 192 Colo. 12, 554 P.2d 1100 (1976).

Voluntary appearance waives defective service. A party who appears in the action and voluntarily proceeds with it waives any defect in service of summons. Davis v. Dist. Court, 161 Colo. 559, 423 P.2d 846 (1967).

Proceedings defective where service did not comply with section. Where the record fails to show that notice of hearing was

served on parents in delinquency proceedings against a minor in juvenile court, such proceedings were defective. Martinez v. People, 150 Colo. 374, 372 P.2d 947 (1962).

Applied in Rose v. People, 111 Colo. 220, 139 P.2d 261 (1943).

19-2.5-502. Petition initiation - petition form and content.

(1) If the district attorney determines that the interests of the juvenile or of the community require that further action be taken, the district attorney may file a petition in delinquency on the form specified in subsections (3), (4), and (5) of this section, which the court shall accept. If the district attorney chooses to file a petition in delinquency on any juvenile who receives a detention hearing pursuant to section 19-2.5-305, the district attorney shall file the petition within seventy-two hours after the detention hearing, excluding Saturdays, Sundays, and legal holidays. Upon filing the petition, the court, if practicable, shall send notice of the pendency of such action to the juvenile's parent, guardian, or legal custodian.

(2) If the petition is the first juvenile petition filed against the juvenile in any jurisdiction and is initiated in a jurisdiction that has restorative justice practices available, the district attorney or the district attorney's designee may determine whether the juvenile is suitable for restorative justice practices. The district attorney shall consider whether the victim, having been informed about restorative justice practices pursuant to section 24-4.1-303 (11)(g), is requesting consideration of restorative justice practices as an alternative to formal prosecution; the seriousness of the crime; the crime's impact on the victim; the best methodology to involve the victim; whether the juvenile accepts responsibility for, expresses remorse for, and is willing to repair the harm caused by the juvenile's actions; whether the juvenile's parent or legal guardian is willing to support the juvenile in the process; and other programmatic support available. If a juvenile wants to participate in restorative justice practices, the juvenile shall make the request to the district attorney or the law enforcement agency administering the program and may not make the request to the victim. If requested by the juvenile, restorative justice practices may only be conducted after the district attorney consults with the victim and offers the victim an opportunity to participate or submit a victim impact statement. If a victim elects not to attend, a victim-offender conference may be held with a suitable victim surrogate or victim advocate, and the victim may submit a victim impact statement. The district attorney may offer dismissal of charges as an option for the successful completion of these and any other conditions imposed and designed to address the harm done to the victim and the community by the offender, subject to approval by the court.

(3) **Form and content.** The petition and all subsequent court documents in any proceedings brought pursuant to section 19-1-104 (1)(a) or (1)(b) must be titled "The People of the State of Colorado, in the Interest of ....., a juvenile (or juveniles) and Concerning ....., Respondent".

The petition may be filed using the language of the statutes defining the offense, including either conjunctive or disjunctive clauses. Pleading in either the conjunctive or the disjunctive places a respondent on notice that the prosecution may rely on any or all of the alternatives alleged.

(4) The petition must plainly set forth the facts that bring the juvenile within the court's jurisdiction. If the petition alleges that the juvenile is delinquent, it must cite the law or municipal or county ordinance that the juvenile is alleged to have violated. The petition must also state the name, age, and residence of the juvenile and the names and residences of the juvenile's parents, guardian, or other legal custodian or of the nearest known relative if a parent, guardian, or other legal custodian is unknown.

(5) (a) Pursuant to article 1.2 of this title 19, in delinquency proceedings to which the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., applies, including, but not limited to, status offenses such as the illegal possession or consumption of ethyl alcohol or marijuana by an underage individual or illegal possession of marijuana paraphernalia by an underage person, as described in section 18-13-122, and possession of handguns by juveniles, as described in section 18-12-108.5, the petition must:

(I) Include a statement indicating what continuing inquiries the district attorney or the district attorney's representative has made in determining whether the juvenile is an Indian child;

(II) Identify whether the juvenile is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the Indian child's parent or Indian custodian and to the Indian child's tribe pursuant to article 1.2 of this title 19, the postal receipts must be attached to the petition and filed with the court or filed within fourteen days after the filing of the petition, as specified in article 1.2 of this title 19.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 596, § 2, effective October 1. **L. 2025:** IP(5)(a) and (5)(b) amended, (HB 25-1204), ch. 338, p. 1816, § 5, effective August 6.

Editor's note: This section is similar to former §§ 19-2-512 and 19-2-513 as they existed prior to 2021.

ANNOTATION

Law reviews. For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (Nov. 2002).

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

Petition to inform of nature and cause of accusation. A petition in delinquency is sufficient if it advises the juvenile of the nature and cause of the accusation against him, so that he can adequately defend himself. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

Petition in delinquency need not specify lesser included offenses that may have been committed in commission of the described act. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

Incorrect statutory citation not fatal. The incorrect citation of a specific statutory reference in a petition in delinquency is not grounds for reversal, absent substantial prejudice. People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981).

State is a party of record to a delinquency proceeding. S.A.S. v. District Court, 623 P.2d 58 (Colo. 1981).

19-2.5-503. Aggravated juvenile offender.

(1) (a) In any action in delinquency alleging that a juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the petition must allege by separate count that the juvenile is an aggravated juvenile offender and that increased commitment is authorized.

(b) If the petition alleges that the juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the petition must identify by separate counts each alleged former adjudication or probation revocation and, for each such count, must include the date of adjudication or probation revocation, the court, and the specific act that formed the basis for the adjudication or probation revocation. If the alleged prior adjudication or probation revocation occurred outside of this state, the petition must so allege and state that the delinquent act that formed the basis for the adjudication or probation revocation would constitute a felony in this state.

(2) (a) In any action in delinquency in which it is alleged that a juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the court shall, at the juvenile's first appearance, advise the juvenile of the effect and consequences of the allegation that the juvenile is an aggravated juvenile offender.

(b) If a juvenile is alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the juvenile is required, at the juvenile's first appearance before the court, to admit or deny any previous adjudications or probation revocations alleged in the petition. A refusal to admit or deny any such adjudication or probation revocation is considered a denial.

(3) (a) In addition to the rights specified in section 19-2.5-605, a juvenile who is alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125 (4), may file a written request that adjudication of the act that is the subject of the petition must be to a jury of twelve persons, and the court shall so order it. A juvenile who requests a jury is deemed to have waived the time limit for an adjudicatory trial pursuant to section 19-2.5-610 (4).

(b) When a jury is requested pursuant to this subsection (3), the following challenges are allowed:

(I) If the petition alleges that one juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the state and the juvenile are each entitled to five peremptory challenges.

(II) If the petition alleges that more than one juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), and the adjudicatory trials on the acts that are the subject of the petition are not severed, the state and the defense are entitled to two additional challenges for every juvenile after the first, not to exceed fifteen peremptory challenges per side; when multiple juveniles are adjudicated in a single hearing, each peremptory challenge made on the part of the juveniles must be made and considered as the joint peremptory challenge of all of the juveniles.

(c) When more than one petition concerning different juveniles are consolidated for the adjudication of the delinquent acts that are the subjects of the petitions, peremptory challenges are allowed as if the juveniles had been joined in the same petition in delinquency.

(4) (a) If a juvenile alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125 (4), admits the previous adjudications or probation revocations alleged in the petition pursuant to subsection (2) of this section, further proof of such previous adjudications or probation revocations is not required. Upon a finding that the juvenile has committed the delinquent acts that are the subject of the petition alleging that the juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the court may enter any sentence authorized by this section.

(b) If a juvenile alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125 (4), denies one or more of the previous adjudications or probation revocations alleged in the petition pursuant to subsection (2) of this section, the court, after a finding of guilty of the acts that are the subject of this petition, shall conduct a separate hearing in which the court shall be the trier of fact to determine whether the juvenile has suffered such adjudications or probation revocations. Each count alleging a previous adjudication or probation revocation must be proven beyond a reasonable doubt.

(c) In any hearing before the court pursuant to subsection (4)(b) of this section, a duly authenticated copy of the record of an adjudication or probation revocation is prima facie evidence that the juvenile suffered the adjudication or probation revocation. In addition, any basic identification information that is part of the record of the former adjudication or probation

revocation at the place the juvenile was incarcerated after disposition of the adjudication or probation revocation may be introduced into evidence in any hearing before the court pursuant to subsection (4)(b) of this section and is prima facie evidence of the identity of the juvenile.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 598, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-601 (1) to (4) as it existed prior to 2021.

ANNOTATION

Law reviews. For article, "New Juvenile Justice Laws Increase Options for Youth", see 42 Colo. Law. 37 (Apr. 2013).

Although violent juvenile offender was granted four rather than the five peremptory challenges awarded to an aggravated juvenile offender, violent juvenile offender's right to equal protection was not violated where the elements constituting an aggravated juvenile offender differ from those constituting a violent juvenile offender. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993) (decided under former law).

PART 6

COURT PROCEEDINGS

19-2.5-601. Appointment of guardian ad litem.

The court may appoint a guardian ad litem pursuant to section 19-1-111 for a juvenile in a proceeding brought pursuant to this article 2.5.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 599, § 2, effective October 1.

19-2.5-602. General procedure for juvenile hearings.

(1) The Colorado rules of juvenile procedure apply in all proceedings conducted pursuant to this article 2.5.

(2) Hearings must be held before the court without a jury, except as set forth in sections 19-2.5-610 and 19-2.5-503 (3), and may be conducted in an informal manner.

(3) A verbatim record must be taken of all proceedings, including any hearing conducted by a magistrate.

(4) When more than one juvenile is named in a petition or individual petitions are filed against more than one juvenile alleging delinquent acts arising from the same delinquent episode, any proceedings, including trials, may be consolidated.

(5) Juvenile cases must be heard separately from adult cases, and the juvenile or the juvenile's parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

(6) The juvenile's parent, guardian, or legal custodian is required to attend all proceedings, including all hearings, concerning the juvenile. Failure, without good cause, to attend a proceeding concerning the juvenile may subject the parent, guardian, or legal custodian to contempt sanctions; except that, if the juvenile's legal custodian is a county department of human or social services or the state department of human services, the legal custodian need not attend any proceeding at which the juvenile's guardian ad litem is present.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 599, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-109 as it existed prior to 2021.

ANNOTATION

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

Juvenile proceedings are governed by the procedural rules contained in the Colorado Children's Code. People ex rel. M.C.L., 671 P.2d 1339 (Colo. App. 1983).

Hearing may be informally conducted, and the court may take into consideration all factors which he normally takes into account when sentencing. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

And court is not bound by strict rules of evidence in a hearing to determine whether probation should be revoked. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Thus, there is a presumption that all incompetent or hearsay evidence is disregarded by a court in reaching its conclusions, so a judgment will not be

reversed on appeal because of the admission of such evidence. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

However, the Colorado Children's Code does not dispense with rules of evidence which directly bear upon substantive proof although the code does permit hearings to be conducted in an informal manner. Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

In delinquency cases a verbatim record of the proceedings and evidence shall be maintained unless expressly waived. John Doe v. People, 156 Colo. 311, 398 P.2d 624 (1965).

Lack of transcript and evidence required reversal. Where an order was entered declaring a child neglected and dependent, severing parental rights, and holding the child's grandfather in contempt of court for failure to deliver the child, but the court reporter certified that there had been no transcript made of any of the hearings prior to the one on the contempt violation, and since there was no evidence or showing that the home environment which the grandfather might provide for the child would be unsatisfactory the judgment and orders of the trial court were reversed. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

19-2.5-603. Notification. (Repealed)

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 600, § 2, effective October 1. **L. 2022:** Entire section repealed, (SB 22-018), ch. 191, p. 1274, § 8, effective July 15.

Editor's note: Prior to its repeal, this section was similar to former § 19-2-509 (9) as it existed prior to 2021.

19-2.5-604. Open hearings.

The general public must not be excluded from hearings held pursuant to this article 2.5 unless the court determines that it is in the best interest of the juvenile or of the community to exclude the general public. In such event, the court shall admit only such persons as have an interest in the case or work of the court, including persons whom the district attorney, the juvenile, or the juvenile's parents or guardian wishes to be present.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 600, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-110 as it existed prior to 2021.

19-2.5-605. Advisement - right to counsel - waiver of right to counsel - definition.

(1) (a) At the juvenile's first appearance before the court, after the detention hearing or at the first appearance if the juvenile appears on a summons, the court shall advise the juvenile and the juvenile's parents, guardian, or other legal custodian of the juvenile's constitutional rights and legal rights as set forth in rule 3 of the Colorado rules of juvenile procedure, including but not limited to the right to counsel. The advisement must include the possibility of restorative justice practices, including victim-offender conferences if restorative justice practices are available in the jurisdiction. The advisement regarding restorative justice practices does not establish any right to restorative justice practices on the juvenile's behalf.

(b) If the respondent has made an early application for appointed counsel for the juvenile and the office of the state public defender has made a preliminary determination that the juvenile is eligible for appointed counsel as set forth in section 21-1-103 or if the court has appointed counsel for the juvenile pursuant to section 19-2.5-305 (2), an attorney from the office of the state public defender or, in the case of a conflict, from the office of alternate defense counsel, shall be available to represent the juvenile at the juvenile's first appearance, as described in subsection (1)(a) of this section.

(c) If the respondent has not made an early application for appointed counsel for the juvenile but the juvenile requests appointment of counsel at the first appearance, the court shall determine if the juvenile is eligible for counsel pursuant to subsection (2)(a) of this section.

(d) As used in this subsection (1), unless the context otherwise requires, "early application" means that the respondent has contacted the office of the state public defender and applied for representation of the juvenile by the state public defender not less than five days, excluding Saturdays, Sundays, and legal holidays, before the juvenile's scheduled court date for the first appearance and has provided sufficient information to the office of the state public defender to allow that office to make a preliminary determination of eligibility for representation.

(e) Failure of the juvenile's parent, guardian, or legal custodian to apply for court-appointed counsel may not be construed as a waiver of the right to counsel or any other rights held by the juvenile.

(2) (a) If the juvenile and the juvenile's parents, guardian, or other legal custodian are found to be indigent pursuant to section 21-1-103 (3), or the juvenile's parents, guardian, or other legal

custodian refuses to retain counsel for the juvenile, or the court, on its own motion, determines that counsel is necessary to protect the interests of the juvenile or other parties, or the juvenile is in the custody of the state department of human services or a county department of human or social services, the court shall appoint the office of state public defender or, in the case of a conflict, the office of alternate defense counsel for the juvenile; except that the court shall not appoint the office of the state public defender or the office of alternate defense counsel if:

(I) The juvenile has retained the juvenile's own counsel; or

(II) The juvenile has made a knowing, intelligent, and voluntary waiver of the juvenile's right to counsel, as described in subsection (2)(c) of this section.

(b) Repealed.

(c) The court may accept a waiver of counsel by a juvenile only after finding on the record, based on a dialogue conducted with the juvenile, that the juvenile:

(I) Is of a sufficient maturity level to make a voluntary, knowing, and intelligent waiver of the right to counsel;

(II) Understands the sentencing options that are available to the court in the event of an adjudication or conviction of the offense with which the juvenile is charged;

(III) Has not been coerced by any other party, including but not limited to the juvenile's parent, guardian, or legal custodian, into making the waiver;

(IV) Understands that the court will provide counsel for the juvenile if the juvenile's parent, guardian, or legal custodian is unable or unwilling to obtain counsel for the juvenile; and

(V) Understands the possible consequences that may result from an adjudication or conviction of the offense with which the juvenile is charged, which consequences may occur in addition to the actual adjudication or conviction itself.

(d) The appointment of counsel pursuant to this subsection (2) continues until:

(I) The court's jurisdiction is terminated;

(II) The juvenile or the juvenile's parent, guardian, or legal custodian retains counsel for the juvenile;

(III) The court finds that the juvenile or the juvenile's parents, guardian, or other legal custodian has sufficient financial means to retain counsel or that the juvenile's parents, guardian, or other legal custodian no longer refuses to retain counsel for the juvenile; or

(IV) The court finds the juvenile has made a knowing, intelligent, and voluntary waiver of the juvenile's right to counsel, as described in subsection (2)(c) of this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 600, § 2, effective October 1; (2)(b) repealed, (HB 21-1315), ch. 461, p. 3116, § 25, effective October 1.

Editor's note: This section is similar to former § 19-2-706 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021.

ANNOTATION

Protections afforded to a juvenile must, at a minimum, be equivalent to those afforded to an adult defendant. Failure to properly advise a juvenile and to inquire on the record into whether the juvenile demonstrates, under the totality of the circumstances, an unequivocal knowing, intelligent, and voluntary intent to relinquish the right to representation results in an invalid waiver of counsel. People in Interest of J.V.D., 2019 COA 70, 442 P.3d 1030 (decided under former law).

19-2.5-606. Preadjudication service program - creation.

(1) (a) The chief judge of any judicial district may issue an order that any juvenile who applies for preadjudication release be evaluated for placement by a preadjudication service program established pursuant to this section. In evaluating the juvenile, the service program shall follow criteria for the placement of a juvenile established pursuant to section 19-2.5-1404. Upon evaluation, the service program shall make a recommendation to the court concerning placement of the juvenile with a preadjudication service program.

(b) Parents or legal guardians of a juvenile evaluated by a preadjudication service program shall complete the information form described in section 19-2.5-1404 (1)(b)(VIII) no later than two business days after the evaluation or prior to the juvenile's first detention hearing, whichever occurs first. If available, the screening team or preadjudication service program shall file the original completed information form with the court. If the information form has not been completed at the time of the detention hearing, the court shall direct the parent or legal guardian to immediately complete the form and file it with the court. The screening team, preadjudication service program, or the court shall deliver a copy of the information form to the division of youth services; the guardian ad litem, if any; and the county department of human or social services no later than seven business days after the date of the detention hearing.

(2) Any county or city and county or judicial district in the state may establish a preadjudication service program for use by the district court for the county or city and county or judicial district. Such program must be established in accordance with a local justice plan developed pursuant to section 19-2.5-302.

(3) The local justice plan must provide for the assessment of juveniles taken into custody and detained by law enforcement officers. The assessment must be based on criteria for the placement of juveniles established pursuant to section 19-2.5-1404, so that relevant information may be presented to the judge presiding over the detention hearing. The information provided to the court through the screening process, including the record of any prior adjudication of the juvenile, is intended to enhance the court's ability to make a more appropriate detention and bond decision, based on facts relative to the juvenile's substantial risk of serious harm to others.

(4) The plan may include different methods and levels of community-based supervision as conditions for preadjudication release, including the possibility of release without formal supervision. The plan may provide for the use of the same supervision methods that have been established for adult defendants as a pretrial release method to reduce pretrial incarceration or that have been established as sentencing alternatives for juvenile or adult offenders placed on probation or parole. The use of such supervision methods is intended to reduce preadjudication detentions without sacrificing the protection of the community from juveniles who may be risks to the public. The plan may allow for the release of the juvenile to the juvenile's home with no formal supervision or provide for the use of any of the following supervision methods as conditions of preadjudication release:

(a) Periodic telephone communications with the juvenile;

(b) Periodic office visits by the juvenile to the preadjudication service program;

(c) Periodic home visits to the juvenile's home;

(d) If a validated mental health or substance use screening and subsequent mental health or substance use assessment indicates that the juvenile has a need:

(I) Periodic drug testing of the juvenile; or

(II) Behavioral or mental health or substance use treatment for the juvenile, which may include residential treatment;

(e) Periodic visits to the juvenile's school;

(f) Domestic violence or child abuse counseling for the juvenile, if applicable;

(g) Electronic or global position monitoring of the juvenile;

(h) Work release for the juvenile, if school attendance is not applicable or appropriate under the circumstances; or

(i) Juvenile day reporting and day treatment programs.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 603, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-302 as it existed prior to 2021.

19-2.5-607. Mandatory protection order.

(1) (a) A mandatory protection order is created against any juvenile charged with the commission of a delinquent act and the juvenile's parents or legal guardian. The order remains in effect from the time that the juvenile is advised of the juvenile's rights and informed of the order at the juvenile's first appearance before the court until final disposition of the action or, in the case of an appeal, until disposition of the appeal. The order restrains the juvenile and the juvenile's parents or legal guardian from harassing, molesting, intimidating, retaliating against, or tampering with any witness to or victim of the delinquent act charged.

(b) The protection order issued pursuant to this section must be on a standardized form prescribed by the judicial department, and a copy must be provided to the protected parties.

(2) At the time of the juvenile's first appearance before the court, the court shall inform the juvenile and the juvenile's parents or legal guardian of the protection order effective pursuant to this section and shall also inform the juvenile and the juvenile's parents or legal guardian that a violation of such order is punishable as contempt of court.

(3) Nothing in this section precludes the juvenile or the juvenile's parents or legal guardian from applying to the court at any time for modification or dismissal of the protection order issued pursuant to this section or the district attorney from applying to the court at any time for additional provisions under the protection order, modification of the order, or dismissal of the order. The trial court shall retain jurisdiction to enforce, modify, or dismiss the protection order during the pendency of any appeal that may be brought.

(4) The duties of peace officers enforcing orders issued pursuant to this section are in accordance with section 18-6-803.5 and any rules adopted by the Colorado supreme court pursuant to said section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 604, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-707 as it existed prior to 2021.

19-2.5-608. Fingerprinting - ordered by court - definition.

(1) For purposes of this section, "juvenile" means any juvenile who is charged with committing, summoned, or held in detention for committing a delinquent act that constitutes a felony, a class 1 misdemeanor, or a misdemeanor pursuant to section 42-4-1301 or a crime, the underlying factual basis of which included an act of domestic violence, as defined in section 18-6-800.3 (1), as if committed by an adult.

(2) If a juvenile has not been fingerprinted prior to the juvenile's first appearance before the court, the court shall order the juvenile to report to an entity authorized by the court or the local law enforcement agency for fingerprinting, except for juvenile detention centers and alternative service programs, otherwise known as "SB 91-94 programs", described in section 19-2.5-606. The authorized entity or local law enforcement agency shall endorse upon a copy of the order the completion of the fingerprinting and return the same to the court. The authorized entity or local law enforcement agency shall forward a set of fingerprints ordered pursuant to this subsection (2) to the Colorado bureau of investigation in the form and manner prescribed by the bureau.

(3) Any fingerprints required by this section to be forwarded to the Colorado bureau of investigation must be forwarded within twenty-four hours after completion of the fingerprinting, excluding Saturdays, Sundays, and legal holidays.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 605, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-503.5 (1), (3), and (4) as it existed prior to 2021.

19-2.5-609. Preliminary hearing - dispositional hearing.

(1) The district attorney or a juvenile who is accused in a petition of a delinquent act that constitutes a class 1, 2, or 3 felony may demand and receive a preliminary hearing to determine if there is probable cause to believe that the delinquent act alleged in the petition was committed by the juvenile. In addition, the district attorney or a juvenile who is accused in a petition of only those delinquent acts that constitute class 4, 5, or 6 felonies, which felonies require mandatory sentencing, constitute crimes of violence as defined in section 18-1.3-406, or constitute sexual

offenses pursuant to part 4 of article 3 of title 18, may demand and receive a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the delinquent act alleged in the petition. A preliminary hearing may be heard by a judge of the juvenile court or by a magistrate and conducted as follows:

(a) At the juvenile's advisement hearing and after the filing of the delinquency petition, the prosecution shall make available to the juvenile the discovery material required by the Colorado rules of juvenile procedure. The juvenile or the prosecution may file a written motion for a preliminary hearing, stating the basis therefor. Upon the filing of the motion, the court shall set the matter for a hearing. The juvenile or the prosecution shall file a written motion for a preliminary hearing not later than fourteen days after the advisement hearing.

(b) If the juvenile is being detained because of the delinquent act alleged in the petition, the preliminary hearing must be held within thirty-five days after the filing of the motion, unless good cause for continuing the hearing beyond that time is shown to the court. If the juvenile is not being detained, it must be held as promptly as the calendar of the court permits.

(c) At the preliminary hearing, the juvenile shall not be called upon to plead, although the juvenile may cross-examine the prosecution witnesses and may introduce evidence in the juvenile's own behalf. The prosecution has the burden of establishing probable cause. The court at the hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(d) If the court determines that probable cause exists, it shall enter a finding to that effect and schedule an adjudicatory trial. If from the evidence it appears to the court that probable cause does not exist, it shall dismiss the delinquency petition and the court shall discharge the juvenile from any restriction or other previous temporary order stemming from the petition.

(2) (a) The district attorney and the juvenile who is accused in a petition of a delinquent act that constitutes a class 4, 5, or 6 felony, except those that require mandatory sentencing, that constitute crimes of violence as defined in section 18-1.3-406, or that constitute sexual offenses pursuant to part 4 of article 3 of title 18, do not have the right to demand or receive a preliminary hearing but shall participate in a dispositional hearing for the purposes of case evaluation and potential resolution. A judge of the juvenile court or a magistrate may hear the dispositional hearing.

(b) Any juvenile accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing pursuant to subsection (2)(a) of this section may demand and shall receive a preliminary hearing within a reasonable time pursuant to subsection (1) of this section if the juvenile is in custody; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the juvenile has been released from custody prior to the preliminary hearing.

(3) A request for review of a preliminary hearing finding entered by a magistrate must be filed pursuant to section 19-1-108 (5.5), and review must be conducted pursuant to said section.

(4) The prosecution may file a motion to refile the petition in delinquency, which motion must be accompanied by a verified affidavit stating the grounds therefor.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 605, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-705 as it existed prior to 2021.

ANNOTATION

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

Detained juvenile entitled to preliminary hearing. A juvenile who is detained is entitled to a preliminary hearing by constitutional mandate. The right to a preliminary hearing in all other instances is based upon interpretation of the Colorado Children's Code and the Colorado rules of juvenile procedure. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

When juvenile entitled to preliminary hearing. Juveniles charged in delinquency proceedings with crimes (felonies and class 1 misdemeanors) subject to Crim. P. 5 and 7 are entitled to a preliminary hearing. Juveniles held on lesser charges are not granted a right to a preliminary hearing by statute or by rule. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Former § 19-3-103 (1)(d) gave juvenile courts limited discretion to conduct a preliminary hearing on the issue of probable cause to charge a juvenile suspect. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Distinction is constitutional. Distinguishing between detained and nondetained juvenile suspects and between juveniles charged with committing serious offenses and juveniles charged with committing other offenses for the purpose of determining whether a preliminary hearing is required is a reasonable and rational distinction. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Preliminary hearings. Section 19-3-101 (1)(d) gives the juvenile courts limited discretion to conduct a preliminary hearing on the issue of probable cause to charge a juvenile suspect. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Distinguishing between detained and nondetained juvenile suspects and between juveniles charged with committing serious offenses and juveniles charged with committing other offenses for the purpose of determining whether a preliminary hearing

is required is a reasonable and rational distinction. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Under subsection (3), prosecutors and juveniles are entitled to ask a juvenile court to review a juvenile court magistrate's preliminary hearing finding in a delinquency proceeding. People in Interest of A.S.M., 2022 CO 47, 517 P.3d 675.

Granting a motion to dismiss and denying a motion to refile a juvenile delinquency is within the discretion of the court. People in Interest of D.J.P., 785 P.2d 129 (Colo. 1990).

Failure of prosecution to subpoena witness or to show necessity for the testimony of such witness is sufficient to deny prosecution motion to continue and to dismiss the action. People in Interest of D.J.P., 785 P.2d 129 (Colo. 1990).

19-2.5-610. Right to jury trial.

(1) In any action in delinquency in which a juvenile is alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125, or is alleged to have committed an act that would constitute a crime of violence, as defined in section 18-1.3-406, if committed by an adult, the juvenile or the district attorney may demand a trial by a jury of not more than six persons, except as provided in section 19-2.5-503 (3)(a), or the court, on its own motion, may order the jury to try any case brought pursuant to this title 19, except as provided in subsection (2) of this section.

(2) The juvenile is not entitled to a trial by jury when the petition alleges a delinquent act that is a misdemeanor, a petty offense, a violation of a municipal or county ordinance, or a violation of a court order.

(3) Unless a jury is demanded pursuant to subsection (1) of this section, it is deemed waived.

(4) Notwithstanding any other provisions of this article 2.5, in any action in delinquency in which a juvenile requests a jury pursuant to this section, the juvenile is deemed to have waived the sixty-day requirement for holding the adjudicatory trial established in section 19-2.5-902. In such a case, the juvenile's right to a speedy trial is governed by section 18-1-405 and rule 48 (b) of the Colorado rules of criminal procedure.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 607, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-107 as it existed prior to 2021.

ANNOTATION

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

Error for trial judge to refuse a jury trial and fail to notify defendants or parents or friends present, that a trial by jury might be had if they wished it. Kahm v. People, 83 Colo. 300, 264 P. 718 (1928).

Juvenile who claimed that the incorrect statute was applied during his trial waived his statutory right to a jury trial because he was given the opportunity at pretrial hearing to make his position known regarding the applicable statutory provisions, and did not do so. People v. J.J.H., 992 P.2d 626 (Colo. App. 1999), rev'd on other grounds, 17 P.3d 159 (Colo. 2001).

Trial court did not err in denying the request for a jury trial. Since defendant's charge of sexual assault on a child did not include charges of bodily injury, intimidation, threats, or force, defendant was not charged with a crime of violence as defined in § 18-1.3-406 and, subsequently, was not entitled to a jury trial. People ex rel. A.B.-B., 215 P.3d 1205 (Colo. App. 2009).

Jury trial is not constitutionally required under the due process clause or equal protection clause of the state constitution, article II, § 25, in the less serious delinquency adjudications specified in this statute. People in Interest of T.M., 742 P.2d 905 (Colo. 1987); People in Interest of T.A.W., 38 Colo. App. 175, 556 P.2d 1225 (1996).

Express constitutional right to a jury trial afforded to an adult facing a serious criminal charge not extended to a juvenile in delinquency proceedings under the federal or state constitution, even when the consequences for the juvenile include possible commitment over six months; rationale for not extending jury trial to juvenile proceedings focuses on the unique nature of juvenile proceedings and not on the potential consequences of a delinquency adjudication. People ex rel. A.C., 991 P.2d 304 (Colo. App. 1999), aff'd, 16 P.3d 240 (Colo. 2001).

Right to due process under the state constitution does not include a right to a jury in any delinquency proceeding. People ex rel. A.C., 991 P.2d 304 (Colo. App. 1999), aff'd, 16 P.3d 240 (Colo. 2001).

No equal protection right to a juvenile facing possible commitment over six months; there is no juvenile fundamental right to a jury trial in delinquency proceedings and it is not irrational to preclude jury trials in juvenile proceedings. People ex rel. A.C., 991 P.2d 304 (Colo. App. 1999), aff'd, 16 P.3d 240 (Colo. 2001).

Absent a corresponding constitutional right, juvenile who was not alleged to have committed an act that would constitute a crime of violence and who was not an aggravated juvenile offender did not have a statutory right to a jury trial. People ex rel. A.C., 991 P.2d 304 (Colo. App. 1999), aff'd, 16 P.3d 240 (Colo. 2001); People ex rel. J.T., 13 P.3d 321 (Colo. App. 2000), overruled on

other grounds in People in Interest of T.B., 2021 CO 59, 489 P.3d 752.

Jury demand right extended to all parties of record to delinquency proceeding. The general assembly's selection of "any interested party" stands out as a purposeful choice to extend the right of jury demand to all parties of record to the delinquency proceeding. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981); People in Interest of T.A.W., 38 Colo. App. 175, 556 P.2d 1225 (1996).

And juvenile has no veto power over state's demand. There is no indication of an intent to bestow on the juvenile a veto power over the state's jury demand through a statutory right of jury waiver. S.A.S. v. Dist. Court, 623 P.2d 58 (Colo. 1981).

19-2.5-611. Contempt - warrant - legislative declaration.

(1) Except as otherwise set forth in subsection (3) of this section, any person summoned or required to appear pursuant to section 19-2.5-501 who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

(2) If after reasonable effort the summons cannot be served or if the welfare of the juvenile requires that the juvenile be brought immediately into the custody of the court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the juvenile.

(3) (a) When a parent or other person who signed a written promise to appear and bring the juvenile to court or who has waived or acknowledged service fails to appear with the juvenile on the date set by the court, a bench warrant may be issued for the parent or other person, the juvenile, or both.

(b) Whenever a parent or guardian or person with whom the juvenile resides, if other than the parent or guardian, who has received a summons to appear fails, without good cause, to appear on any other date set by the court, a bench warrant must be issued for the parent, guardian, or person with whom the juvenile resides, and the parent, guardian, or person with whom the juvenile resides is subject to contempt.

(c) For purposes of this subsection (3), good cause for failing to appear includes but is not limited to a situation where a parent or guardian:

(I) Does not have physical custody of the juvenile and resides outside of Colorado;

(II) Has physical custody of the juvenile but resides outside of Colorado and appearing in court will result in undue hardship to the parent or guardian; or

(III) Resides in Colorado but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to the parent or guardian.

(d) The nonappearance of the parent, guardian, or person with whom the juvenile resides is not the basis for a continuance.

(e) This subsection (3) is not applicable to any proceeding in a case that has been transferred to the district court pursuant to section 19-2.5-802.

(f) The general assembly declares that every parent or guardian whose juvenile is the subject of a juvenile proceeding pursuant to this article 2.5 shall attend any such proceeding.

(g) Nothing in this subsection (3) creates a right for any juvenile to have the juvenile's parent or guardian present at any proceeding at which the juvenile is present.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 607, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-515 as it existed prior to 2021.

19-2.5-612. Mental health services for juvenile - how and when issue raised - procedure - definitions.

(1) At any stage of a delinquency proceeding, if the court, prosecution, probation officer, guardian ad litem, parent, or legal guardian has reason to believe that the juvenile could benefit from mental health services, the party shall immediately advise the court of that belief.

(2) After the party advises the court of the party's belief that the juvenile could benefit from mental health services, the court shall immediately order a mental health screening of the juvenile pursuant to section 16-11.9-102 using the mental health screening tool selected pursuant to section 24-33.5-2402 (1)(b), as it existed prior to its repeal in 2022, unless the court already has sufficient information to determine whether the juvenile could benefit from mental health services or unless a mental health screening of the juvenile has been completed within the last three months. Before sentencing a juvenile, the court shall order a mental health screening using the mental health screening tool selected pursuant to section 24-33.5-2402 (1)(b), as it existed prior to its repeal in 2022, or make a finding that the screening would not provide information that would be helpful in sentencing the juvenile. The court shall not stay or suspend delinquency proceedings pending the results of the mental health screening ordered pursuant this section. However, the court may continue the dispositional and sentencing hearing to await the results of the mental health screening.

(3) If the mental health screening indicates that the juvenile could benefit from mental health services, the court may order a mental health assessment.

(4) At the time the court orders a mental health assessment, the court shall specify the date upon which the assessment must be completed and returned to the court. The court may assign responsibility for the cost of the assessment to any party having legal custody or legal guardianship of the juvenile.

(5) The assessment, at a minimum, must include an opinion regarding whether the juvenile could benefit from mental health services. If the assessment concludes that the juvenile could benefit from mental health services, the assessment must identify the juvenile's mental health issues and the appropriate services and treatment.

(6) Evidence or treatment obtained as a result of a mental health screening or assessment ordered pursuant to this section, including any information obtained from the juvenile in the course of a mental health screening or assessment, must be used only for purposes of sentencing; to determine what mental health treatment, if any, to provide to the juvenile; and to determine whether the juvenile justice or another service system is most appropriate to provide this treatment, and must not be used for any other purpose. The mental health screening or assessment or any information obtained in the course of the mental health screening or assessment is not subject to subpoena or any other court process for use in any other court proceeding and is not admissible on the issues raised by a plea of not guilty unless the juvenile places the juvenile's mental health at issue. If the juvenile places the juvenile's mental health at issue, then either party may introduce evidence obtained as a result of a mental health screening or assessment. The court shall keep any mental health screening or assessment in the court file under seal.

(7) For purposes of this section:

(a) "Assessment" means an objective process used to collect pertinent information in order to identify a juvenile who may have mental health needs and identify the least restrictive and most appropriate services and treatment.

(b) "Juvenile could benefit from mental health services" means a juvenile exhibits one or more of the following characteristics:

(I) A chronic or significant lack of impulse control or of judgment;

(II) Significant abnormal behaviors under normal circumstances;

(III) Severe or frequent changes in sleeping or eating patterns or in levels of activity;

(IV) A pervasive mood of unhappiness or of depression; or

(V) A history that includes mental health treatment, a suicide attempt, or the use of psychotropic medication.

(c) "Screening" means a short validated mental health screening adopted by the committee on juvenile justice reform pursuant to section 24-33.5-2402 (1)(b), as it existed prior to its repeal in 2022, to identify juveniles who may have mental health needs.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 608, § 2, effective October 1. **L. 2022:** (2) and (7)(c) amended, (HB 22-1211), ch. 79, p. 393, § 6, effective December 31.

Editor's note: This section is similar to former § 19-2-710 as it existed prior to 2021.

19-2.5-613. Advisement of services.

(1) For any juvenile who is sixteen years of age or older, before terminating jurisdiction, the court shall advise the juvenile that:

(a) If the juvenile was in foster care at sixteen years of age or older, or in noncertified kinship care and adjudicated dependent and neglected, then the juvenile has the right to begin voluntarily receiving child welfare services on or after reaching eighteen years of age through the foster youth in transition program, established in part 3 of article 7 of this title 19, until the juvenile's twenty-first birthday, or such greater age of foster care eligibility as required by federal law;

(b) The foster youth in transition program provides the juvenile with access to financial support for housing and other services, as outlined in section 19-7-305; and

(c) If the juvenile is eligible for the foster youth in transition program, the juvenile has the right to counsel through the office of the child's representative.

Source: L. 2022: Entire section added, (HB 22-1245), ch. 88, p. 417, § 2, effective August 10.

PART 7

COMPETENCY TO PROCEED

19-2.5-701. Legislative declaration.

(1) The general assembly finds and declares that:

(a) The juvenile justice system is civil in nature and focused on rehabilitation rather than punishment;

(b) Juveniles differ in significant and substantive ways from adults; therefore, different standards for competency are necessary for juveniles and adults; and

(c) Notwithstanding the differences between adults and juveniles, age alone is not determinative of incompetence without a finding that the juvenile actually lacks the relevant capacities for competence.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 610, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1300.2 as it existed prior to 2021.

19-2.5-701.5. Definitions.

As used in this part 7, unless the context otherwise requires:

(1) "Competency evaluation" means a court-ordered evaluation performed by the department, or a second evaluation conducted pursuant to section 19-2.5-707, conducted by a competency evaluator that meets the requirements described in section 19-2.5-703 (4).

(2) "Competency evaluator" means an individual with the qualifications described in section 19-2.5-703 (4)(b).

(3) "Competency hearing" means an initial hearing to determine whether a juvenile is competent to proceed.

(4) "Competent to proceed" means that a juvenile has the sufficient present ability to consult with the juvenile's attorney, with a reasonable degree of rational understanding, to assist the attorney in the juvenile's defense, and that the juvenile has a rational as well as factual understanding of the proceedings.

(5) "Incompetent to proceed" means that, based on an intellectual or developmental disability, mental health disorder, or lack of mental capacity, a juvenile does not have sufficient present ability to consult with the juvenile's attorney with a reasonable degree of rational understanding in order to assist the attorney in the juvenile's defense or that the juvenile does not have a rational as well as a factual understanding of the proceedings.

(6) "Restoration evaluation" means a court-ordered evaluation performed by the department, or a second evaluation conducted pursuant to section 19-2.5-707, conducted by a competency

evaluator to determine if the juvenile has become competent to proceed or will be able to be restored to competency in the reasonably foreseeable future.

(7) "Restoration progress review hearing" means a hearing in which the juvenile's progress in restoration to competency education and other applicable services is reviewed, based on restoration education, treatment records, and any prior competency evaluation reports.

(8) "Restoration to competency hearing" means a hearing to determine whether a juvenile who has previously been determined to be incompetent to proceed is now competent to proceed.

(9) "Second evaluation" means an evaluation in response to a court-ordered competency evaluation or court-ordered restoration evaluation requested by the juvenile that is performed by a competency evaluator and that is not performed by, under the direction of, or paid for by the department.

Source: L. 2023: Entire section added, (HB 23-1012), ch. 205, p. 1043 § 2, effective August 7. **L. 2025:** (1) and (6) amended, (SB 25-041), ch. 357, p. 1929, § 13, effective August 8.

19-2.5-702. Incompetent to proceed - effect - how and when raised.

(1) This part 7 applies only to proceedings brought pursuant to this title 19.

(2) A juvenile must not be tried or sentenced if the juvenile is incompetent to proceed, as defined in section 19-2.5-701.5, at that stage of the proceedings. Juveniles, like adults, are presumed competent to proceed, as defined in section 19-2.5-701.5, until such time as they are found incompetent to proceed through a decision by the court. A determination of competency must include an evaluation of intellectual and developmental disabilities, mental health disorders, and mental capacity. Age alone is not determinative of incompetence without a finding that the juvenile actually lacks the relevant capacities for competence.

(3) When a party specified in this subsection (3) has reason to believe that a juvenile is incompetent to proceed in a delinquency action, the party shall raise the question of the juvenile's competency in the following manner:

(a) On its own motion, the court shall suspend the proceeding and determine the competency or incompetency of the juvenile pursuant to section 19-2.5-703;

(b) By motion of the prosecution, probation officer, guardian ad litem, or defense, made in advance of the commencement of the particular proceeding. The motion may be filed after the commencement of the proceeding if, for good cause shown, the juvenile's mental health was unknown or unapparent before the commencement of the proceeding.

(c) By the juvenile's parent or legal guardian.

(4) If the issue of competency is raised at the time charges are filed or at any time thereafter and the juvenile is not represented by counsel, the court may immediately appoint counsel and may also appoint a guardian ad litem to ensure the best interests of the juvenile are addressed in accordance with existing law.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 610, § 2, effective October 1. **L. 2023:** (2) amended, (HB 23-1012), ch. 205, p. 1044, § 3, effective August 7.

Editor's note: This section is similar to former § 19-2-1301 as it existed prior to 2021.

ANNOTATION

Version of subsection (1) prior to the 2018 amendment is not unconstitutional because it applied the definition of "incompetent to proceed" for adults in criminal proceedings to juveniles. People in Interest of A.C.E-D., 2018 COA 157, 433 P.3d 153 (decided under former law).

19-2.5-703. Determination of incompetency to proceed.

(1) Whenever the question of a juvenile's competency to proceed is raised, the court shall make a preliminary finding that the juvenile is or is not competent to proceed. If the court feels that the information available to it is inadequate for making such a finding, it shall order a competency examination.

(2) The court shall immediately notify the prosecuting attorney and defense counsel of the preliminary finding regarding competency. The prosecuting attorney or the defense counsel may request a hearing on the preliminary finding by filing a written request with the court within fourteen days after the date on which the court issues the preliminary finding, unless the court extends the time period for good cause. The preliminary finding becomes a final determination if neither the prosecuting attorney nor defense counsel requests a hearing. Upon the timely written request of either the prosecuting attorney or defense counsel, the court shall hold a competency hearing. If the court did not order a competency examination or other evaluation prior to its preliminary determination and the court determines adequate mental health information is not available, the court shall refer the juvenile for a competency examination prior to the hearing. At the conclusion of the competency hearing, the court shall make a final determination regarding the juvenile's competency to proceed. At a competency hearing held pursuant to this subsection

(2), the burden of submitting evidence and the burden of proof by a preponderance of the evidence are upon the party asserting the juvenile's incompetency.

(3) If the question of a juvenile's incompetency to proceed is raised after a jury is impaneled to try the issues raised by a plea of not guilty or after the court as the finder of fact begins to hear evidence and the court determines that the juvenile is incompetent to proceed or orders the juvenile referred for a competency examination, the court may declare a mistrial. If the court declares a mistrial under these circumstances, the juvenile must not be deemed to have been placed in jeopardy with regard to the charges at issue. The juvenile may be tried on, and sentenced if adjudicated for, the same charges after the juvenile has achieved or been restored to competency.

(4) (a) If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least-restrictive environment, including home or community placement, if appropriate, taking into account the public safety and the best interests of the juvenile.

(b) A competency evaluation must be conducted by a licensed psychiatrist or licensed psychologist who is experienced in the clinical evaluation of juveniles and trained in forensic competency assessments, or a psychiatrist or psychologist who is in forensic training and under the supervision of a licensed forensic psychiatrist or licensed psychologist with expertise in forensic psychology.

(c) The competency evaluation must, at a minimum, include an opinion regarding whether the juvenile is incompetent to proceed as defined in section 19-2.5-701.5. If the evaluation concludes the juvenile is incompetent to proceed, the evaluation must include a recommendation as to whether there is a likelihood that the juvenile may achieve or be restored to competency in the reasonably foreseeable future and identify appropriate services to restore the juvenile to competency.

(d) The evaluator conducting the competency evaluation shall file the evaluation with the court within:

(I) Thirty-five days after issuance of the order for the competency evaluation, unless good cause is shown for a delay, if the juvenile is held in a secure detention facility;

(II) Forty-nine days after issuance of the order for the competency evaluation, unless good cause is shown for a delay, if the juvenile is not held in a secure detention facility.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 611, § 2, effective October 1. **L. 2023:** (4)(c) amended, (HB 23-1012), ch. 205, p. 1045, § 4, effective August 7.

Editor's note: This section is similar to former § 19-2-1302 as it existed prior to 2021.

ANNOTATION

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

A juvenile is not entitled to a second competency evaluation at state expense. The provisions of the adult competency statutes, §§ 16-8.5-106 and 16-8.5-107, do not apply to juvenile delinquency proceedings. A juvenile does not have a constitutional right to a competency evaluation at state expense. People in Interest of W.P., 2013 CO 11, 295 P.3d 514.

This section applies only when a juvenile's competency is initially questioned. It does not apply after the preliminary finding or final determinations of competency, nor does it authorize subsequent competency evaluations. People in Interest of B.B.A.M., 2019 CO 103, 453 P.3d 1161.

This section does not apply to the question of restoration to competency, which is governed by §§ 19-2-1304 and 19-2-1305. People in Interest of B.B.A.M., 2019 CO 103, 453 P.3d 1161.

This section, which concerns a juvenile court's initial determination regarding competency, does not empower a juvenile court to order a second competency evaluation. However, §§ 19-2.5-704 and 19-2.5-705, in conjunction with § 19-2.5-706 (2), authorize a juvenile court to order a reassessment evaluation after the court determines a juvenile remains incompetent. People in Interest of A.C., 2022 CO 49, 517 P.3d 1228.

19-2.5-703.5. Waiver of privilege - exchange of information - admissibility of statements.

(1) When the court determines that a juvenile is incompetent to proceed, any claim of confidentiality or privilege by the juvenile or the juvenile's parent or legal guardian is deemed waived within the case to allow the court and parties to determine issues related to the juvenile's competency, restoration, and any management plan developed by the court pursuant to section 19-2.5-704 (3). The district attorney, defense attorney, guardian ad litem, the department, any competency evaluators, any restoration treatment providers, bridges court liaisons, and the court are granted access, without written consent of the juvenile or further order of the court, to:

(a) Competency evaluations and restoration evaluations, including all second evaluations;

(b) Information and documents related to competency evaluations that are created, obtained, reviewed, or relied on by a competency evaluator performing a court-ordered competency evaluation;

(c) Information and documents relating to competency restoration that are created, obtained, reviewed, or relied on by a competency provider performing court-ordered restoration services;

(d) The competency evaluator, for the purpose of discussing the competency evaluation; and

(e) The providers of court-ordered restoration services for the purpose of discussing such services.

(2) Upon a request by either party or the court for information described in subsection (1) of this section, the competency evaluator or restoration services provider shall provide the information to the party or court for use in preparing for a competency hearing, restoration progress review hearing, restoration to competency hearing, or hearing regarding a management plan pursuant to section 19-2.5-704 (3) and for use in any such hearing.

(3) A competency evaluator or restoration services provider assigned pursuant to a court order issued pursuant to this article 2.5 shall provide procedural information to the district attorney, defense attorney, guardian ad litem, the department, any competency evaluators, any restoration treatment providers, and the court concerning:

(a) The juvenile's location;

(b) The juvenile's hospital or facility admission status;

(c) The status of evaluation procedures;

(d) The status of restoration services procedures; and

(e) Any other procedural information relevant to the juvenile's competency, restoration, or management plan.

(4) Nothing in this section limits the court's ability to order, in addition to the information set forth in subsections (1) and (3) of this section, additional information be provided to the district attorney, defense attorney, guardian ad litem, the department, any competency evaluator, any restoration treatment provider, and the court, unless it is otherwise protected from disclosure by other law. Nothing in this section limits the information that is available with the written consent of the juvenile.

(5) The court shall order the parties to exchange the names, addresses, reports, and statements of each physician or psychologist who examined or treated the juvenile for competency.

(6) Evidence obtained during a competency evaluation or during competency restoration services that is related to the juvenile's competency or incompetency is only admissible to

determine the juvenile's competency, incompetency, or to determine orders related to restoration, restoration services, or a management plan and is not admissible on the issues raised by a plea of not guilty.

Source: L. 2023: Entire section added, (HB 23-1012), ch. 205, p. 1045, § 5, effective August 7. **L. 2025:** IP(1) amended, (HB 25-1146), ch. 358, p. 1936, § 6, effective July 1.

19-2.5-704. Procedure after determination of competency or incompetency.

(1) If the court finally determines pursuant to section 19-2.5-703 that the juvenile is competent to proceed, the court shall order that the suspended proceeding continue or, if a mistrial has been declared, shall reset the case for trial at the earliest possible date.

(2) (a) If the court finally determines pursuant to section 19-2.5-703 that the juvenile is incompetent to proceed but may be restored to competency in the reasonably foreseeable future, the court shall stay the proceedings and order that the juvenile receive services designed to restore the juvenile to competency, based upon recommendations in the competency evaluation, unless the court makes specific findings that the recommended services in the competency evaluation are not justified. The court shall order that the restoration services ordered are provided in the least-restrictive environment, taking into account the public safety and the best interests of the juvenile, and that the provision of the services and the juvenile's participation in those services occur in a timely manner. The court shall hold a restoration progress review hearing at least every ninety-one days until competency is restored, unless the juvenile is in custody, in which event the court shall hold a restoration progress review hearing every thirty-five days to ensure the prompt provision of services in the least-restrictive environment. The court shall not maintain jurisdiction longer than the maximum possible sentence for the most serious offense, unless the court makes specific findings of good cause to retain jurisdiction. However, the juvenile court's jurisdiction shall not extend beyond the juvenile's twenty-first birthday.

(b) Pursuant to section 27-60-105, the department is the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration. The department shall only conduct a restoration evaluation with a court order pursuant to subsection (2)(c) of this section.

(c) (I) The court, a party, or the department may raise, at any time, the need for a restoration evaluation of a juvenile's competency. The request must include the factual grounds that support the need for a restoration evaluation.

(II) (A) The court must ensure prompt resolution of any request for a restoration evaluation.

(B) The court shall order each party to state their position and provide input on the request no later than fourteen days after when the party was notified of the request; except that, if the juvenile is in custody or inpatient restoration, the court shall allow seven days for a party to object to the request. If the parties are before the court, the court may take positions on the record, or the court may order a written position from each party as necessary.

(C) If no party objects, the court shall order the restoration evaluation forthwith.

(D) If a party objects, the party shall state the grounds for their objection.

(III) If a party timely objects to a restoration evaluation being ordered, the court shall order a restoration evaluation only when there is credible information that the juvenile's circumstances have changed, the court cannot fairly determine whether the juvenile has been restored to competency or will be able to be restored to competency in the reasonably foreseeable future without an evaluation, and the cause for a restoration evaluation outweighs the negative impact of a restoration evaluation upon the juvenile. The court may rule on a request based on the information received with the request and with any objection without a hearing, or if the court finds a hearing is necessary to rule on the request, the court may hold a hearing within fourteen days after receiving an objection to determine if a restoration evaluation must be ordered. If the court orders a restoration evaluation, such evaluation must meet the requirements of section 19-2.5-703 (4).

(2.3) If the court makes a final determination pursuant to section 19-2.5-703 that the juvenile is incompetent to proceed and the juvenile's highest charged act constitutes a class 2 misdemeanor, a petty offense, a drug misdemeanor, or a traffic offense, the court shall immediately dismiss the delinquency petition or charges, as applicable, against the juvenile.

(2.5) (a) If the court finds a juvenile is incompetent to proceed, the juvenile's highest charged act is not included in the charges specified in subsection (2.3) of this section, and the juvenile has been incompetent to proceed for a period of time that exceeds the time limits set forth in this subsection (2.5), the court shall enter a finding that the juvenile is unrestorable to competency and shall determine whether a management plan for the juvenile is necessary pursuant to subsection (3)(a) of this section. The time limits are as follows:

(I) If the highest charged act constitutes a class 1 misdemeanor or a level 4 drug felony and the juvenile is not restored to competency after a period of six months, the court shall find the juvenile unrestorable to competency;

(II) If the highest charged act constitutes a class 4, 5, or 6 felony, or a level 3 drug felony, and the juvenile is not restored to competency after a period of one year, the court shall find the juvenile unrestorable to competency;

(III) If the highest charged act constitutes a class 3 felony or a level 1 or 2 drug felony, except for a charge that constitutes an act that alleges the juvenile is an aggravated juvenile

offender pursuant to section 19-2.5-1125 (4), and the juvenile is not restored to competency after a period of two years, the court shall find the juvenile unrestorable to competency; or

(IV) If the highest charged act constitutes a class 1 or 2 felony or for a charge that constitutes an act that alleges the juvenile is an aggravated juvenile offender pursuant to section 19-2.5-1125 (4) and the juvenile is not restored to competency after a period of five years, the court shall find the juvenile unrestorable to competency.

(b) Upon a motion from the prosecuting attorney filed prior to the expiration of the time limits set forth in subsection (2.5)(a) of this section, the court may extend the time limits set forth in subsection (2.5)(a) of this section for an additional three months if the court, after a hearing, makes factual findings that:

(I) The juvenile has failed to attend or substantially cooperate with restoration treatment;

(II) There is a reasonable likelihood of restoration in the foreseeable future if the juvenile cooperates with restoration treatment; and

(III) The juvenile's lack of cooperation is not the result of an intellectual and developmental disability, mental or behavioral health disorder, or a lack of mental capacity.

(c) Nothing in this subsection (2.5) precludes a court from determining a juvenile is unlikely to be restored to competency in the reasonably foreseeable future and entering an order that the juvenile is unrestorable to competency pursuant to subsection (3)(a) of this section through a competency hearing or restoration to competency hearing conducted at any time prior to the expiration of the time limits set forth in subsection (2.5)(a) of this section, based upon the available evidence.

(3) (a) If the court finally determines pursuant to section 19-2.5-703 or 19-2.5-703.5 that the juvenile is incompetent to proceed and cannot be restored to competency in the reasonably foreseeable future, the court shall enter an order finding the juvenile unrestorable to competency and shall determine whether a case management plan for the juvenile is necessary, taking into account the public safety and the best interests of the juvenile. If the court determines a case management plan is unnecessary, the court may continue any treatment or plan already in place for the juvenile. If the court determines a case management plan is necessary, the court must develop the case management plan after ordering that the juvenile be placed or continue placement in the least-restrictive environment, taking into account the public safety and best interests of the juvenile. In order to develop an appropriate case management plan, the court may order any member of the juvenile's professional team to consult with the juvenile, the juvenile's parent or legal guardian, or other individuals, including the juvenile's defense attorney, guardian ad litem, or treatment provider, to develop a proposed management plan to present to the court for consideration. The court shall notify any individual, organization, or agency that is identified as responsible for the juvenile or responsible for implementation of the management plan. The management plan must, at a minimum, address treatment for the juvenile, identify the party or

parties responsible for the juvenile, and specify appropriate behavior management tools if the tools are not otherwise part of the juvenile's treatment.

(b) The management plan may include:

(I) Placement options included in article 10.5 or 65 of title 27;

(II) A treatment plan developed by a licensed mental health professional;

(III) An informed supervision model, upon the court finding on the record supported by information that the underlying charge is rationally related to the need for the use of an informed supervision model;

(IV) Institution of a guardianship petition; or

(V) Any other remedy the court deems rationally related to mitigating community safety concerns.

(b.5) Notwithstanding subsection (3)(b) of this section, the management plan must not include:

(I) Detention of the juvenile or commitment of the juvenile to the division of youth services, a county jail, community corrections, or the Colorado mental health institute at Pueblo; or

(II) Work release.

(c) If the charges are not dismissed earlier by the district attorney, the charges against a juvenile found to be incompetent and unrestorable must be dismissed no later than the maximum possible sentence for the original offense after the date of the court's finding of incompetent and unrestorable, unless the court makes specific findings of good cause to retain jurisdiction. However, the juvenile court's jurisdiction shall not extend beyond the juvenile's twenty-first birthday.

(d) Any entity responsible for connecting the juvenile to services, service coordination, or case management may report to the court on the juvenile's or the juvenile's parent's or legal guardian's engagement in the services ordered in the management plan. If the juvenile or the juvenile's parent or legal guardian does not engage in the services ordered in the management plan, the court may alter the management plan or take other action as necessary and permitted by law, including, but not limited to, referral to a local collaborative management program, to the extent that a local collaborative management program exists and provides case management services; ordering a department of human services investigation pursuant to section 19-3-501 (1); or filing a dependency and neglect petition pursuant to section 19-3-501 (2)(b) if there is current information that the juvenile has suffered abuse as defined in section 19-1-103 and the best interests of the juvenile require that the juvenile is protected from risk of further abuse.

(4) A determination pursuant to subsection (2) of this section that a juvenile is incompetent to proceed must not preclude the court from considering the release of the juvenile on bond upon compliance with the standards and procedures for such release prescribed by statute. At any hearing to determine eligibility for release on bond, the court may consider any effect the juvenile's incompetency may have on the juvenile's ability to ensure the juvenile's presence for trial.

Source: L. 2021: (4) amended, (SB 21-071), ch. 463, p. 3336, § 6, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 612, § 2, effective October 1. **L. 2022:** (2)(b) amended, (HB 22-1278), ch. 222, p. 1505, § 48, effective July 1; (3)(b)(I) amended, (SB 22-212), ch. 421, p. 2972, § 38, effective August 10. **L. 2023:** (2)(b) amended, (HB 23-1236), ch. 206, p. 1051, § 3, effective May 16; (2)(a) and (3)(a) amended and (2)(c) and (2.5) added, (HB 23-1012), ch. 205, p. 1046, § 6, effective August 7; (2)(b) amended, (HB 23-1138), ch. 423, p. 2485, § 4, effective July 1, 2024. **L. 2025:** (2.3), (3)(b.5), and (3)(d) added and IP(2.5)(a), (2.5)(a)(I), (2.5)(a)(II), (3)(a), and (3)(b) amended, (HB 25-1146), ch. 358, p. 1936, § 7, effective July 1; (2)(b) and (2)(c) amended, (SB 25-041), ch. 357, p. 1929, § 14, effective August 6.

Editor's note: (1) This section is similar to former § 19-2-1303 as it existed prior to 2021.

(2) Subsection (4) was numbered as 19-2-1303 (4) in SB 21-071 (see L. 2021, p. 3336). That provision was harmonized with subsection (4) of this section as it appears in SB 21-059.

(3) Amendments to subsection (2)(b) by HB 23-1138 and HB 23-1236 were harmonized.

ANNOTATION

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

Juvenile court's order requiring juvenile to undergo a psychosexual evaluation as part of juvenile's management plan did not violate juvenile's right to be free from compelled self-incrimination. Section 19-2-1305 (3) provides the juvenile immunity related to the statements made during the evaluation, so there is no fifth amendment violation. People ex rel. C.Y., 2012 COA 31, 275 P.3d 762.

Juvenile court's order requiring juvenile to undergo a psychosexual evaluation as part of juvenile's management plan did not violate juvenile's right to due process. Since the juvenile was found incompetent to stand trial and cannot be restored to competency, the juvenile will never be tried, therefore, the juvenile's right to presumption of

innocence is not contemplated. People ex rel. C.Y., 2012 COA 31, 275 P.3d 762.

As the designated entity responsible for the oversight of restoration to competency restoration services, the office of behavioral health must either provide an opinion concerning competency or find a qualified outsider to do so. The statutory scheme creates an expectation that the designated providers of competency restoration services would provide an opinion in its report to the court on a juvenile's progress toward competency. People in Interest of B.B.A.M., 2019 CO 103, 453 P.3d 1161.

A court cannot order a subsequent competency evaluation pursuant to this section or § 19-2-1304. After a preliminary competency evaluation and a juvenile has begun receiving restoration services, the court may determine only whether a juvenile has been restored to competency at either a restoration review conducted pursuant to this section or during a restoration hearing conducted pursuant to § 19-2-1304. People in Interest of B.B.A.M., 2019 CO 103, 453 P.3d 1161.

When a juvenile court determines during a restoration review under this section or after a restoration hearing under § 19-2.5-705 that a juvenile remains incompetent, the court has the authority to order the juvenile to submit to a reassessment evaluation to determine whether the juvenile has been restored to competency. People in Interest of A.C., 2022 CO 49, 517 P.3d 1228.

Restoration evaluations of juveniles are included in "services necessary to competency restoration". Therefore, the department of human services may conduct such evaluations without a court order. People in Interest of J.D., 2025 CO 14, 567 P.3d 138.

19-2.5-705. Restoration to competency hearing.

(1) The court may order a restoration to competency hearing, as defined in section 19-2.5-701.5, at any time on its own motion, on motion of the prosecuting attorney, or on motion of the juvenile. The court shall order a restoration of competency hearing if a competency evaluator with the qualifications described in section 19-2.5-703 (4)(b) files a report certifying that the juvenile is competent to proceed.

(2) At the hearing, if the question is contested, the burden of submitting evidence and the burden of proof by a preponderance of the evidence is on the party asserting that the juvenile is competent.

(3) At the restoration to competency hearing, the court shall determine whether the juvenile has achieved or is restored to competency.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 613, § 2, effective October 1. **L. 2023:** (1) amended, (HB 23-1012), ch. 205, p. 1049, § 7, effective August 7.

Editor's note: This section is similar to former § 19-2-1304 as it existed prior to 2021.

ANNOTATION

The court cannot order a subsequent competency evaluation pursuant to this section or § 19-2-1303. After a preliminary competency evaluation and a juvenile has begun receiving restoration services, the court may determine only whether a juvenile has been restored to competency at either a restoration hearing conducted pursuant to this section or during a restoration review conducted pursuant to § 19-2-1303. People in Interest of B.B.A.M., 2019 CO 103, 453 P.3d 1161 (decided under former law).

When a juvenile court determines during a restoration review under § 19-2.5-704 or after a restoration hearing under this section that a juvenile remains incompetent, the court has the authority to order the juvenile to submit to a reassessment evaluation to determine whether the juvenile has been restored to competency. People in Interest of A.C., 2022 CO 49, 517 P.3d 1228.

19-2.5-706. Procedure after restoration to competency hearing.

(1) If a juvenile is found to have achieved or been restored to competency after a restoration to competency hearing, pursuant to section 19-2.5-705, or by the court during a review, pursuant to section 19-2.5-704 (2), the court shall resume or recommence the trial or sentencing proceeding or order the sentence carried out. The court may credit any time the juvenile spent in confinement or detention while incompetent to proceed against any term of commitment imposed after achievement of or restoration to competency.

(2) If the court determines that the juvenile remains incompetent to proceed and the delinquency petition is not dismissed, the court may continue or modify any orders entered at the time of the original determination of incompetency or enter any new order necessary to facilitate the juvenile's achievement of or restoration to competency.

(3) Evidence obtained during a competency evaluation or during treatment related to the juvenile's competency or incompetency and the determination as to the juvenile's competency or incompetency are not admissible on the issues raised by a plea of not guilty.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 614, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1305 as it existed prior to 2021.

ANNOTATION

Subsection (2) grants juvenile courts the authority to order a reassessment evaluation after determining that a juvenile remains incompetent during a review under § 19-2.5-704 (2) or following a restoration hearing under § 19-2.5-705 if the delinquency petition is not dismissed. A reassessment evaluation is distinct from a second competency evaluation, which is not authorized under § 19-2.5-703 (1). People in Interest of A.C., 2022 CO 49, 517 P.3d 1228.

19-2.5-707. Evaluation at the request of the juvenile.

A juvenile has the right to request a second evaluation in response to a court-ordered competency evaluation or a court-ordered restoration evaluation within seven days after the receipt of an evaluation. If a juvenile wants a second evaluation to be conducted by a competency evaluator of the juvenile's choice in connection with a proceeding held pursuant to this article 2.5, the court, upon timely motion, shall order that the competency evaluator be given reasonable opportunity to conduct the second evaluation prior to any competency or restoration hearing.

Source: L. 2023: Entire section added, (HB 23-1012), ch. 205, p. 1049, § 8, effective August 7.

PART 8

DIRECT FILING AND TRANSFER HEARINGS

19-2.5-801. Direct filing - definition.

(1) A juvenile may be charged by the direct filing of an information in the district court or by indictment only if the juvenile is sixteen years of age or older at the time of the commission of the alleged offense and:

(a) Is alleged to have committed a class 1 or class 2 felony; or

(b) Is alleged to have committed a sexual assault that is a crime of violence pursuant to section 18-1.3-406 or a sexual assault under the circumstances described in section 18-3-402 (5)(a); or

(c) (I) Is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406, other than a sexual assault as described in subsection (1)(b) of this section, or is alleged to have committed sexual assault pursuant to section 18-3-402, sexual assault on a child pursuant to section 18-3-405, or sexual assault on a child by one in a position of trust pursuant to section 18-3-405.3; and

(II) Is found to have a prior adjudicated felony offense; or

(d) Has previously been subject to proceedings in district court as a result of a direct filing pursuant to this section or a transfer pursuant to section 19-2.5-802; except that:

(I) If the juvenile is found not guilty in district court of the prior felony or any lesser included offense, the subsequent charge must be remanded to the juvenile court; and

(II) If the juvenile is convicted in district court in the prior case of a lesser included or nonenumerated offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section, the subsequent charge may be remanded to the juvenile court.

(2) If, after a preliminary hearing, the district court does not find probable cause for an offense that may be charged by direct filing, or if the direct file eligible offense is dismissed at a later date, the court shall remand the case to the juvenile court.

(3) Notwithstanding section 19-2.5-802, after filing charges in the juvenile court but before the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to this section. Upon the filing or indictment in the district court, the juvenile court no longer has jurisdiction over proceedings concerning the charges.

(4) (a) After a juvenile case has been charged by direct filing of information or by an indictment in district court, the juvenile may file in district court a motion to transfer the case to juvenile court. The juvenile must file the motion no later than the time to request a preliminary hearing. Upon receipt of the motion, the court shall set the reverse-transfer hearing with the preliminary hearing. The court shall permit the district attorney to file a response to the juvenile's motion to transfer the case to juvenile court. The district attorney shall file the response no later than fourteen days before the reverse-transfer hearing.

(b) In determining whether the juvenile and the community would be better served by adjudicative proceedings pursuant to this article 2.5 or by proceedings pursuant to title 16, the court shall consider the following factors:

(I) The seriousness of the alleged offense and whether the protection of the community requires response or consequence beyond that afforded by this article 2.5;

(II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(IV) The age of the juvenile and the maturity of the juvenile, as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;

(V) The juvenile's record and previous history in prior court-related matters;

(VI) The juvenile's current and past mental health status, as evidenced by relevant mental health or psychological assessments or screenings that are made available to both the district attorney and defense counsel;

(VII) The likelihood of the juvenile's rehabilitation by use of the sentencing options available in the juvenile courts and district courts;

(VIII) The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;

(IX) The impact of the offense on the victim;

(X) Whether the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony; and

(XI) Whether the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of the delinquent act.

(c) If the district court determines pursuant to subsection (4)(b) of this section that the juvenile and the community would be better served by adjudicative proceedings pursuant to this article 2.5, the court shall enter an order directing that the offenses against the juvenile be adjudicated in juvenile court pursuant to this article 2.5.

(5) (a) If a juvenile is convicted following the filing of criminal charges by information or indictment in the district court pursuant to this section, the district judge shall sentence the juvenile either:

(I) As an adult; except that a juvenile is excluded from the mandatory minimum sentencing provisions in section 18-1.3-406, unless the juvenile is convicted of a class 1 felony or a sex offense that is subject to part 9 of article 1.3 of title 18; or

(II) To the youthful offender system in the department of corrections in accordance with section 18-1.3-407; except that a juvenile is ineligible for sentencing to the youthful offender system if the juvenile is convicted of:

(A) A class 1 felony;

(B) Any sexual offense described in section 18-6-301 or 18-6-302 or part 4 of article 3 of title 18; or

(C) A second or subsequent offense, if the juvenile received a sentence to the department of corrections or to the youthful offender system for the prior offense.

(b) The district court judge may sentence a juvenile pursuant to this article 2.5 if the juvenile is convicted of a lesser included or nonenumerated felony offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section. If the juvenile is convicted of only a misdemeanor offense or misdemeanor offenses, the court shall adjudicate the juvenile a delinquent and sentence the juvenile pursuant to this article 2.5.

(c) If a juvenile is convicted of an offense that is not eligible for district court jurisdiction pursuant to either this section or section 19-2.5-802, the juvenile must be remanded to juvenile court.

(6) In the case of a person who is sentenced as a juvenile pursuant to subsection (5) of this section, the following provisions apply:

(a) Section 19-2.5-1126 (1)(a), regarding mandatory sentence offenders;

(b) Section 19-2.5-1126 (1)(b), regarding repeat juvenile offenders;

(c) Section 19-2.5-1126 (1)(c), regarding violent juvenile offenders; and

(d) Sections 19-2.5-503 and 19-2.5-1127, regarding aggravated juvenile offenders.

(7) The court in its discretion may appoint a guardian ad litem for a juvenile charged by the direct filing of an information in the district court or by indictment pursuant to this section.

(8) When a juvenile is sentenced pursuant to this article 2.5, the juvenile's conviction must be adjudicated as a juvenile delinquency adjudication.

(9) For purposes of this section, "violent juvenile offender" has the same meaning as set forth in section 19-2.5-1125 (3).

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 614, § 2, effective October 1; (1) amended, (SB 21-266), ch. 423, p. 2800, § 16, effective October 1.

Editor's note: This section is similar to former § 19-2-517 as it existed prior to 2021.

ANNOTATION

Law reviews. For article, "Psychological Considerations in Direct Filing", see 40 Colo. Law. 41 (May 2011). For article, "New Juvenile Justice Laws Increase Options for Youth", see 42 Colo. Law. 37 (Apr. 2013).

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

District attorney may properly invoke concurrent jurisdiction of district court under former § 19-1-104 (4)(b)(II) and former § 19-1-103 (9)(b)(II) in deciding to proceed against a person between the ages of 16 and 18 in district rather than juvenile court. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974).

Former § 19-1-104 (4)(b)(II) (similar provisions now found in this section) is not an ex post facto law. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974).

The broad discretion granted to a district attorney by subsection (4)(b)(II) does not deny due process and equal protection of the laws. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974).

Juvenile court had original and exclusive jurisdiction under former § 19-2-104 (1)(a) in some, but not all, proceedings concerning juveniles alleged to have committed delinquent acts. The former statute contained an exception for cases for which another law limited or removed that court's jurisdiction. It permitted the prosecution to direct file criminal charges against juveniles in district court when specified criteria applied. Under the former statute, the general assembly established circumstances in which juvenile defendants did not have a liberty interest in being tried as juveniles. Therefore, due process did not require that defendant be notified and given an opportunity to be heard before the district attorney direct filed in district court. People v. Perez-Hernandez, 2013 COA 160, 348 P.3d 451 (decided under former law).

Former § 19-1-104 (4)(b)(II) (similar provisions now found in this section) does not punish a prior adjudication of delinquency, but rather, it provides a mechanism whereby a person between the ages of 16 and 18 may be treated as an adult if such person has a record of juvenile delinquency and is alleged to have committed a felony. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974).

The direct file statute does not discriminate against a juvenile in district court based on whether it was a direct file or transfer, so the statute does not violate the requirement of uniform operation of laws. Flakes v. People, 153 P.3d 427 (Colo. 2007).

The direct file statute does not violate separation of powers. Prosecutorial

discretion balanced by the district court's sentencing discretion is not unconstitutional. Flakes v. People, 153 P.3d 427 (Colo. 2007).

District attorney may properly invoke concurrent jurisdiction of district court under former § 19-1-104 (4)(b)(II) (similar provision now found in this section) and former § 19-1-103 (9)(b)(II) in deciding to proceed against a person between the ages of 16 and 18 in district rather than juvenile court. Myers v. Dist. Court, 184 Colo. 81, 518 P.2d 836 (1974); People v. Thorpe, 641 P.2d 935 (Colo. 1982).

Defendant's 84-year sentence for nonhomicide crimes committed as a juvenile is not an unconstitutional cruel and unusual punishment under Graham v. Florida, 560 U.S. 48 (2010). Defendant will be eligible for parole when he is 57 years old and thus has a meaningful opportunity for release during his natural lifetime. People v. Lucero, 2013 COA 53, 410 P.3d 467, aff'd, 2017 CO 49, 394 P.3d 1128.

The U.S. supreme court's holdings in Graham v. Florida and Miller v. Alabama, 567 U.S. 460 (2012), do not apply to aggregate term-of-year sentences imposed for multiple offenses. Lucero v. People, 2017 CO 49, 394 P.3d 1128.

Graham covers lengthy term-of-years sentences as well as sentences designated as life imprisonment without parole. Rainer v. Hansen, 952 F.3d 1203 (10th Cir. 2020).

Graham's holding is limited to offenders convicted of non-homicide offenses. The Graham court used the term "homicide" to refer to crimes causing the victim's death. Rainer v. Hansen, 952 F.3d 1203 (10th Cir. 2020).

Graham therefore applies in a case involving first-degree attempted murder because attempted first-degree murder is not a homicide offense in this state. Rainer v. Hansen, 952 F.3d 1203 (10th Cir. 2020).

Probation is not an option for a juvenile convicted of a crime of violence in adult court as a result of either a transfer or direct file, therefore, there is no equal protection violation. This section states that a juvenile convicted of a crime of violence is not subject to the mandatory minimum provisions in § 18-1.3-406, but the transfer statute, § 19-2-518, does not contain similar language. That difference is immaterial to the issue of whether probation is a possible sentence. This section does not permit a probation sentence for a direct file juvenile, it only excludes the juvenile from the mandatory minimum sentence that begins at least at the midpoint of the presumptive range. A court can sentence the juvenile below the midpoint of the presumptive range but still has to sentence the juvenile to incarceration. In a transfer case, the court must sentence the juvenile to incarceration starting at the midpoint of the presumptive range. So, a juvenile convicted of a crime of violence in adult court either as a result of a transfer or direct file must be sentenced to incarceration and thus is not eligible for probation, therefore, there is no equal protection violation. Howard v. People, 2020 CO 15, 458 P.3d 893.

The 2012 amendments do not apply retroactively. Statutes are presumed

prospective; the 2012 amendments are not ameliorative, amendatory legislation; and the rule of lenity does not require retroactive application. People v. Godinez, 2018 COA 170M, 457 P.3d 77.

Allegation of the commission of a violent felony, and not conviction, triggers district court's subject matter jurisdiction under plain language of former § 19-2-805 (1)(a)(II)(A) (now in this section). People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

Criminally negligent homicide is not an enumerated offense for purposes of the direct file statute. The offense is not a per se crime of violence and merely alleging use of a deadly weapon as part of the factual basis does not satisfy the requirement of the crime of violence statute. In addition, the elements of the crime do not include the use, possession, or threatened use of a deadly weapon. People v. Vickers, 168 P.3d 9 (Colo. App. 2007).

For first degree burglary to be enumerated as a crime of violence, and thus to allow a direct filing, the prosecution must allege that defendant used, possessed, or threatened the use of a deadly weapon or caused serious bodily injury. People v. Ball, 22 P.3d 574 (Colo. App. 2001).

District attorney has sole discretion in charging as adult or juvenile. The statutory scheme of former § 19-1-104 (4) (now this section) is clear and vests the determination whether a person shall be charged as an adult or a juvenile solely in the discretion of the district attorney. People v. Thorpe, 641 P.2d 935 (Colo. 1982).

Hearing not required prior to criminal prosecution. A quasi-judicial hearing is not required to be held by the district attorney as a precondition to his determination that a child 14 years of age or older alleged to have committed a crime of violence defined as a class 1 felony shall be prosecuted in a criminal proceeding. People v. Thorpe, 641 P.2d 935 (Colo. 1982).

Charges involving a minor should be resolved in adult court when the requirements of the direct filing statute are satisfied as to any charge. People v. Dalton, 70 P.3d 517 (Colo. App. 2002).

The district attorney may not directly file charges in district court where the identical charges were initially filed in juvenile court and a transfer hearing is pending. J.D.C. v. Dist. Court 18th Jud. Dist., 910 P.2d 684 (Colo. 1996) (decided prior to amendment of § 19-2-104 (1)(b) specifically authorizing direct filing under such circumstances).

Exception to juvenile court's exclusive jurisdiction in cases where prosecution directly files charges. Under the plain language of subsection (2) of this section and §§ 19-2-104 (1)(b) and 19-2-518 (2), a prosecutor has discretion to proceed charging alleged juvenile offenders who are eligible to be charged as adults by means of a direct filing in district court until such time as the juvenile court actually conducts a transfer hearing. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Because the conducting of a transfer hearing is the only event that vests the juvenile court with exclusive jurisdiction

and the juvenile court had not conducted a transfer hearing before the prosecution directly filed the information, the district court had jurisdiction. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Additional charges must be prosecuted in same action. When a court has jurisdiction to entertain criminal proceedings against a juvenile under former § 19-1-104 (4)(b)(II), any additional charges arising out of the same act or series of acts can and must be prosecuted in that same action, even though they do not rise to the seriousness of class 3 felonies. People v. Jiminez, 651 P.2d 395 (Colo. 1982).

When a juvenile is charged in Denver district court as a result of a direct file and the offense that permitted the direct file is dismissed, the Denver district court no longer has subject matter jurisdiction over the additional charge that was not eligible for direct file. The Denver juvenile court has exclusive jurisdiction over that charge. People v. Sandoval, 2016 COA 57, 383 P.3d 92 (decided under law in effect in 2007).

Defendant's conviction in the Denver district court, therefore, is a nullity and must be vacated. People v. Sandoval, 2016 COA 57, 383 P.3d 92 (decided under law in effect in 2007).

The direct file statute does not provide for mandatory adult sentences for unenumerated offenses. The district court retains its discretion to sentence juveniles found guilty of unenumerated charges as either adults or juveniles as an exercise of its general jurisdiction over juvenile and criminal matters. Flakes v. People, 153 P.3d 427 (Colo. 2007); People v. Vickers, 168 P.3d 9 (Colo. App. 2007).

A district court sentencing a juvenile found guilty of unenumerated offenses must make a finding of why the court is treating the juvenile as an adult or as a juvenile and must explain the chosen sentence. Flakes v. People, 153 P.3d 427 (Colo. 2007); People v. Vickers, 168 P.3d 9 (Colo. App. 2007).

A child under 18 may be charged with a felony only as provided in former § 19-1-104 (4) (now this section). People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967); People ex rel. Rodello v. Dist. Court, 164 Colo. 530, 436 P.2d 672 (1968); I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970); Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

A minor pursuant to former § 19-1-104 (4) (now this section) may be tried as an adult. Romero v. Dist. Court, 178 Colo. 200, 496 P.2d 1049 (1972).

A child under 14 years of age is not held criminally responsible for actions, which if committed by an adult, would constitute a felony. People ex rel. Terrell v. Dist. Court, 164 Colo. 437, 435 P.2d 763 (1967).

Plain language of statute prior to 2006 amendment was ambiguous as to whether a juvenile must be 14 years of age when delinquent act occurred or when prosecution filed charges. Based upon the stated purpose and legislative intent, a juvenile must have been at least 14 years of age at time delinquent act occurred.

Bostelman v. People, 162 P.3d 686 (Colo. 2007).

District court had no jurisdiction to proceed by direct information charging felony against 17-year-old. People ex rel. Rodello v. Dist. Court, 164 Colo. 530, 436 P.2d 672 (1968).

Measuring two-year period set out in former § 19-2-805 (now this section). The critical two-year period of time as set out in former § 19-2-805 (now this section) is measured from the date of the previous adjudication of delinquency to the date of the commission of the subsequent offense, and not from the previous adjudication to the date of the filing of the information charging defendant with the subsequent offense. People v. Trujillo, 983 P.2d 124 (Colo. App. 1999).

Date child is adjudicated delinquent. For purposes of former § 19-1-104 (4)(b)(II) (now this section), the date upon which one is adjudicated a delinquent child is the date the trial court made its written findings and entered its judgment of delinquency. People v. Alward, 654 P.2d 327 (Colo. App. 1982).

Juvenile court had no jurisdiction to order the placement of a juvenile in the custody of the department of human services when the district court ordered that juvenile held in county jail awaiting trial on charges filed against the juvenile as an adult. People v. Juvenile Court, 915 P.2d 1274 (Colo. 1996).

A trial court sentencing a juvenile on a direct-filed charge of a violent crime retains discretion to impose a sentence to the department of corrections. People v. Espinoza, 990 P.2d 1117 (Colo. App. 1999).

District court had jurisdiction to sentence juvenile as an adult under subsection (6)(c) of this section since the juvenile was eligible for district court jurisdiction under § 19-2-518 (1)(a)(I)(B) as a juvenile delinquent for committing a prior felony. People v. Nelson, 2015 COA 123, 369 P.3d 733.

Subsection (8) is limited according to the specific provisions in § 19-1-111(2)(a)(I) to (III). The juvenile court is statutorily permitted to appoint a guardian ad litem in delinquency proceedings, and therefore in adult criminal proceedings in the district court initiated by transfer, only upon occurrence of one of three triggering events: (1) No parent or enumerated person functioning in the role of parent appears in the case; (2) the court finds a conflict of interest between the child and parent or person functioning as a parent; or (3) the court makes specific findings that the appointment of a guardian ad litem is necessary to serve the best interest of the child and those findings are included in the court's order of appointment. Ybanez v. People, 2018 CO 16, 413 P.3d 700.

Pursuant to subsection (9), a juvenile's conviction must be adjudicated as a juvenile delinquency adjudication only if the district court chooses to sentence the juvenile to the juvenile justice system. People v. Nelson, 2015 COA 123, 369 P.3d 733.

Subsection (4)(b) requires only that the court "shall consider" the eleven factors

when deciding a motion for reverse transfer to juvenile court. It is left for the court to determine how to weigh the evidence presented regarding each factor. People v. Mitchell, 2024 COA 7M, 547 P.3d 412.

The court is not required to find that a juvenile's rehabilitation is ensured before transferring the case to juvenile court; rather, subsection (4)(b)(VII) requires only that the court consider "[t]he likelihood of the juvenile's rehabilitation". A court can properly determine that, where the alleged offense was serious (first factor), violent (second factor), committed against a person (third factor), the cause of the victim's death (ninth factor), and committed with a deadly weapon (eleventh factor), the juvenile and the community would be better served by the case proceeding in the juvenile system only if the likelihood of rehabilitation was very high. People v. Mitchell, 2024 COA 7M, 547 P.3d 412.

Subsection (3)(b)(VI) does not constitute a waiver of a juvenile defendant's psychotherapist-patient privilege. Because the proper inquiry to determine whether there was a waiver of privilege is whether a party injected his or her physical or mental health condition into the case, simply requesting a reverse-transfer hearing does not waive the privilege. Subsection (3)(b)(VI) only requires that the trial court consider mental health records "made available", that is, voluntarily waived by the privilege holder. People v. Johnson, 2016 CO 69, 381 P.3d 316.

Subsection (3)(b)(VI) does not give a trial court power to order a juvenile defendant to submit to a mental health screening simply by virtue of the juvenile's request for a reverse-transfer hearing. Subsection (3)(b)(VI) requires only that the trial court take into account "relevant mental health or psychological assessments or screenings that are made available to both the district attorney and defense counsel". A juvenile has a significant interest in the confidentiality of both past and future mental health records. People v. Johnson, 2016 CO 69, 381 P.3d 316.

Section does not grant juvenile defendant the right to disclose privileged information solely for the purposes of reverse transfer. The reverse-transfer hearing and the underlying claims are all one "case" and any privilege waived in one applies to the other. People v. Brown, 2019 CO 50, 442 P.3d 428.

The state provided inmate serving a 112-year sentence for crimes committed when he was a juvenile with the opportunity required by Graham v. Florida through the combination of the Juveniles Convicted as Adults Program and the general parole program. Rainer v. Hansen, 952 F.3d 1203 (10th Cir. 2020).

19-2.5-802. Transfers.

(1) (a) The juvenile court may enter an order certifying a juvenile to be held for criminal proceedings in the district court if:

(I) A petition filed in juvenile court alleges the juvenile is:

(A) Twelve or thirteen years of age at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a class 1 or class 2 felony or a crime of violence, as defined in section 18-1.3-406; or

(B) Fourteen years of age or older at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a felony; and

(II) After investigation and a hearing, the juvenile court finds it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction.

(b) A petition may be transferred from the juvenile court to the district court only after a hearing as provided in this section.

(c) If the crime alleged to have been committed is a felony defined by section 18-8-208, and no other crime is alleged to have been committed and the juvenile has been adjudicated a juvenile delinquent for a delinquent act that constitutes a class 4 or 5 felony, then the charge for the crime may not be filed directly in the district court, but the juvenile court may transfer the charge to the district court pursuant to subsection (1)(a) of this section.

(d) (I) If a juvenile is convicted in cases in which criminal charges are transferred to the district court pursuant to this section, the district court judge shall sentence the juvenile either:

(A) As an adult; except that a juvenile is excluded from the mandatory minimum sentencing provisions in section 18-1.3-406, unless the juvenile is convicted of a class 1 felony or a sex offense that is subject to part 9 of article 1.3 of title 18; or

(B) To the youthful offender system in the department of corrections in accordance with section 18-1.3-407; except that a juvenile is not eligible for sentencing to the youthful offender system if the juvenile is convicted of a class 1 felony; any sexual offense described in section 18-6-301 or 18-6-302, or part 4 of article 3 of title 18; or a second or subsequent offense, if the juvenile received a sentence to the department of corrections or to the youthful offender system for the prior offense.

(II) The district court judge may sentence a juvenile pursuant to this article 2.5 if the juvenile is convicted of a lesser included or nonenumerated felony offense in cases in which criminal charges are transferred to the district court pursuant to this section. If the juvenile is convicted of only a misdemeanor offense or misdemeanor offenses, the court shall adjudicate the juvenile a delinquent and sentence the juvenile pursuant to this article 2.5.

(III) If a juvenile is convicted of an offense that is not eligible for district court jurisdiction pursuant to either this section or section 19-2.5-801, the juvenile shall be remanded to juvenile court for sentencing pursuant to this article 2.5.

(IV) In the case of a person who is sentenced as a juvenile pursuant to this subsection (1)(d), the following provisions apply:

(A) Section 19-2.5-1126 (1)(a), regarding mandatory sentence offenders;

(B) Section 19-2.5-1126 (1)(b), regarding repeat juvenile offenders;

(C) Section 19-2.5-1126 (1)(c), regarding violent juvenile offenders; and

(D) Section 19-2.5-1127, regarding aggravated juvenile offenders.

(V) The court in its discretion may appoint a guardian ad litem for a juvenile following the transfer of charges to the district court pursuant to this section.

(VI) When a juvenile is sentenced pursuant to this article 2.5, the juvenile's conviction shall be adjudicated as a juvenile delinquency adjudication.

(VII) For purposes of this subsection (1)(d), "violent juvenile offender" has the same meaning as defined in section 19-2.5-1125 (3).

(e) Whenever a juvenile under the age of fourteen years is sentenced pursuant to section 18-1.3-401 as provided in subsection (1)(d) of this section, the department of corrections shall contract with the department of human services to house and provide services to the juvenile in a facility operated by the department of human services until the juvenile reaches the age of fourteen years. On reaching the age of fourteen years, the juvenile must be transferred to an appropriate facility operated by the department of corrections for the completion of the juvenile's sentence.

(2) After filing charges in the juvenile court but prior to the time that the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to section 19-2.5-801. Upon the filing or indictment in the district court, the juvenile court no longer has jurisdiction over proceedings concerning the charges.

(3) At the transfer hearing, the court shall consider:

(a) Whether there is probable cause to believe that the juvenile has committed a delinquent act for which waiver of juvenile court jurisdiction over the juvenile and transfer to the district court may be sought pursuant to subsection (1) of this section; and

(b) Whether the interests of the juvenile or of the community would be better served by the juvenile court's waiving its jurisdiction over the juvenile and transferring jurisdiction over the juvenile to the district court.

(4) (a) The hearing must be conducted as set forth in section 19-1-106, and the court shall make certain that the juvenile and the juvenile's parents, guardian, or legal custodian have been fully informed of their right to be represented by counsel.

(b) In considering whether to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(I) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(IV) The juvenile's maturity, as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;

(V) The juvenile's record and previous history;

(VI) The likelihood of the juvenile's rehabilitation by use of facilities available to the juvenile court;

(VII) The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;

(VIII) The impact of the offense on the victim;

(IX) Whether the juvenile was twice previously adjudicated a delinquent juvenile for delinquent acts that constitute felonies;

(X) Whether the juvenile was previously adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406;

(XI) Whether the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony;

(XII) Whether the juvenile is sixteen years of age or older at the time of the offense and the present act constitutes a crime of violence, as defined in section 18-1.3-406;

(XIII) Whether the juvenile is sixteen years of age or older at the time of the offense and has been twice previously adjudicated a juvenile delinquent for delinquent acts against property that constitute felonies; and

(XIV) Whether the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of a delinquent act.

(c) The amount of weight to be given to each of the factors listed in subsection (4)(b) of this section is discretionary with the court; except that a record of two or more previously sustained petitions for delinquent acts that constitute felonies or a record of two or more juvenile probation revocations based on acts that constitute felonies establish prima facie evidence that to retain jurisdiction in juvenile court would be contrary to the best interests of the juvenile or of the community.

(d) The insufficiency of evidence pertaining to any one or more of the factors listed in subsection (4)(b) of this section is not in and of itself determinative of the issue of waiver of juvenile court jurisdiction.

(5) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history may be considered by the court, but the court, if so requested by the juvenile, the juvenile's parent or guardian, or other interested party, shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) (a) If the court finds that its jurisdiction over a juvenile should be waived, it shall enter an order to that effect; except that such order of waiver is null and void if the district attorney fails to file an information in the criminal division of the district court within five days after issuance of the written order of waiver, exclusive of Saturdays, Sundays, and court holidays. Upon failure of the district attorney to file an information within five days of the issuance of the written order of waiver, exclusive of Saturdays, Sundays, and court holidays, the juvenile court shall retain jurisdiction and shall proceed pursuant to this article 2.5.

(b) As a condition of the waiver of jurisdiction, the court in its discretion may provide that a juvenile shall continue to be held in custody pending the filing of an information in the criminal division of the district court. Where the juvenile has made bond in proceedings in the juvenile court, the bond may be continued and made returnable in and transmitted to the district court, where it must continue in full force and effect unless modified by order of the district court.

(7) If the court finds that it is in the best interests of the juvenile and of the public for the court to retain jurisdiction, it shall proceed with the adjudicatory trial pursuant to part 9 of this article 2.5.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 618, § 2, effective October 1; (1)(d) R&RE, (HB 21-1091), ch. 175, p. 956, § 4, effective October 1.

Editor's note: This section is similar to former § 19-2-518 as it existed prior to 2021.

ANNOTATION

Law reviews. For note, "The Expanding Scope of Prosecutorial Discretion in Charging Juveniles as Adults: A Critical Look at People v. Thorpe", see 54 U. Colo. L. Rev. 617 (1983). For article, "New Juvenile Justice Laws Increase Options for Youth", see 42 Colo. Law. 37 (Apr. 2013).

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

Rules of procedure governing section. This section is governed by the rules of juvenile procedure and by the rules of civil procedure if there is no applicable rule of juvenile procedure. Stroh v. Johnson, 194 Colo. 411, 572 P.2d 840 (1978).

Former § 19-1-104 (4)(a) (now this section) is not unconstitutional as denying due process of law. People v. Moseley, 193 Colo. 256, 566 P.2d 331 (1977).

Former § 19-1-104 (4)(a) does not constitute a violation of substantive due process nor an equal protection violation. Statute is a valid exercise of prosecutorial discretion and it is not unreasonable to treat certain juvenile offenders differently from others. People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

Former § 19-1-104 (4)(a) does not constitute an unlawful delegation of legislative power to the judiciary. People v. Moseley, 193 Colo. 256, 566 P.2d 331 (1977).

Defendant's 84-year sentence for nonhomicide crimes committed as a juvenile is not an unconstitutional cruel and unusual punishment under Graham v. Florida, 560 U.S. 48 (2010). Defendant will be eligible for parole when he is 57 years old and thus has a meaningful opportunity for release during his natural lifetime. People v. Lucero, 2013 COA 53, 410 P.3d 467, aff'd, 2017 CO 49, 394 P.3d 1128.

The U.S. supreme court's holdings in Graham v. Florida and Miller v. Alabama, 567 U.S. 460 (2012), do not apply to aggregate term-of-year sentences imposed for multiple offenses. Lucero v. People, 2017 CO 49, 394 P.3d 1128.

Jurisdiction transferable by juvenile court. Only under certain narrowly described circumstances may the juvenile court in a delinquency proceeding enter an order certifying the child to be held for criminal proceedings in the district court. I.R. v. People, 171 Colo. 54, 464 P.2d 296 (1970).

Subsection (1)(a)(I) does not condition transfer eligibility on a previous delinquency adjudication. The plain language requires the delinquency petition to allege that the juvenile is at least a certain age and that the juvenile is accused of committing an offense of at least a certain seriousness; it does not require that the petition allege the juvenile have been previously adjudicated for a delinquent act. People v. Dennel, 2022 COA 115M, 523 P.3d 471.

Discretion of court in transfer hearing. The design of this section is to permit the juvenile court, in case of a less serious

felony, to determine in a transfer hearing whether, in the best interests of the accused juvenile, the case should be transferred to the criminal side of the court; but in those circumstances where a more serious felony is charged, as set forth in former § 19-1-104 (4)(b) (now this section), no such discretion lies in the court to retain the case in the juvenile side of the court when the district attorney elects to have the case transferred for trial as a criminal action. People v. Dist. Court, 191 Colo. 28, 549 P.2d 1317 (1976); People v. Thorpe, 641 P.2d 935 (Colo. 1982).

To transfer jurisdiction from juvenile court to district court, the trial court must determine the following: (1) Whether there is "probable cause" to believe that the juvenile committed the offense for which the prosecution seeks a waiver of jurisdiction; and (2) whether it would be contrary to the best interests of the juvenile or the public to retain jurisdiction over the child. People v. Lee, 989 P.2d 777 (Colo. App. 1999).

The eight factors the court must consider in determining the best interests of the juvenile and public are as follows: (1) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities; (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (3) whether the alleged offense was against persons or property, greater weight being given to offenses against persons; (4) the maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living; (5) the record and previous history of the juvenile; (6) the likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court; (7) the interest of the community in the imposition of a punishment commensurate with the gravity of the offense; and (8) the impact of the offense on the victim. People v. Lee, 989 P.2d 777 (Colo. App. 1999).

Transfer to district court was appropriate, even though alleged offenses were against property rather than a person, where the court found the following factors: (1) The offenses were committed in a premeditated and willful manner; (2) defendant was more mature than his chronological age; (3) the interest of the community in the imposition of punishment commensurate with the offenses supported transfer because the school building that was the object of the arson was important to the community; and (4) in light of the historic nature of the building and the risk to the lives of the firefighters who extinguished the blaze, the impact of the offense on the victim was quite serious. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

Court considers interest of child or public. At the hearing provided for in this section the juvenile court may consider only whether it would be contrary to the best interests of the child or of the public to retain jurisdiction over the child. If the court finds that a child should be held for criminal proceedings in the district court, it shall enter an order certifying that fact and transfer the case to the district court. Maddox v. People, 178 Colo. 366, 497 P.2d 1263 (1972).

The test under subsection (3)(b) is whether the interests of the juvenile or the community would be better served by the juvenile court's waiving its jurisdiction. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

Appearance waives personal service. The voluntary appearance of juvenile's mother and her participation in the transfer hearing constitutes a waiver of her right to personal service. People v. District Court, 183 Colo. 101, 515 P.2d 101 (1973).

The probable-cause phase of a transfer hearing is equivalent to a preliminary hearing. Thus, the case law on preliminary hearings applies to the probable-cause phase of transfer hearings. People v. Juvenile Court, 813 P.2d 326 (Colo. 1991); People v. Hayes, 923 P.2d 221 (Colo. App. 1995).

Juvenile not entitled to another determination of probable cause. A juvenile who was transferred to the district court from the juvenile court, after a transfer hearing where probable cause as to the offenses charged was determined, was not entitled in the district court to another determination of probable cause in the form of a preliminary hearing. People v. Flanigan, 189 Colo. 43, 536 P.2d 41 (1975).

Due process does not require that the evidence supporting a transfer in a juvenile proceeding be clear and convincing. People in Interest of A.D.G., 895 P.2d 1067 (Colo. App. 1994).

Nor is it necessary that the factors in support of transfer clearly and convincingly outweigh the factors in support of retaining jurisdiction. People in Interest of A.D.G., 895 P.2d 1067 (Colo. App. 1994).

Evidence sufficient to meet probable cause standard. To meet the standard of probable cause, the prosecution need only present evidence sufficient to induce a person of ordinary prudence and caution to entertain a reasonable belief that the defendant committed the crime. People v. Juvenile Court, 813 P.2d 326 (Colo. 1991).

Evidence presented at transfer hearing sufficient to justify waiver of juvenile court jurisdiction. People in Interest of G.A.T., 183 Colo. 111, 515 P.2d 104 (1973).

A transfer order from juvenile to district court is not a final judgment from which appeal lies. D.H. v. People, 192 Colo. 542, 561 P.2d 5 (1977).

It is evident from the provisions of subsection (4) of this section and §§ 19-3-106 and 19-3-109 that an order of the juvenile division of the district court waiving jurisdiction is not a final disposition of the action. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

But is interlocutory in nature. A transfer order from juvenile to district court is interlocutory in nature and in no sense completely determines the rights of the parties. D.H. v. People, 192 Colo. 542, 561 P.2d 5 (1977).

Once a transfer order under subsection (1)(a) has been entered, juvenile court has no further jurisdiction unless district court, in its discretion, chooses to remand case to juvenile court for disposition.

People v. Armand, 873 P.2d 7 (Colo. App. 1993).

The district attorney may not directly file charges in district court where the identical charges were initially filed in juvenile court and a transfer hearing is pending. J.D.C. v. Dist. Court 18th Jud. Dist., 910 P.2d 684 (Colo. 1996) (decided prior to amendment of § 19-2-104 (1)(b) specifically authorizing direct filing under such circumstances).

Exception to juvenile court's exclusive jurisdiction in cases where prosecution directly files charges. Under the plain language of subsection (2) of this section and §§ 19-2-104 (1)(b) and 19-2-517 (2), a prosecutor has discretion to proceed charging alleged juvenile offenders who are eligible to be charged as adults by means of a direct filing in district court until such time as the juvenile court actually conducts a transfer hearing. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Because the conducting of a transfer hearing is the only event that vests the juvenile court with exclusive jurisdiction and the juvenile court had not conducted a transfer hearing before the prosecution directly filed the information, the district court had jurisdiction. People v. Pino, 262 P.3d 938 (Colo. App. 2011).

Whenever a juvenile court elects to waive jurisdiction over a child and certifies child to the criminal jurisdiction of a district court, the district court retains jurisdiction over the child, and it may properly impose sentence for any resulting felony convictions. Although this section grants the district court the power to dispose of the case as would a juvenile court, or to remand the case to the juvenile court for disposition, the decision to do so is within the discretion of the district court. People v. Hernandez, 690 P.2d 263 (Colo. App. 1984).

Trial court did not abuse its discretion in transferring jurisdiction of a case from juvenile court to district court despite defendant's arguments that he was not 16 years old at the time of alleged offense, that he had been previously adjudicated a delinquent on only one occasion, and that he had not been previously committed to department of institutions or been adjudicated for any crime of violence. The court properly relied on the fact that defendant had been in juvenile system for offenses involving sexual aggression, that he appeared to pose a threat to children, that he was on probation at the time of present offense, and that alleged offense was a serious one. People v. Armand, 873 P.2d 7 (Colo. App. 1993).

Abuse of juvenile court's discretion. Juvenile court abused its discretion during the transfer hearing by finding sua sponte that there was probable cause to support the lesser-included offense of attempt to commit manslaughter rather than attempt to commit first degree murder as charged by the people. People v. Juvenile Court, 813 P.2d 326 (Colo. 1991).

Under subsection (1)(d)(I), the court may sentence a defendant as an adult or, in its discretion, as a juvenile or remand the case to juvenile court unless the individual falls within one of the classifications of juveniles who must be sentenced as adults.

People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

Subsection (1)(d)(1) requires that a juvenile who is convicted of a crime of violence be sentenced pursuant to § 18-1-105. Because assault in the second degree under § 18-3-203 (1)(g) is a per se crime of violence under § 16-11-309, defendant's conviction under that statute is considered a conviction for a crime of violence and therefore the court had no discretion to impose a juvenile disposition but, rather, was required to impose sentence under § 18-1-105 (9) and (9.7). People v. Lee, 989 P.2d 777 (Colo. App. 1999).

Applied in People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980); People v. Thorpe, 641 P.2d 935 (Colo. 1982); People v. Zamora, 13 P.3d 813 (Colo. App. 2000); People v. Hoang, 13 P.3d 819 (Colo. App. 2000).

PART 9

ADJUDICATORY PROCEEDINGS

19-2.5-901. Informal adjustment.

(1) The district attorney may request of the court at any time, either before, during, or after the filing of a petition, that the matter be handled as an informal adjustment if:

(a) The juvenile and the juvenile's parents, guardian, or legal custodian have been informed of their constitutional and legal rights, including the right to have counsel at every stage of the proceedings;

(b) There are sufficient facts to establish the court's jurisdiction; and

(c) The juvenile and the juvenile's parents, guardian, or legal custodian have waived the right to a speedy trial.

(2) An informal adjustment must be for an initial period of no longer than six months. One additional extension of up to six months may be ordered by the court upon showing of good cause.

(3) During any informal adjustment, the court may place the juvenile under the supervision of the probation department or other designated agency. The court may require further conditions of conduct, as requested by the district attorney, probation department, or designated agency.

(4) A juvenile shall not be granted an informal adjustment if the juvenile has been adjudicated a juvenile delinquent within the preceding twelve months, has had a prior deferred adjudication, or has had an informal adjustment granted within the preceding twelve months.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 622, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-703 as it existed prior to 2021.

19-2.5-902. Entry of plea.

(1) Upon the entry of a plea of not guilty to the allegations contained in the petition, the court shall set the matter for an adjudicatory trial. Except as set forth in section 19-2.5-610, the court shall hold the adjudicatory trial within sixty days after the entry of a plea of not guilty.

(2) Upon the entry of a plea of guilty to one or more of the allegations contained in the petition, the court shall advise the juvenile in accordance with rule 3 of the Colorado rules of juvenile procedure. The advisement must include the possibility of restorative justice practices, including victim-offender conferences if restorative justice practices are available in the jurisdiction. The advisement regarding restorative justice practices does not establish any right to restorative justice practices on the juvenile's behalf.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 622, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-708 as it existed prior to 2021.

ANNOTATION

Failure to request dismissal on speedy trial grounds before the beginning of adjudicatory trial will result in the waiver of speedy trial rights under this section. People ex rel. J.M.N., 39 P.3d 1261 (Colo. App. 2001) (decided under former law).

19-2.5-903. Deferral of adjudication.

(1) Except as set forth in subsection (2) of this section, in any case in which the juvenile has agreed with the district attorney to enter a plea of guilty, the court, with the consent of the juvenile and the district attorney, upon accepting the guilty plea and entering an order deferring adjudication, may continue the case for a period not to exceed one year after the date of entry of

the order deferring adjudication. The court may continue the case for an additional one-year period for good cause.

(2) In a case in which the juvenile has agreed with the district attorney to enter a plea of guilty, resulting in a conviction, as defined in section 16-22-102 (3), for unlawful sexual behavior, as defined in section 16-22-102 (9), the court, with the consent of the juvenile and district attorney, upon accepting the guilty plea and entering an order deferring adjudication, may continue the case for a period of time not to exceed two years after the date of the order deferring adjudication. Upon a showing of good cause, the court may continue the case for additional time, not to exceed five years after the date of the order deferring adjudication.

(3) A juvenile granted a deferral of adjudication pursuant to this section may be placed under the supervision of a probation department. The court may impose any conditions of supervision that it deems appropriate that are stipulated to by the juvenile and the district attorney.

(4) Upon full compliance with the conditions of supervision, the plea of the juvenile or the finding of guilt by the court must be withdrawn and the case dismissed with prejudice.

(5) The district attorney or a probation officer may make an application for entry of adjudication and imposition of sentence at any time within the term of the deferred adjudication or within thirty-five days thereafter.

(6) If the juvenile fails to comply with the terms of supervision, the court shall enter an order of adjudication and proceed to sentencing pursuant to section 19-2.5-1102. Lack of compliance is a matter to be determined by the court without a jury, upon written application of the district attorney or probation department. At least seven days' notice must be given to the juvenile and the juvenile's parents, guardian, or legal custodian. The burden of proof is the same as if the matter were being heard as a probation revocation proceeding.

(7) If the juvenile agrees to a deferral of adjudication, the juvenile waives all rights to a speedy trial and sentencing.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 622, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-709 as it existed prior to 2021.

ANNOTATION

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

Subsection (1) unambiguously conditions the trial court's power to defer a juvenile's sentence upon the concurrence of the prosecuting attorney. People in Interest of R.W.V., 942 P.2d 1317 (Colo. App. 1997).

Requirement for prosecution's approval of a deferred sentence does not impermissibly interfere with the judiciary's sentencing authority. People in Interest of R.W.V., 942 P.2d 1317 (Colo. App. 1997).

This section does not require the court to wait until the end of the first year of deferred adjudication to extend the deferred adjudication for a second year. The court can extend the period to two years at the time it enters the guilty plea. People ex rel. D.S., 2012 COA 199, 292 P.3d 1210 (decided under law in effect prior to 2012 amendment).

This section does not require the court to expressly state it found good cause to extend the period of deferred adjudication, but the court needs to make sufficient findings on the record to reflect its good cause determination. The court's findings were sufficient to establish good cause. People ex rel. D.S., 2012 COA 199, 292 P.3d 1210 (decided under law in effect prior to 2012 amendment).

19-2.5-904. Speedy trial - procedural schedule.

(1) The juvenile's right to a speedy trial is governed by section 18-1-405 and rule 48(b) of the Colorado rules of criminal procedure.

(2) In bringing an adjudicatory action against a juvenile pursuant to this article 2.5, the district attorney and the court shall comply with the deadlines for:

(a) Holding the detention hearing, as specified in section 19-2.5-305 (3)(a)(I);

(b) Filing the petition, as specified in section 19-2.5-305 (3)(a)(IX);

(c) Setting the first appearance, as specified in section 19-2.5-501 (4); and

(d) Holding the adjudicatory trial, as specified in section 19-2.5-902 (1).

(3) The court may grant a continuance with regard to any of the deadlines specified in subsection (2) of this section upon making a finding of good cause.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 623, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-108 as it existed prior to 2021.

ANNOTATION

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

This section incorporates the speedy trial tolling and enforcement provisions of § 18-1-405, at least to the extent that those provisions are not inconsistent with the more specific 60-day and "good cause" continuance provisions of this section. People ex rel. J.M.N., 39 P.3d 1261 (Colo. App. 2001).

Since a juvenile's right to speedy trial is governed by § 18-1-405, the right is waived when the juvenile, through counsel, affirmatively accepts a trial date beyond the 60-day period provided in § 19-2-509 when the juvenile is detained without bail. People in Interest of G.W.R., 943 P.2d 466 (Colo. App. 1996).

A court must consider the factors set forth in § 18-1-405 (6)(g) when ruling on a prosecutor's request in a juvenile adjudicatory action to continue the trial past the speedy trial deadline without the juvenile's consent. People in Interest of C.M.W.R., 2024 COA 4, 546 P.3d 1191.

19-2.5-905. Evidentiary considerations.

(1) All statutes and rules of this state that apply to evidentiary considerations in adult criminal proceedings apply to proceedings pursuant to this title 19 except as otherwise specifically provided.

(2) In any case brought pursuant to this title 19, the credibility of any witness may be challenged because of the witness's prior adult felony convictions and juvenile felony adjudications. The fact of such conviction or adjudication may be proved either by the witness through testimony or by other competent evidence.

(3) Prior to the juvenile resting the juvenile's case, the trial court shall advise the juvenile outside the presence of the jury that:

(a) The juvenile has a right to testify in the juvenile's own behalf;

(b) If the juvenile wants to testify, no one, including the juvenile's attorney, can prevent the juvenile from doing so;

(c) If the juvenile testifies, the prosecutor will be allowed to cross-examine the juvenile;

(d) If the juvenile has been convicted or adjudicated for a felony, the prosecutor is entitled to ask the juvenile about it and thereby disclose it to the jury;

(e) If a felony conviction or adjudication is disclosed to the jury, the jury can be instructed to consider it only as it bears upon the juvenile's credibility;

(f) The juvenile has a right not to testify and that, if the juvenile does not testify, the jury must be instructed about such right.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 624, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-802 as it existed prior to 2021.

ANNOTATION

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

Evidentiary provisions of the Colorado Children's Code are no longer applicable once case is transferred to district court. Trial court erred in ruling that if defendant were to testify in his own defense in district court, his prior juvenile adjudication may be used to impeach him. People v. Armand, 873 P.2d 7 (Colo. App. 1993).

Serious constitutional concerns would result if district court were to apply the provisions of the Colorado Children's Code to a case that was first initiated under the code and then transferred to district court. Adult could not be impeached with a juvenile adjudication but juvenile tried as an adult could. People v. Armand, 873 P.2d 7 (Colo. App. 1993).

The provisions of the Colorado Code of Criminal Procedure, articles 1 to 13 of title 16, do not apply to the Colorado Children's Code unless expressly indicated in the Criminal Procedure Code. This section does not conflict with § 16-1-102. In re People in Interest of A.A., 2013 CO 65, 312 P.3d 1170.

19-2.5-906. Admissibility of evidence - legislative declaration - definitions.

(1) It is the intent of the general assembly that, when evidence is sought to be excluded from the trier of fact in a delinquency proceeding because of the conduct of a peace officer leading to its discovery, such evidence should not be suppressed if otherwise admissible when the proponent of the evidence can show that the conduct in question was taken in a reasonable, good-faith belief that it was proper. It is further declared to be the general assembly's intent to identify the characteristics of admissible evidence and not to address or attempt to prescribe court procedure.

(2) For purposes of this section:

(a) "Good-faith mistake" means a reasonable error of judgment concerning the existence of facts or law that, if true, would be sufficient to constitute probable cause.

(b) "Peace officer" has the meaning set forth in section 16-2.5-101.

(c) "Technical violation" means a reasonable, good-faith reliance upon a statute that is later ruled unconstitutional, a warrant that is later invalidated due to a good-faith mistake, or a court precedent that is later overruled.

(3) The court shall not suppress evidence sought to be excluded in a delinquency proceeding because of the conduct of the peace officer leading to its discovery if the court finds that the evidence was seized by the peace officer as a result of a good-faith mistake or a technical violation and the evidence is otherwise admissible.

(4) The court shall not supress in a delinquency proceeding evidence that is obtained as a result of a confession voluntarily made in a noncustodial setting if the evidence is otherwise admissible.

(5) It is prima facie evidence that the conduct of the peace officer was taken in the reasonable good-faith belief that it was proper if there is a showing that the evidence was obtained pursuant to and within the scope of a warrant, unless the warrant was obtained through intentional and material misrepresentation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 624, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-803 as it existed prior to 2021.

ANNOTATION

Former subsection (4) of this section and former § 19-2-506 contain proper test to measure validity of consent to search given by juvenile in noncustodial setting. People in Interest of S.J., 778 P.2d 1384 (Colo. 1989) (decided under former law).

19-2.5-907. Procedures at trial.

(1) At the adjudicatory trial, that must be conducted pursuant to section 19-1-106, the court shall consider whether the allegations of the petition are supported by evidence beyond a

reasonable doubt. Jurisdictional matters of the age and residence of the juvenile are deemed admitted by or on behalf of the juvenile unless specifically denied within a reasonable time prior to the trial.

(2) If the juvenile is found not guilty after an adjudicatory trial, the court shall order the petition dismissed and the juvenile discharged from any detention or restriction previously ordered. The juvenile's parents, guardian, or other legal custodian are also discharged from any restriction or other previous temporary order.

(3) If the juvenile is found guilty after an adjudicatory trial, the court may proceed to sentencing or direct that the matter be set for a separate sentencing hearing within forty-nine days following completion of the adjudicatory trial.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 625, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-804 as it existed prior to 2021.

ANNOTATION

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

Although proceedings under the Colorado Children's Code are civil in nature, a respondent child in such proceedings is entitled to certain of the constitutional safeguards which are afforded in criminal prosecutions. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

Child who is subject of petition for adjudication as delinquent is entitled to constitutional protections afforded adult defendant in criminal case. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Term "order of adjudication" refers only to orders by which a child is decreed to be delinquent, in need of supervision, or neglected or dependent and does not include orders for revocation of probation. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

C.R.J.P. 8(e) not superceded. This special statutory procedure for waiving jurisdiction of the juvenile court does not supercede C.R.J.P. 8(e). People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980).

Waiver of jurisdiction not final disposition of action. It is evident from the provisions of this section and §§ 19-3-108 (4) and 19-3-109 that an order of the juvenile division of the district court waiving jurisdiction is not a final disposition

of the action. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

When proof beyond reasonable doubt required. Due process and fair treatment require proof beyond a reasonable doubt during the adjudicatory state when a juvenile is charged with an act which would constitute a crime if committed by an adult. D.W. v. Dist. Court, 193 Colo. 194, 564 P.2d 949 (1976).

Right of alleged delinquent to testify as to criminal intent. Where intent is a material element of the crime charged, a child alleged to be delinquent, grounded on an alleged theft, has the right to testify specifically as to intention in the commission of the acts. People in Interest of J.S.C. v. J.S.C., 30 Colo. App. 381, 493 P.2d 671 (1972).

Court may continue adjudicatory hearing without making an adjudication and may impose certain conditions of conduct under this section, as distinguished from probation under § 19-3-113 (former § 19-2-703). People in Interest of F.D., 735 P.2d 496 (Colo. App. 1987).

An adjudication of delinquency is sufficient to establish a conclusive presumption of intent when intent is an element of the offense, because the adjudication requires a higher burden of proof and provides constitutional protections not available in most civil cases. Swentkowski v. Dawson, 881 P.2d 437 (Colo. App. 1994).

The standards for reviewing the sufficiency of evidence supporting a judgment of juvenile delinquency are the same as those applied in a criminal case. The reviewing court must determine whether the evidence, viewed as a whole and in the light most favorable to the prosecution, is sufficient to support a conclusion by a reasonable person that the defendant is guilty of the crime charged beyond a reasonable doubt. People ex rel. J.M.N., 39 P.3d 1261 (Colo. App. 2001); People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

Evidence held sufficient. In a proceeding to declare children delinquent, evidence held legally sufficient to warrant a finding that the children were delinquent. Kahm v. People, 83 Colo. 300, 264 P. 718 (1928).

Evidence held insufficient. Evidence held clearly insufficient to support court's finding that minor was a "delinquent child". Carmean v. People, 110 Colo. 399, 134 P.2d 1056 (1943).

Where a minor child aged 16 was alleged to be a delinquent, grounded on the allegation that he had committed an assault and battery, but at the close of the evidence presented by the people, the court ruled that the evidence presented was not sufficient to sustain the allegations of the petition and entered a judgment of acquittal, on appeal by the people it was held that the case was moot. The minor had been acquitted of the charge contained in the petition and could not again be put in jeopardy for this offense. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

A minute order can be effective as a written order or judgment when the

parties to an action attend a hearing concerning the subject matter of the order and understand the substantive content of the decision represented by the minute order. Wesson v. Bowling, 199 Colo. 30, 604 P.2d 23 (1979); People v. Easter, 914 P.2d 493 (Colo. App. 1995).

Under the plain language of subsection (6)(a), a written order would include any direction of the court reduced to written form such as a written directive for transfer to the adult court and assigning a criminal action number to the case. People v. Easter, 914 P.2d 493 (Colo. App. 1995).

The written minute order waiving juvenile court jurisdiction triggered the requirement for the prosecution to file an information in district court within five days of the issuance of the order and, since the time limit is mandatory and jurisdictional, the prosecution's failure to file an information within that time limit rendered the waiver null and void and the juvenile court was required to retain jurisdiction. People v. Easter, 914 P.2d 493 (Colo. App. 1995).

The later issuance of a second written order by the juvenile court judge cannot correct the prosecution's failure initially to file the information and is not permitted under the mandatory language of subsection (6)(a). People v. Easter, 914 P.2d 493 (Colo. App. 1995).

19-2.5-908. Method of jury selection.

Examination and selection of jurors are governed by rule 47 of the Colorado rules of civil procedure; except that challenges for cause are governed by rule 24 of the Colorado rules of criminal procedure.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 625, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-805 as it existed prior to 2021.

19-2.5-909. Motion for new trial.

(1) All motions for a new trial must be made pursuant to rule 33 of the Colorado rules of criminal procedure.

(2) If the juvenile was not represented by counsel, the court shall inform the juvenile and the juvenile's parent, guardian, or legal custodian at the conclusion of the trial that they have the right to file a motion for a new trial and that, if such motion is denied, they have the right to appeal.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 626, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-902 as it existed prior to 2021.

ANNOTATION

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

Standing to appear. The Colorado Children's Code has not changed the basic law of the state that a grandparent to whom the child has been entrusted for care has status to appear and protest the actions of the court relative to the child. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

Petition for new trial proper. In a proceeding under the Colorado Children's Code, where it was argued that the petition for new trial and demand for jury trial were filed too late, and thus were not in accordance with C.R.C.P. 59(b), this argument was rejected since according to the record there had never been any trial held or evidence presented in support of the dependency petition, and hence, no violation of C.R.C.P. 59(b) could have occurred. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

Failure to move for a new hearing pursuant to this section does not preclude consideration as to whether an illegal sentence has been imposed pursuant to Crim. P. 35(a). People v. T.O., 696 P.2d 811 (Colo. 1985).

19-2.5-910. Adjudication - collateral relief - application - definitions.

(1) At the time of the entry of adjudication or at any time thereafter, upon the request of the adjudicated juvenile or upon the court's own motion, a court may enter an order of collateral relief in the juvenile's case for the purpose of improving the juvenile's likelihood of success in the community.

(2) **Application contents.**

(a) An application for an order of collateral relief must cite the grounds for granting the relief, the type of relief sought, and the specific collateral consequence from which the applicant is seeking relief and must include a copy of a recent criminal history record check. The state court administrator may produce an application form that an applicant may submit in application.

(b) The applicant shall provide a copy of the application to the district attorney and to the regulatory or licensing body that has jurisdiction over the collateral consequence from which the applicant is seeking relief, if any, by certified mail or personal service within fourteen days after filing the application with the court.

(c) An application filed after an adjudication order has been entered must include a copy of a recent Colorado bureau of investigation fingerprint-based criminal history record check, the filing fee required by law, and an additional filing fee of thirty dollars to cover the actual costs related to the application. A court shall waive the filing fees if it finds that the juvenile is indigent.

(3) An order of collateral relief may relieve an adjudicated juvenile of any collateral consequences of the adjudication, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify, including but not limited to statutory, regulatory, or other collateral consequences that the court may see fit to relieve that will assist the adjudicated juvenile in successfully reintegrating into the community.

(4) (a) Notwithstanding any other provision of law, an order of collateral relief cannot relieve any collateral consequences imposed by law for licensure by the department of education or any collateral consequences imposed by law for employment with the judicial branch, the department of corrections, the division of youth services in the department of human services, or any other law enforcement agency in the state of Colorado.

(b) A court shall not issue an order of collateral relief if the adjudicated juvenile:

(I) Has been adjudicated for a felony that included an element that requires a victim to suffer a serious bodily injury and the victim suffered a permanent impairment of the function of any part or organ of the body;

(II) Has been adjudicated for a crime of violence as described in section 18-1.3-406; or

(III) Is required to register as a sex offender pursuant to section 16-22-103.

(5) **Hearing.**

(a) The court may conduct a hearing on any matter relevant to the granting or denying of an application or include a hearing on the matter at the adjudicated juvenile's sentencing hearing and may take testimony under oath.

(b) The court may hear testimony from victims or any proponent or opponent of the application and may hear arguments from the applicant and the district attorney.

(6) **Standard for granting relief.**

(a) A court may issue an order of collateral relief if the court finds that:

(I) The order of collateral relief is consistent with the applicant's rehabilitation; and

(II) Granting the application would improve the applicant's likelihood of success in reintegrating into society and is in the public's interest.

(b) The court that previously issued an order of collateral relief, on its own motion or either by cause shown by the district attorney or on grounds offered by the applicant, may at any time issue a subsequent judgment to enlarge, limit, or circumscribe the relief previously granted.

(c) Upon the motion of the district attorney or probation officer or upon the court's own motion, a court may revoke an order of collateral relief upon evidence of a subsequent criminal conviction or adjudication or proof that the adjudicated juvenile is no longer entitled to relief. Any bars, prohibitions, sanctions, and disqualifications relieved may be reinstated as of the date of the written order of revocation. The court shall provide a copy of the order of revocation to the holder and to any regulatory or licensing entity that the adjudicated juvenile noticed in the juvenile's motion for relief.

(7) If the court issues an order of collateral relief, it shall send a copy of the order of collateral relief through the Colorado integrated criminal justice information system to the Colorado bureau of investigation, and the Colorado bureau of investigation shall note in the applicant's record in the Colorado crime information center that the order of collateral relief was issued.

(8) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Adjudication" or "adjudicated" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or an adjudication for a crime under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, which, if committed within this state, would be a crime. "Adjudication" or "adjudicated" also includes having received a deferred adjudication.

(b) "Collateral consequence" means a collateral sanction or a disqualification.

(c) "Collateral sanction" means a penalty, prohibition, bar, or disadvantage, however denominated, imposed on an individual as a result of the individual's adjudication for an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, costs of prosecution, or a restraint or sanction on an individual's driving privilege.

(d) "Disqualification" means a penalty, prohibition, bar, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's adjudication for an offense.

(9) The provisions of this section apply to adjudications entered before, on, or after September 7, 2021.

Source: L. 2021: (9) added, (HB 21-1214), ch. 455, p. 3029, § 2, effective September 7; entire article added with relocations, (SB 21-059), ch. 136, p. 626, § 2, effective October 1.

Editor's note: (1) This section is similar to former § 19-2-927 as it existed prior to 2021.

(2) Subsection (9) was numbered as 19-2-927 (9) in HB 21-1214 (see L. 2021, p. 3029). That provision was harmonized with subsection (9) of this section as it appears in SB 21-059.

PART 10

TEEN COURTS

19-2.5-1001. Short title.

The short title of this part 10 is the "Colorado Teen Court Program".

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 628, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1101 as it existed prior to 2021.

19-2.5-1002. Definitions.

As used in this part 10, unless the context otherwise requires:

(1) "Minor offense" means any offense denominated a misdemeanor in title 18 or violation of a municipal ordinance where the maximum penalty authorized does not exceed imprisonment for more than six months.

(2) "Supervising court" means the juvenile court for the city and county of Denver, the district courts of the state other than that of Denver, and any municipal court that establishes a teen court program pursuant to this part 10.

(3) "Teen" means any person thirteen years of age or older and under nineteen years of age who is enrolled in school.

(4) "Teen court judge" means a volunteer, licensed to practice law in the state of Colorado, approved by and serving at the pleasure of the chief judge of the supervising court.

(5) "Teen defendant" means a teen ordered to participate in a teen court program pursuant to this part 10.

(6) "Teen defense attorney" means a teen who is chosen by a teen court judge to speak on behalf of a teen defendant.

(7) "Teen jury" means not less than three teens who have been chosen by a teen court judge to decide what sentence should be imposed against a teen defendant.

(8) "Teen prosecutor" means a teen who has been chosen by a teen court judge to advocate on behalf of a school or community for any sentence to be imposed.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 628, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1102 as it existed prior to 2021.

19-2.5-1003. Teen court program - supervising courts.

(1) Any supervising court is authorized to establish a teen court program pursuant to the this part 10. In any jurisdiction where a teen court program is established, a teen charged with a minor offense may receive a deferred judgment, a condition of which is successful participation in the teen court program.

(2) The procedure for determining the eligibility for and imposition of the deferred judgment is as follows:

(a) The teen, in the presence of at least one of the teen's parents or legal guardian, enters a plea of guilty to the minor offense charged;

(b) The teen requests to participate in the teen court program, agrees to the deferral of further proceedings in the supervising court for a period of six months or until the teen has successfully completed the teen court program, and provides the court with addresses for mailing notices to both the teen and the teen's parent or legal guardian;

(c) The supervising court finds that the teen will benefit more from participation in the teen court program than from any other sentence that may be imposed;

(d) The supervising court may accept the teen's plea, order that the teen participate in the teen court program, and defer further proceedings in the supervising court for up to six months; and

(e) In addition to ordering the teen to participate in the teen court program, the supervising court may enter an order that the teen pay any restitution otherwise authorized by law.

(3) If the supervising court receives a report from the teen court judge that the teen has not successfully completed the teen court program, or if within six months after the entry of the order for deferred judgment the supervising court has not received a report that the teen has successfully completed the teen court program, the court shall schedule a sentencing hearing, send notice to the teen and the teen's parent or legal guardian at the addresses given at the time of the order for deferred judgment or any changed address, and at the sentencing hearing impose any other sentence authorized for the offense charged.

(4) If the supervising court receives a report from the teen court judge that the teen has successfully completed the teen court program, the court shall dismiss all charges against the teen. The dismissal does not constitute a conviction for any purpose.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 629, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1103 as it existed prior to 2021.

19-2.5-1004. Procedures - hearings.

(1) Subject to any applicable rules of the Colorado supreme court, the supervising court is responsible for establishing procedures for any teen court program under its jurisdiction, including but not limited to:

(a) The use of its courtroom and other facilities during times when they are not required for other court business;

(b) The approval of teen court judges;

(c) The collection of a fee from any teen defendant; and

(d) The range of sentencing options that may be imposed upon a teen defendant. Sentencing options must not include a term of imprisonment nor the payment of restitution, but may include:

(I) Community service supervised by the supervising court;

(II) Participation in law-related education classes, counseling, treatment, or other programs; or

(III) Participation as a juror or other teen court member in proceedings involving teen defendants.

(2) Whenever a teen, as a condition of a deferred judgment, is ordered to participate in a teen court program, the teen and the teen's parent or legal guardian must be ordered to appear at a teen court sentencing hearing. The teen court judge shall preside over the sentencing hearing. The teen defendant may represent himself or herself or be represented by a teen defense attorney. The following procedures must be followed at the teen court sentencing hearing:

(a) The teen court judge shall select a teen jury;

(b) The teen prosecutor and either the teen defendant or teen defense attorney may question the jury on their knowledge of the defendant or the facts of the offense for which the teen defendant was charged;

(c) The teen court judge may order that a teen juror be replaced if the judge finds that the juror may be biased;

(d) The teen prosecutor and either the teen defendant or teen defense attorney may make an opening statement;

(e) The teen defendant is subject to cross-examination by the teen prosecutor concerning the circumstances or facts surrounding the offense or the character of the teen defendant and may either make a statement or be subject to direct examination by the teen defense attorney;

(f) Each side may offer witnesses and documents concerning the circumstances or facts surrounding the offense or the character of the teen defendant;

(g) The teen prosecutor and either the teen defendant or teen defense attorney may make a closing statement;

(h) Unless otherwise ordered by the teen court judge, the teen jury shall deliberate in private and shall unanimously agree upon the sentence to be imposed against the teen defendant, pursuant to guidelines adopted by the court; and

(i) If the jury is unable to unanimously agree on a sentence, then the teen court judge shall impose the sentence, pursuant to guidelines adopted by the court.

(3) The teen court judge shall enter a written order that:

(a) Orders the teen defendant to complete the sentence imposed by the teen jury;

(b) Orders the teen defendant to submit a written report to the teen court judge within three months after the sentencing hearing showing satisfactory completion of the terms of the sentence; and

(c) Notifies the teen defendant that if the teen court judge does not receive the written report within the time required, the teen court judge shall file with the supervising court a report stating that the teen defendant has not satisfactorily completed the teen court program.

(4) Within six months after the order for deferred judgment, the teen court judge shall file a written report with the supervising court notifying the court whether the teen defendant has satisfactorily completed the teen court program.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 629, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1104 as it existed prior to 2021.

19-2.5-1005. Alternative procedures.

Nothing contained in this part 10 impairs the authority of courts to adopt different or alternative procedures for the establishment and operation of teen court programs within their respective jurisdictions.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 631, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1105 as it existed prior to 2021.

PART 11

SENTENCING

SUBPART A

IN GENERAL

19-2.5-1101. Presentence investigation.

(1) (a) Prior to the sentencing hearing, juvenile probation for the judicial district in which the juvenile is adjudicated shall conduct a presentence investigation unless waived by the court on its own determination or on recommendation of the prosecution or the juvenile. The presentence investigation must take into consideration and build on the intake assessment performed by the screening team. The presentence investigation may address, but is not limited to, the following:

(I) The details of the offense;

(II) Statements made by the victims of the offense;

(III) The amount of restitution, if any, that should be imposed on the juvenile or the juvenile's parent, guardian, or legal custodian;

(IV) The juvenile's previous criminal record, if any, if the juvenile has not been adjudicated for an act that constitutes unlawful sexual behavior as defined in section 16-22-102 (9);

(V) Any history of substance abuse by the juvenile;

(VI) The juvenile's education history, including any special education history and any current individualized education program the juvenile may have pursuant to section 22-20-108;

(VII) The juvenile's employment history;

(VIII) The juvenile's family, kin, and persons having a significant relationship with the juvenile;

(IX) The juvenile's peer relationships;

(X) The status of juvenile programs and community placements in the juvenile's judicial district of residence;

(XI) Other related material;

(XII) Review of placement and commitment criteria adopted pursuant to section 19-2.5-1404, which are the criteria for any sentencing recommendations included in the presentence investigation;

(XIII) Assessment of the juvenile's needs; and

(XIV) Recommendations and a proposed treatment plan for the juvenile.

(b) If the juvenile has been adjudicated for an act that constitutes unlawful sexual behavior, as defined in section 16-22-102 (9), then the report on the presentence investigation must include the juvenile's previous criminal and juvenile delinquency records, if any.

(2) (a) The probation department shall conduct a presentence investigation in each case unless waived by the court on its own determination or on recommendation of the prosecution or the juvenile. The level of detail included in the presentence investigation may vary, as appropriate, with the services being considered for the juvenile.

(b) (I) Except as set forth in subsection (2)(b)(II) of this section, if the juvenile is adjudicated on or after July 1, 2018, the report described in subsection (1)(a) of this section must include the following statement:

> Each adjudicated juvenile may, at the time of adjudication or at any time thereafter, apply to the court for an order of collateral relief of the consequences of the juvenile's adjudication pursuant to section 19-2.5-910, Colorado Revised Statutes.

(II) The report described in subsection (1)(a) of this section need not include the statement described in subsection (2)(b)(I) of this section if the juvenile:

(A) Has been adjudicated for a felony that included an element that requires a victim to suffer a serious bodily injury and the victim suffered a permanent impairment of the function of any part or organ of the body;

(B) Has been adjudicated for a crime of violence as described in section 18-1.3-406; or

(C) Is required to register as a sex offender pursuant to section 16-22-103.

(3) (a) The state court administrator may implement a behavioral or mental health disorder screening program to be used by the juvenile court. If the state court administrator chooses to implement a behavioral or mental health disorder screening program, the juvenile court shall use the standardized behavioral or mental health disorder screening developed pursuant to section 16-11.9-102 and conduct the screening in accordance with the procedures established pursuant to section 16-11.9-102. The findings and results of any standardized behavioral or mental health disorder screening conducted pursuant to this subsection (3) must be included in the written report to the court prepared and submitted pursuant to this section.

(b) Prior to implementation of a behavioral or mental health disorder screening program pursuant to this subsection (3), if implementation of the program would require an increase in appropriations, the state court administrator shall submit to the joint budget committee a request for funding in the amount necessary to implement the behavioral or mental health disorder screening program. If implementation of the behavioral or mental health disorder screening program would require an increase in appropriations, implementation of the program is conditional upon approval of the funding request.

(4) Prior to sentencing a juvenile who was adjudicated for an offense that would be a felony or misdemeanor not contained in title 42 if committed by an adult, the court may order the juvenile to participate in an assessment to determine whether the juvenile would be suitable for participation in restorative justice practices that would be a part of the juvenile's sentence; except that the court may not order participation in a restorative justice practice if the juvenile was adjudicated a delinquent for unlawful sexual behavior, as defined in section 16-22-102 (9); a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1); stalking, as defined in section 18-3-602; or violation of a protection order, as defined in section 18-6-803.5. If the court orders a suitability assessment, the assessor shall provide the services for a fee of no more than forty dollars based on a sliding scale consistent with guidelines used to determine eligibility for appointment of counsel. The court shall not include payment of this fee as part of any court order. If a juvenile wants to participate in restorative justice practices, the juvenile must make the request to the district attorney or the law enforcement agency administering the program and may not make the request to the victim. If requested by the juvenile or law enforcement agency, a victim-offender conference may only be conducted after the victim is consulted by the district attorney and offered an opportunity to participate or submit a victim impact statement. If a victim elects not to attend, a victim-offender conference may be held with a suitable victim surrogate or victim advocate, and the victim may submit a victim impact statement. If the juvenile participates in a restorative justice practices victim-offender conference, the facilitator shall provide these services for a fee of no more than one hundred twenty-five dollars based on a sliding scale consistent with guidelines used to determine eligibility for appointment of counsel. The court shall not include payment of this fee as part of any court order.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 631, § 2, effective October 1; (4) amended, (HB 21-1315), ch. 461, p. 3117, § 27, effective October 1.

Editor's note: This section is similar to former § 19-2-905 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021.

ANNOTATION

Law reviews. For article, "The Mandate to Use Special Education at Juvenile Delinquency Sentencings", see 32 Colo. Law. 99 (Oct. 2003).

19-2.5-1102. Sentencing hearing.

(1) (a) After making a finding of guilt, the court shall hear evidence on the question of the proper disposition best serving the interests of the juvenile and the public. Such evidence includes but is not necessarily limited to the social study and other reports as provided in section 19-1-107.

(b) In cases in which the juvenile is adjudicated a juvenile delinquent for an act that constitutes unlawful sexual behavior, as defined in section 16-22-102 (9), the court shall consider the juvenile's previous criminal and juvenile delinquency records, if any, set forth in the presentence investigation report prepared pursuant to section 19-2.5-1101 (1)(b) in determining the proper disposition for the juvenile and the public.

(2) If the court has reason to believe that the juvenile may have an intellectual and developmental disability, the court shall refer the juvenile to the case management agency, as defined in section 25.5-6-1702, in the defined service area where the action is pending for an eligibility determination pursuant to article 10.5 of title 27. If the court has reason to believe that the juvenile may have a behavioral or mental health disorder, the court shall order a mental health placement prescreening to be conducted in any appropriate place.

(3) If the court receives a mental health screening or mental health assessment pursuant to section 19-2.5-612 determining that the juvenile could benefit from mental health services, or the court already has sufficient information to determine that the juvenile could benefit from mental health services, the court may order mental health services as a part of the disposition.

(4) (a) The court may continue the sentencing hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence; except that the court shall determine sentencing within forty-nine days after completion of the adjudicatory trial.

(b) If the hearing is continued, the court shall make an appropriate order for detention of the juvenile or for the juvenile's release in the custody of the juvenile's parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

(c) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a juvenile who is in detention or who has otherwise been removed from the home before an order of disposition has been made.

(5) In any case in which the sentence is placement out of the home, except for juveniles committed to the department of human services, the court shall, at the time of placement, set a review within ninety-one days to determine if continued placement is necessary and is in the best interest of the juvenile and of the community. The court shall give notice of the review to all parties and to the director of the facility or agency in which the juvenile is placed and any person who has physical custody of the juvenile and any attorney or guardian ad litem of record.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 634, § 2, effective October 1; (2) amended, (HB 21-1187), ch. 83, p. 327, § 9, effective July 1, 2024.

Editor's note: (1) This section is similar to former § 19-2-906 as it existed prior to 2021.

(2) Subsection (2) was numbered as 19-2-906 (2) in HB 21-1187 (see L. 2021, p. 327). That provision was harmonized with subsection (2) of this section as it appears in SB 21-059, effective July 1, 2024.

ANNOTATION

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

Court's disposition of case must consider both the child's best interests and society's best interests. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987).

State is an "interested party". The state of Colorado, through its representative, the district attorney, is an "interested party" at the dispositional stage of a delinquency proceeding, as the same factors which establish the state's status as an interested party at the adjudicatory stage of the delinquency proceeding are equally applicable to the dispositional stage. People in Interest of R.M.S., 651 P.2d 377 (Colo. 1982).

Hearing not required for revocation of probation. Where hearing emanated from petition to revoke probation of child and not from petition for either delinquency adjudication or in need of supervision, child was not entitled to dispositional hearing and social study. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Rules of evidence not controlling. Information which will assist the court in determining the disposition, or upon which the court relies in fashioning conditions of

probation, can be obtained by the court in a variety of ways, none of which need comply with the rules of evidence. John Doe v. People, 156 Colo. 311, 398 P.2d 624 (1965).

Trial court's failure to sentence juvenile within 45 days after adjudication pursuant to subsection (3)(a) entitles juvenile to credit for pre-sentence confinement for the period following the expiration of the 45-day sentencing deadline until the date of sentencing. The trial court retains discretion as to whether to grant pre-sentence confinement credit for any confinement from the date of adjudication until the expiration of the 45-day sentencing deadline. People ex rel. J.R., 216 P.3d 1220 (Colo. App. 2009).

19-2.5-1103. Sentencing schedule - options.

(1) Upon completion of the sentencing hearing pursuant to section 19-2.5-1102, the court shall enter a decree of sentence or commitment imposing any of the following sentences or combination of sentences, as appropriate:

(a) Commitment to the department of human services pursuant to section 19-2.5-1117;

(b) Confinement in the county jail or in community corrections pursuant to section 19-2.5-1118;

(c) Detention pursuant to section 19-2.5-1123;

(d) Placement of legal custody of the juvenile with a relative or other suitable person pursuant to section 19-2.5-1112;

(e) Probation pursuant to section 19-2.5-1106;

(f) Commitment to the community accountability program pursuant to section 19-2.5-1111;

(g) Placement of legal custody of the juvenile in the county department of human or social services or a child placement agency pursuant to section 19-2.5-1115;

(h) Placement of the juvenile in a hospital or other suitable facility for receipt of special care pursuant to section 19-2.5-1114;

(i) Imposition of a fine pursuant to section 19-2.5-1105;

(j) Ordering the juvenile to pay restitution pursuant to section 19-2.5-1104;

(k) Ordering the juvenile to complete an anger management treatment program or any other appropriate treatment program pursuant to section 19-2.5-1122;

(l) Participation in an evaluation to determine whether the juvenile would be suitable for restorative justice practices that would be a part of the juvenile's sentence; except that the court may not order participation in restorative justice practices if the juvenile was adjudicated a

delinquent for unlawful sexual behavior, as defined in section 16-22-102 (9); a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1); stalking, as defined in section 18-3-602; or violation of a protection order, as defined in section 18-6-803.5. If the court orders participation in restorative justice practices, the facilitator shall provide these services for a fee of no more than one hundred twenty-five dollars based on a sliding scale consistent with guidelines used to determine eligibility for appointment of counsel. The court shall not include payment of this fee as part of any court order. Nothing in this subsection (1)(l) requires a victim to participate in a restorative justice victim-offender conference.

(2) The judge shall sentence any juvenile adjudicated as a special offender pursuant to section 19-2.5-1126.

(3) Any sentence imposed on a juvenile pursuant to this section may include the juvenile's parent or guardian pursuant to section 19-2.5-1110.

(4) If, as a condition of or in connection with any sentence imposed pursuant to this section, the court requires a juvenile to attend school, the court shall notify the school district in which the juvenile is enrolled of such requirement.

(5) (a) Except as otherwise set forth in section 19-2.5-1127 for an aggravated juvenile offender, if the court finds that placement out of the home is necessary and is in the best interests of the juvenile and the community, the court shall place the juvenile, following the criteria established pursuant to section 19-2.5-1404, in the facility or setting that most appropriately meets the needs of the juvenile, the juvenile's family, and the community. In making its decision as to proper placement, the court shall utilize the evaluation for placement prepared pursuant to section 19-1-107 or the evaluation for placement required by section 19-1-115 (8)(e). Any placement recommendation in the evaluation prepared by the county department of human or social services must be accorded great weight as the placement that most appropriately meets the needs of the juvenile, the juvenile's family, and the community. A recommendation prepared by the county department of human or social services must set forth specific facts and reasons for the placement recommendation. If the evaluation for placement recommends placement in a facility located in Colorado that can provide appropriate treatment and that will accept the juvenile, then the court shall not place the juvenile in a facility outside this state. If the court places the juvenile in a facility located in Colorado other than one recommended by the evaluation for placement, in a facility located outside this state in accordance with the evaluation for placement, or in a facility in which the average monthly cost exceeds the amount established by the general assembly in the general appropriation bill, it shall make specific findings of fact, including the monthly cost of the facility in which the juvenile is placed, relating to its placement decision. A copy of the findings must be sent to the chief justice of the supreme court, who shall, notwithstanding section 24-1-136 (11)(a)(I), report monthly to the joint budget committee and annually to the house and senate committees on health and human services, or any successor

committees, on such placements. If the court commits the juvenile to the state department of human services, it shall not make a specific placement, nor is this subsection (5) relating to specific findings of fact applicable.

(b) If the court sentences a juvenile to an out-of-home placement funded by the state department of human services or any county, or commits a juvenile to the state department of human services, and the receiving agency determines that the placement or commitment does not follow the criteria established pursuant to section 19-2.5-1404, including the placement recommended by the receiving agency, the receiving agency may, after assessing the juvenile's needs, file a petition with the court for reconsideration of the placement or commitment. The petition must be filed not later than thirty-five days after the placement or commitment. The court shall hear the petition and enter an order thereon not later than thirty-five days after the filing of the petition, and after notice to all agencies or departments that might be affected by the resolution of the petition, and after all such agencies or departments have had an opportunity to participate in the hearing on the petition. Failure of any such agency or department to appear may be a basis for refusal to accept a subsequent petition by the agency or department that had an opportunity to appear and be present at the original petition hearing. The notification to the parties required pursuant to this subsection (5)(b) must be made by the petitioning party, and proof of the service must be filed with the court. If the court sentences a juvenile to an out-of-home placement funded by the county department of human or social services, temporary legal custody of the juvenile must be placed with the county department of human or social services, and the placement recommended by the county department must be accorded great weight as the placement that most appropriately meets the needs of the juvenile, the juvenile's family, and the community. Any deviation from the recommendation must be supported by specific findings on the record of the case detailing the specific extraordinary circumstances that constitute the reasons for deviations from the placement recommendation of the county department of human or social services.

(6) Repealed.

(7) The juvenile court in each judicial district may implement a behavioral or mental health disorder screening program to screen juveniles sentenced pursuant to this part 11. If the juvenile court chooses to implement a behavioral or mental health disorder screening program, the juvenile court shall use the standardized behavioral or mental health disorder screening developed pursuant to section 16-11.9-102 and conduct the screening in accordance with procedures established pursuant to section 16-11.9-102.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 635, § 2, effective October 1; (1)(l) amended and (6) repealed, (HB 21-1315), ch. 461, p. 3118, § 28, effective October 1.

Editor's note: This section is similar to former § 19-2-907 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021.

ANNOTATION

Law reviews. For article, "Commitment of Misdemeanants to the Colorado State Reformatory", see 29 Dicta 294 (1952). For article, "One Year Review of Domestic Relations", see 40 Den. L. Ctr. J. 115 (1963). For article, "Towards a More Practical Central Registry", see 51 Den. L.J. 509 (1974). For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "Toward an Integrated Theory of Delinquency Responsibility", see 60 Den. L.J. 485 (1983).

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

Jurisdiction of court to determine placement. It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent. State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs., 642 P.2d 16 (Colo. App. 1981).

Incarceration, if any is to be decreed, is to be as provided in this section. Martinez v. People, 150 Colo. 374, 372 P.2d 947 (1962) (decided under former § 22-8-11, C.R.S. 1963).

Trial court cannot impose a more severe penalty upon a juvenile adjudicated a delinquent child than such child could have received as an adult for commission of the same offense. People in Interest of A.L., 713 P.2d 934 (Colo. App. 1985).

Acts not grounds for delinquency do not support commitment to institution for delinquents. It would be contrary to the obvious legislative intent to allow a child to be committed to an institution for juvenile delinquents where the only acts alleged, violation of child in need of supervision probation, were those which were not, in and of themselves, grounds for an adjudication of delinquency and for which the statute already provides a comprehensive and complete procedure for review and punishment. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Exclusive placement power in department. When the terms of this section are given their ordinary and generally accepted meaning, it appears that the general assembly has bestowed upon the department of institutions the exclusive power to place a delinquent in a particular facility once that child has been committed by the court to the

department. Leidig v. Delaney, 189 Colo. 186, 539 P.2d 1264 (1975).

Trial court, once having committed an individual to the custody of the department of institutions pursuant to § 19-2-703 (1)(a), may not limit the department's discretion regarding placement of that individual. McDonnell v. Juvenile Court, 864 P.2d 565 (Colo. 1993).

Consecutive terms not authorized. In absence of express authorization in the Colorado Children's Code, court lacks authority to impose consecutive terms of commitment upon one adjudicated both a "repeat juvenile offender" and a "mandatory sentence offender". S.G.W. v. People, 752 P.2d 86 (Colo. 1988).

Trial court erred in interpreting subsection (1) as allowing the combination of a one-year term of commitment followed by a one-year term of probation. Although the aggregate length of the combined sentence imposed by the court did not exceed two years, the period of commitment exceeded the 45-day aggregate maximum described in § 19-2-925 (1)(a). People in Interest of J.S.R., 2014 COA 98M, 338 P.3d 1088.

This section and § 19-2-908 (1)(a) can be harmonized and applied together when any combined sentence to commitment and probation limits the term of commitment to no more than 45 days. People in Interest of J.S.R., 2014 COA 98M, 338 P.3d 1088.

The sentencing options listed in this section are applicable to mandatory sentence offenders. Section 19-2-908 is a supplement to, not a substitute for, this section. People in Interest of J.S.R., 2014 COA 98M, 338 P.3d 1088.

Child must first be adjudicated as delinquent before being placed on probation. People in Interest of F.D., 735 P.2d 496 (Colo. App. 1987).

Where a person is adjudicated a delinquent child at age 17 and is 18 at the time of the dispositional order, equal protection is not violated where the juvenile court retains jurisdiction and proceeds with disposition, even though similarly situated adults are subject to different sanctions contained in the Criminal Code. People in Interest of M.C., 774 P.2d 857 (Colo. 1989).

A court may place legal custody with the department of human services only if, concurrently, physical placement outside the home is authorized. People in Interest of C.A.G., 903 P.2d 1229 (Colo. App. 1995).

Authority to commit to juvenile group care facilities or training schools. Juvenile courts have statutory authority to commit adjudicated delinquents to juvenile group care facilities or training schools under the supervision of the department of institutions. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

But not to impose limited confinement in county jail as probation condition. A juvenile court does not have the statutory authority to impose a limited or partial confinement in county jail as a condition of probation for a juvenile under 18 years of age. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

Implicit in the statutory grant of former subsection (1)(d) is the converse, that a juvenile court may not impose a jail sentence on those younger than 18 years of age. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

The custodial placement sentencing option of former subsection (1)(d) is not available for violent juvenile offenders because the plain language of former subsection (2) specifically states that the judge shall sentence any juvenile adjudicated as a special offender as provided in § 19-2-908. Thus, the availability of a custodial placement sentence for a violent juvenile offender depends entirely on whether such a sentence is authorized by § 19-2-908 (1)(c)(I)(A). People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

Three overriding requirements must be met before a restitution order can be valid: The person who is required to pay restitution must receive adequate notice that the victim or the victim's family claims damages, there must be notice of the amount of restitution requested, and the person obligated to pay must be given the opportunity to controvert the victim's claimed monetary damages. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Restitution order was entered without adequate notice or an opportunity to be heard since the parent did not receive notice of her potential liability nor of her opportunity to challenge the validity of the amounts sought. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Under mandatory provisions of former § 19-2-703 (4) requiring the court to order restitution, the ability of juvenile to pay at the time restitution is ordered is irrelevant. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Restitution order is reasonable if it gives the juvenile sufficient latitude to comply at some time in the future. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Inability to pay bars enforcement of a restitution order only if it is the basis for revocation of probation. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Incarceration of juvenile not a bar to imposition of restitution order. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992); People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Court must make findings of the reasonableness of the restitution amount and the reasonableness of the repayment terms at the time restitution is ordered. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Court may consider family circumstances as well as the juvenile's potential ability to pay after release from incarceration in considering whether restitution would cause serious hardship or injustice to the juvenile. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Payment of restitution to victim's insurer. The broad statutory requirement that a delinquent child must pay "for any damage done to persons or property" fully authorizes a district court's order that the

delinquent make restitution to the victim's insurer. People in Interest of P.J.N., 664 P.2d 245 (Colo. 1983).

Legislative intent underlying this section is that whenever possible, restitution should be required. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Restitution serves society's interest by encouraging juveniles to be responsible for the damage they cause. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992); People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Restitution decree within limits imposed by law and supported by evidence. People in Interest of M.H., 661 P.2d 1195 (Colo. App. 1983).

Restitution order upon juvenile who was adjudicated delinquent in proceeding arising from auto accident was proper even though he served a full sentence of incarceration and restitution was not part of conditional release. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Trial court cannot order juvenile who was adjudicated delinquent in proceeding arising from auto accident to pay restitution to the victim's automobile insurer because the insurer had no right to subrogation to sue the juvenile civilly under § 10-4-713, the no-fault insurance act. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Former § 19-2-703 (4) and § 13-21-107 (2) do not limit a parent's restitution obligation to $3,500 per delinquent act; rather, the "one delinquent act" limitation in that subsection, when read in conjunction with the "any person" language in § 13-21-107 provides that parental restitution payments cannot exceed $3,500 to each person entitled to restitution as a result of each delinquent act. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Applied in People in Interest of R.A.D., 196 Colo. 430, 586 P.2d 46 (1978); Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979); People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979); People in Interest of R.G., 630 P.2d 89 (Colo. App. 1981); People v. M.A.W., 651 P.2d 433 (Colo. App. 1982); People in Interest of M.A.G., 732 P.2d 649 (Colo. App. 1986).

19-2.5-1104. Sentencing - restitution by juvenile.

(1) If the court finds that a juvenile who receives a deferral of adjudication or who is adjudicated a juvenile delinquent has damaged a victim's personal or real property, that the victim's personal property has been lost, or that personal injury has been caused to a victim as a result of the juvenile's delinquent act, the court, in addition to any other sentence or commitment that it may impose on the juvenile pursuant to section 19-2.5-1103, shall enter a sentencing order requiring the juvenile to make restitution as required by article 18.5 of title 16 and part 6 of article 1.3 of title 18.

(2) Restitution must be ordered to be paid in a reasonable manner, as determined by the court and in accordance with article 18.5 of title 16 and part 6 of article 1.3 of title 18.

(3) Notwithstanding section 18-1.3-602 (4)(a)(III) or any other provision of law, a court shall not order a juvenile to pay restitution to an insurance company. A court may order a juvenile to pay restitution to a victim for the portion of a victim's pecuniary loss for which the victim cannot be compensated under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund.

(4) As used in this section, "victim" does not mean an insurance company, as defined in section 38-13-102 (13), for purposes of restitution in juvenile cases.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 637, § 2, effective October 1. **L. 2022:** (3) and (4) added, (HB 22-1373), ch. 392, p. 2772, § 1, effective June 7.

Editor's note: This section is similar to former § 19-2-918 as it existed prior to 2021.

ANNOTATION

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

The federal Controlled Substances Act does not preempt the state's restitution statutes. There is no positive conflict between the two statutes. The restitution statutes do not require a defendant to violate the Controlled Substances Act. Ordering restitution to a licensed marijuana business and thereby acknowledging a state property interest in marijuana does not positively conflict with the Controlled Substances Act. People in Interest of D.M., 2019 COA 56M, 444 P.3d 834.

Three overriding requirements must be met before a restitution order can be valid: The person who is required to pay restitution must receive adequate notice that the victim or the victim's family claims damages, there must be notice of the amount of restitution requested, and the person obligated to pay must be given the opportunity to controvert the victim's claimed monetary damages. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Under mandatory provisions of former § 19-2-703 (4) requiring the court to order restitution, the ability of juvenile to pay at the time restitution is ordered is irrelevant. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Restitution order is reasonable if it gives the juvenile sufficient latitude to comply at

some time in the future. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Inability to pay bars enforcement of a restitution order only if it is the basis for revocation of probation. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Incarceration of juvenile not a bar to imposition of restitution order. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992); People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Court must make findings of the reasonableness of the restitution amount and the reasonableness of the repayment terms at the time restitution is ordered. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

Court may consider family circumstances as well as the juvenile's potential ability to pay after release from incarceration in considering whether restitution would cause serious hardship or injustice to the juvenile. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992).

In amending the statute in 1996 and 2000, the general assembly intended to remove the ability to pay and hardship from a juvenile court's consideration when ordering restitution. People in Interest of A.V., 2018 COA 138M, 446 P.3d 887 (holding contrary to People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992) (decided under former law)); People in Interest of D.L.C., 2019 COA 135, 461 P.3d 588.

Legislative intent underlying this section is that whenever possible, restitution should be required. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Restitution serves society's interest by encouraging juveniles to be responsible for the damage they cause. People in Interest of A.R.M., 832 P.2d 1093 (Colo. App. 1992); People v. T.R., 860 P.2d 559 (Colo. App. 1993).

A juvenile court may not suspend accrual of postjudgment interest on restitution for a juvenile while the juvenile is committed to the division of youth services. People in Interest of D.L.C., 2019 COA 135, 461 P.3d 588.

Payment of restitution to victim's insurer. The broad statutory requirement that a delinquent child must pay "for any damage done to persons or property" fully authorizes a district court's order that the delinquent make restitution to the victim's insurer. People in Interest of P.J.N., 664 P.2d 245 (Colo. 1983).

Restitution order upon juvenile who was adjudicated delinquent in proceeding arising from auto accident was proper even though he served a full sentence of incarceration and restitution was not part of conditional release. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Trial court cannot order juvenile who was adjudicated delinquent in proceeding arising from auto accident to pay restitution to the victim's automobile insurer because the insurer had no right to subrogation to sue the juvenile civilly under § 10-4-713, the no-fault insurance act. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Adjudication of juvenile delinquency is not conviction of a crime within the language of the federal Bankruptcy Code; therefore, a restitution debt is dischargeable under the code. In re Sweeney, 341 B.R. 35 (Bankr. D. Colo. 2006), aff'd, 492 F.3d 1189 (10th Cir. 2007).

Juvenile court lacked authority to transfer defendant's restitution obligation from an unrelated juvenile case to defendant's adult case, and district court had no authority to include the juvenile court's restitution order in its community corrections or department of corrections sentence in an unrelated case. People v. Brooks, 250 P.3d 771 (Colo. App. 2010).

19-2.5-1105. Sentencing - fines.

Except as otherwise set forth in section 19-2.5-1127 for an aggravated juvenile offender, the court may, as the sole punishment or in addition to any other sentence or commitment specified in section 19-2.5-1103, impose on the juvenile a fine of not more than three hundred dollars.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 638, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-917 as it existed prior to 2021.

19-2.5-1106. Sentencing - probation - supervised community service or work program.

(1) Except as otherwise provided in section 19-2.5-1127 for an aggravated juvenile offender:

(a) The court may place the juvenile on probation or under protective supervision in the legal custody of one or both of the juvenile's parents or guardian under such conditions as the court may impose;

(b) The court may place the juvenile on probation and place the juvenile in the juvenile intensive supervision program created pursuant to section 19-2.5-1409;

(c) The court may require as a condition of probation that the juvenile report for assignment to a supervised work program, place the juvenile in a child care facility that provides a supervised work program, or require that the juvenile's custodial parent or guardian assist the juvenile in participating in a supervised work program, if:

(I) The juvenile is not deprived of the schooling that is appropriate to the juvenile's age, needs, and specific rehabilitative goals;

(II) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the juvenile's age level and physical ability, and is combined with counseling from a juvenile probation officer or other guidance personnel; and

(III) The supervised work program assignment is made for a period of time consistent with the juvenile's best interest, but not exceeding one hundred eighty days.

(2) Except as set forth in subsection (1) of this section, as a condition of a deferral of adjudication or of probation, in conjunction with other dispositional orders, or otherwise, the court may order the juvenile to participate in a supervised community service or community work program if the court finds that the program will promote the purposes of this title 19 as set forth in section 19-1-102.

(3) Participation by the juvenile, or by both the juvenile and the juvenile's parent or guardian, in a community service or work program may be ordered in addition to or in conjunction with an order to pay restitution pursuant to section 19-2.5-1104 or 19-2.5-1110.

(4) With the written consent of the victim of the juvenile's delinquent act, the juvenile, or both the juvenile and the custodial parent, the juvenile's parent who has parental responsibilities, or the juvenile's guardian may be ordered to perform work for the victim.

(5) Any order issued by the court pursuant to this section must be structured to allow the juvenile to continue regular school attendance and any employment, if appropriate, and must be suitable to the juvenile's age and abilities. The amount of community service or work ordered must be reasonably related to the seriousness of the juvenile's delinquent act.

(6) The court may order any agency or person supervising a juvenile in a community service or work program to advise the court concerning the juvenile's participation in the program in such manner as the court requires.

(7) The court may order, as a condition of probation, that the juvenile be placed out of the home in a residential child care facility providing a supervised work program or that the juvenile in such facility report to a supervised work program if the court finds the following:

(a) That the juvenile will not be deprived of the education that is appropriate to the juvenile's age, needs, and specific rehabilitative goals;

(b) That the supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the juvenile's age level and physical ability, and is combined with counseling from a probation officer or other guidance personnel; and

(c) That the supervised work program assignment is made for a period of time consistent with the juvenile's best interest but not exceeding one hundred eighty days.

(8) The probation department of the court is responsible for establishing and identifying suitable work programs and assignments. Boards of county commissioners, county sheriffs, and

political subdivisions shall cooperate to establish work programs. The cooperation of suitable nonprofit organizations and other entities may be sought to establish suitable work programs.

(9) For purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, "public employee" does not include any juvenile who is ordered to participate in a work or community service program pursuant to this section.

(10) A governmental entity or cooperating nonprofit organization is not liable pursuant to the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, or pursuant to the "Colorado Employment Security Act", articles 70 to 82 of title 8, for any benefits on account of any juvenile who is ordered to participate in a work or community service program pursuant to this section, but nothing in this subsection (10) prohibits a governmental entity or cooperating nonprofit organization from electing to accept the provisions of the "Workers' Compensation Act of Colorado" by purchasing and keeping in force a policy of workers' compensation insurance covering the person.

(11) A general public liability insurance policy obtained to cover juveniles performing work or community service pursuant to this section and to provide coverage for injuries caused to or by juveniles performing work or community service pursuant to this section must be in a sum of not less than the current limit on government liability under the "Colorado Governmental Immunity Act", article 10 of title 24.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 638, § 2, effective October 1.

Editor's note: This section is similar to former §§ 19-2-913 and 19-2-308 as they existed prior to 2021.

ANNOTATION

Child must first be adjudicated as delinquent before being placed on probation. People in Interest of F.D., 735 P.2d 496 (Colo. App. 1987) (decided under former law).

19-2.5-1107. Juvenile probation officers - powers and duties.

(1) A juvenile probation officer appointed pursuant to section 19-2.5-1406 shall investigate and keep written records of such investigations as the court may direct.

(2) When a juvenile is placed on probation, the juvenile probation officer shall give the juvenile a written statement of the terms and conditions of the juvenile's probation and shall explain fully the terms and conditions to the juvenile, unless the court gave and explained the statement to the juvenile pursuant to section 19-2.5-1108.

(3) (a) Each juvenile probation officer shall keep informed as to the condition and conduct of each juvenile placed under the juvenile probation officer's supervision and shall report to the court as directed.

(b) Each juvenile probation officer shall use all suitable methods, including counseling, to aid each juvenile under the juvenile probation officer's supervision and shall perform such other duties in connection with the care and custody of juveniles as the court may direct.

(c) Each juvenile probation officer shall keep complete records of all work done, as well as complete accounts of all money collected from those under supervision.

(d) Unless inconsistent with other conditions imposed by the court, in directing that a juvenile under the juvenile probation officer's supervision meet with the juvenile probation officer, the probation officer shall:

(I) Schedule, in good faith, meetings with the juvenile on probation at mutually agreeable times that do not conflict with the juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other probation requirements; and

(II) Allow a juvenile to meet with the juvenile probation officer through a telephone call or audio-visual communication technology.

(4) A juvenile probation officer, for the purpose of performing the juvenile probation officer's duties, has all the powers of a peace officer, as described in sections 16-2.5-101 and 16-2.5-138.

(5) (a) When a juvenile probation officer learns that a juvenile under the juvenile probation officer's supervision has changed residence to another county, temporarily or permanently, the juvenile probation officer shall immediately notify the court.

(b) If, after the court is notified pursuant to subsection (5)(a) of this section, the court determines that it is in the best interest of the juvenile to transfer jurisdiction to the court in the county in which the juvenile resides or is to reside, the court shall immediately notify such court and shall enter an order transferring jurisdiction to such court. The court transferring jurisdiction pursuant to this subsection (5)(b) shall transmit all documents and legal and social records, or certified copies thereof, to the receiving court, together with the order transferring jurisdiction. The receiving court shall proceed with the case as if the petition had been originally filed in said court.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 640, § 2, effective October 1. **L. 2024:** (3)(d) added, (HB 24-1445), ch. 353, p. 2407, § 5, effective September 1.

Editor's note: This section is similar to former § 19-2-926 as it existed prior to 2021.

19-2.5-1108. Probation - terms - release - revocation - graduated responses system - rules - report - definition.

(1) (a) The terms and conditions of probation must be specified by rules or orders of the court. The court, as a condition of probation for a juvenile who is ten years of age or older but less than eighteen years of age on the date of the sentencing hearing, may impose a commitment or detention. The aggregate length of any such commitment or detention, whether continuous or at designated intervals, must not exceed forty-five days; except that such limit does not apply to any placement out of the home through a county department of human or social services. Each juvenile placed on probation must be given a written statement of the terms and conditions of the juvenile's probation and have the terms and conditions fully explained.

(b) The court, as a condition of probation for a youth eighteen years of age or older at the time of sentencing for delinquent acts committed prior to the youth's eighteenth birthday, may impose as a condition of probation a sentence to the county jail that must not exceed ninety days; except that the sentence may be for a period of up to one hundred eighty days if the court orders the youth released for school attendance, job training, or employment.

(2) (a) Conditions of probation must be customized to each juvenile based on the guidelines developed by the committee on juvenile justice reform pursuant to section 24-33.5-2402, as it existed prior to its repeal in 2022. The court shall, as minimum conditions of probation, order that the juvenile:

(I) Not violate any federal or state statutes, municipal ordinances, or orders of the court;

(II) Not use or possess a firearm, a dangerous or illegal weapon, or an explosive or incendiary device, unless granted written permission by the court or probation officer;

(III) Meet with a probation officer at reasonable times as directed by the court or probation officer. Unless inconsistent with other conditions imposed by the court, the court shall allow a juvenile under the probation officer's supervision to meet with the probation officer at reasonable times through a telephone call or audio-visual communication technology. Unless inconsistent with other conditions imposed by the court, in directing that a juvenile meet with a probation officer at reasonable times, the court or the probation officer shall schedule, in good faith, meetings with the juvenile on probation at mutually agreeable times that do not conflict with the

juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other probation requirements.

(IV) Permit the probation officer to visit the juvenile at reasonable times at the juvenile's home or elsewhere;

(V) Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer;

(VI) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;

(VII) Make restitution as ordered by the court; and

(VIII) and (IX) Repealed.

(X) May be evaluated to determine whether the juvenile would be suitable for restorative justice practices that would be a part of the juvenile's probation program; except that the court may not order participation in restorative justice practices if the juvenile was adjudicated a delinquent for unlawful sexual behavior, as defined in section 16-22-102 (9); a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1); stalking, as defined in section 18-3-602; or violation of a protection order, as defined in section 18-6-803.5.

(b) The court shall use the results from a validated risk and needs assessment adopted by the committee on juvenile justice reform pursuant to section 24-33.5-2402, as it existed prior to its repeal in 2022, to inform the court of additional conditions of probation, as necessary.

(3) (a) The court may periodically review the terms and conditions of probation and the progress of each juvenile placed on probation. Counsel for the juvenile does not have to be present at any probation review hearing unless notified by the court that a petition to revoke probation has been filed.

(b) The court may release a juvenile from probation prior to the completion of the juvenile's term of probation, pursuant to this section, or modify the terms and conditions of the juvenile's probation at any time, but a juvenile who has complied satisfactorily with the terms and conditions of the juvenile's probation for a period of two years must be released from probation and the jurisdiction of the court terminated.

(4) Before January 1, 2021, the state court administrator shall establish rules to develop a statewide system of structured community-based graduated responses, including incentives and sanctions, to guide probation officers in determining how best to motivate positive juvenile behavior change and the appropriate response to a violation of terms and conditions of juvenile probation. "Graduated responses" means an accountability-based series of sanctions and services designed to respond to a juvenile's violation of probation quickly, consistently, and

proportionally and incentives to motivate positive behavior change and successful completion of probation and treatment goals. Juvenile probation shall adopt and use a state juvenile graduated responses and incentives system developed pursuant to this subsection (4) or develop and use a locally developed system that is aligned to best practices. Policies and procedures for the graduated responses system must:

(a) Include incentives that encourage the completion of treatment milestones as well as compliance with the terms and conditions of a juvenile's probation and that reward behavior aligned with the expectations of supervision and the juvenile's case plan; and

(b) Require that a response to a juvenile's violation of the terms and conditions of the juvenile's supervision take into consideration:

(I) The juvenile's risk to reoffend, as determined by the results of a validated risk and needs assessment;

(II) The previous history of violations and the underlying cause of the juvenile's behavior leading to the violation;

(III) The severity of the current violation;

(IV) The juvenile's case plan; and

(V) The juvenile's previous responses to past violations.

(5) Whenever a probation office has reasonable cause to believe that a juvenile has committed a violation of the terms and conditions of probation and that graduated responses developed pursuant to subsection (4) of this section have previously been applied, or when the nature of the violation poses a substantial risk of serious harm to others, the probation officer, following the approval of the chief probation officer or the chief's designee, shall petition the court for revocation and shall file written information with the court concerning the juvenile's violation behavior history and the responses applied using the graduated response system developed pursuant to subsection (4) of this section.

(6) Unless there is reason to believe that a juvenile would not appear, would interfere with the juvenile justice process, or poses substantial risk of serious harm to others, the probation officer shall issue a summons, or other method approved by local court rule, rather than a warrant when filing a petition for revocation.

(7) The state court administrator shall collect data related to the use of the graduated responses and incentives system developed pursuant to subsection (4) of this section and report the data annually to the judiciary committees of the senate and house of representatives, the health and human services committee of the senate, and the public health care and human services committee of the house of representatives, or any successor committees, and the chief justice of the Colorado supreme court. Notwithstanding section 24-1-136 (11)(a)(I), the reports

to the committees continue indefinitely. Data collected by the state court administrator must include, at a minimum, the types of responses and incentives that were issued, the number of formal violations filed, and the behavior resulting in the violation.

(8) (a) When it is alleged that a juvenile has violated the terms and conditions of probation, and graduated responses have been imposed and exhausted, pursuant to subsection (5) of this section, the court shall set a hearing on the alleged violation and shall give notice to the juvenile and the juvenile's parents, guardian, or other legal custodian and any other parties to the proceeding as provided in section 19-2.5-501.

(b) The juvenile and the juvenile's parents, guardian, or other legal custodian must be given a written statement concerning the alleged violation, and have the right to be represented by counsel at the hearing, and are entitled to the issuance of compulsory process for the attendance of witnesses.

(c) When the juvenile has been taken into custody because of the alleged violation, sections 19-2.5-303, 19-2.5-304, and 19-2.5-305 apply.

(d) (I) The hearing on the alleged violation must be conducted pursuant to section 19-1-106.

(II) Pursuant to section 19-2.5-1103, if the court finds that the juvenile violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this article 2.5 that is in the best interest of the juvenile and the public.

(III) If the court finds that the juvenile did not violate the terms and conditions of probation as alleged, it shall dismiss the proceedings and continue the juvenile on probation under the terms and conditions previously prescribed.

(e) If the court revokes the probation of a person eighteen years of age or older, in addition to other action permitted by this article 2.5, the court may sentence the person to the county jail for a period not to exceed one hundred eighty days, during which time the person may be released during the day for school attendance, job training, or employment, as ordered by the court; except that, if the sentence imposed exceeds ninety days, the court shall order the person released for school attendance, job training, or employment while serving the sentence.

(9) Following specification of the terms and conditions of probation, where the conditions of probation include requiring the juvenile to attend school, the court shall notify the school district in which the juvenile is enrolled of the requirement.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 641, § 2, effective October 1; (2)(a)(VII) amended and (2)(a)(VIII) and (2)(a)(IX) repealed, (HB 21-1315), ch. 461, p. 3119, § 30, effective October 1. **L. 2022:** IP(2)(a) and (2)(b) amended, (HB 22-1211),

ch. 79, p. 394, § 7, effective December 31. **L. 2024:** (2)(a)(III) amended, (HB 24-1445), ch. 353, p. 2407, § 6, effective September 1.

Editor's note: This section is similar to former § 19-2-925 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021.

ANNOTATION

Law reviews. For article, "Colorado's New Court System", see 41 Den. L. Ctr. J. 140 (1964). For article, "The Mandate to Use Special Education at Juvenile Delinquency Sentencings", see 32 Colo. Law. 99 (Oct. 2003).

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

Probation is a privilege rather than a right, suspending conditionally what might be a harsher judgment as a contract with the convicted person, made by a court and sanctioned by statute, that he may remain free so long as his conduct is good and he genuinely attempts to rehabilitate himself. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Granting of probation in lieu of incarceration is act of grace within sound discretion of juvenile court. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

Court's jurisdiction retained until terminated by court order. A court need not be apprised of a probation violation through the timely filing of a petition to revoke or modify probation to retain jurisdiction. Jurisdiction is retained until terminated by court order. People in Interest of Maddox v. Dist. Court, 198 Colo. 208, 597 P.2d 573 (1979).

Loss of jurisdiction results when the court signs an order terminating probation. The plain language of this section clearly authorizes a juvenile court to release a probationer before the probationary period is completed. The court order is a "release" even if entered by mistake. People in Interest of M.T., 950 P.2d 669 (Colo. App. 1997).

The Colorado rules of civil procedure apply only to juvenile matters that are not governed by the Colorado Children's Code. Therefore, the people's argument that a juvenile court's termination order entered by mistake is without effect pursuant to C.R.C.P. 60 is inapplicable. People in Interest of M.T., 950 P.2d 669 (Colo. App. 1997).

Section provides for review of probation terms. This section provides for

review of the terms and conditions of probation at least once each six months. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

The power of a court to impose conditions of probation must be strictly construed from the applicable statutes. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

Authority to suspend a sentence of detention entered as a condition of probation is within the power of the juvenile court in imposing the conditions of probation. People in Interest of J.J., 768 P.2d 754 (Colo. App. 1988).

No authority to impose limited confinement in county jail as condition of probation. A juvenile court does not have the statutory authority to impose a limited or partial confinement in county jail as a condition of probation for a juvenile under 18 years of age. People v. A.F., 192 Colo. 207, 557 P.2d 418 (1976).

Trial court erred in interpreting § 19-2-907 (1) as allowing the combination of a one-year term of commitment followed by a one-year term of probation. Although the aggregate length of the combined sentence imposed by the court did not exceed two years, the period of commitment exceeded the 45-day aggregate maximum described in subsection (1)(a) of this section. People in Interest of J.S.R., 2014 COA 98M, 338 P.3d 1088.

Section meets requirements of due process. Because subsection (4) requires notice and a hearing in cases of alleged violation of juvenile probation and because the prosecution must establish the alleged criminal offense beyond a reasonable doubt, the statutory scheme by which probation revocation triggers mandatory sentence offender status does not deny due process. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

Due process requirements met even though findings of fact were inadequate because general record supports revocation of probation. Even though trial court's findings of fact concerning ability of child to pay restitution were inadequate to revoke probation on that ground, record supports revocation of child's probation on other grounds and is consistent with due process requirements of fundamental fairness and appellate court will not set aside revocation where court's general finding is adequate. People in Interest of C.J.W., 727 P.2d 870 (Colo. App. 1986).

Section provides notice and hearing before revocation. In the event that a child violates the terms and conditions of a child in need of supervision probation, this section provides for notice to the child, his parents, guardian, or other legal custodian, and a full hearing on the matter to determine whether these conditions and terms were in fact violated. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

But probation revocation hearings are not adjudicatory hearings. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

And dispositional hearing and social study not required. Where hearing emanated from petition to revoke probation

of child and not from petition for delinquency adjudication or in need of supervision, child was not entitled to dispositional hearing and social study. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Question of whether probation shall be revoked is within sound discretion of judge. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Revocation justified upon commission of criminal acts. Where a court finds that a child on probation has committed acts which if committed by an adult would be crimes, these findings are sufficient to justify revocation of probation, and the fact that they were filed subsequent to the order recommitting the child and directing issuance of the mittimus is not prejudicial. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Where juvenile court judge is convinced that minor whose probation terms include requirements that he violate no law has been involved in bicycle theft, has been accessory after or during fact, or has engaged in joyriding, judge is justified in revoking probation. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

Burden of proof for probation violations which constitute adult crimes. Minimal due process guarantees of fundamentally fair procedures require no less than proof "beyond a reasonable doubt" of juvenile probation violations based upon alleged acts which would constitute crimes if done by adults. People in Interest of C.B., 196 Colo. 362, 585 P.2d 281 (1978).

The standard of proof required in juvenile probation revocation hearings is proof beyond a reasonable doubt of violations based upon alleged acts which would constitute crimes if done by an adult. People in Interest of G.L., 631 P.2d 1118 (Colo. 1981).

Revocation of probation is not equivalent to finding of guilt on charges alleged in revocation petition. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

Review of probation violation is exclusive. As to those acts of a child in violation of child in need of supervision probation which are not denominated as acts of delinquency, the method of review in this section was intended to be exclusive. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Effect of breach of probation. A probationer is charged with the knowledge that a breach of probationary terms will result in a revocation of probation and a subsequent sentence. People in Interest of B.L.M. v. B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

Revoking juvenile's probation does not undertake to punish him for new offense. Rather, it is imposition of sentence for earlier adjudication. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

Standard of proof. The same standard of proof that obtains in adult probation

revocation hearings, i.e., beyond a reasonable doubt, should also apply in juvenile proceedings. People in Interest of C.B., 40 Colo. App. 43, 572 P.2d 843 (1977).

Admissibility of hearsay statements. In probation revocation hearing trial court is not bound by strict rules of evidence and even if hearsay statements are improperly admitted a presumption arises that the evidence was disregarded and, therefore, trial court did not err in admitting testimony which in part consisted of hearsay. People in Interest of C.J.W., 727 P.2d 870 (Colo. App. 1986).

Alternative dispositions permitted. When a violation of probation has been established, the court is permitted a range of alternative dispositions, including any delineated in the respective sections of the code. People in Interest of C.B., 40 Colo. App. 43, 572 P.2d 840 (1977).

Issue preclusion does not apply to bar the right of a defendant to a trial where defendant had been charged with the crime of driving with a revoked license, which constituted both a violation of his probation and a new criminal act. Defendant did not have a full and fair opportunity to litigate the issue in the probation revocation hearing. A determination of guilt or innocence in a probation revocation hearing would undermine the function of the criminal trial process. Byrd v. People, 58 P.3d 50 (Colo. 2002).

Probation revocation hearings are held for different purposes, governed by different procedures, and do not protect a defendant's rights as does a criminal trial. Byrd v. People, 58 P.3d 50 (Colo. 2002).

Applied in People in Interest of R.J.A., 38 Colo. App. 346, 556 P.2d 491 (1976).

19-2.5-1109. Juvenile probation standards - development.

(1) Before July 1, 2021, the state court administrator, in consultation with judges, the judicial branch, district attorneys, defense counsel, the delivery of child welfare services task force created in section 26-5-105.8, and other interested parties shall establish statewide standards for juvenile probation supervision and services that are aligned with research-based practices and based on the juvenile's risk of reoffending, as determined by a validated risk and needs assessment tool adopted pursuant to section 24-33.5-2402, as it existed prior to its repeal in 2022. The state court administrator shall at least annually provide training to juvenile probation on the adoption and implementation of these standards. Juvenile standards must include, but need not be limited to:

(a) Guidelines to support juvenile probation in adopting the most effective staffing and workloads in order to allocate probation resources most appropriately;

(b) Standards for minimum case contacts, including contacts with juveniles as well as their family members;

(c) (I) Common elements for written individualized case plans for each juvenile placed under the supervision of a probation officer. In developing such a case plan, juvenile probation shall use, but need not be limited to:

(A) The results of a validated risk and needs assessment;

(B) The results of a validated mental health screening, and full assessment if conducted;

(C) The trauma, if any, experienced by the juvenile;

(D) The juvenile's education level and any intellectual and developmental disability;

(E) The seriousness of the offense committed by the juvenile; and

(F) Any relevant information provided by the juvenile's family, including the juvenile's pro-social interests.

(II) A case plan developed pursuant to this section must:

(A) Address the risks the juvenile presents and the juvenile's service needs based on the results of the validated risk and needs assessment, including specific treatment goals;

(B) Specify the level of supervision and intensity of services that the juvenile must receive;

(C) Provide referrals to treatment providers that may address the juvenile's risks and needs;

(D) Be developed in consultation with the juvenile and the juvenile's family or guardian;

(E) Specify the responsibilities of each person or agency involved with the juvenile; and

(F) Provide for the full reentry of the juvenile into the community.

(d) (I) Criteria and policies for the early termination of the juvenile's supervised probation.

(II) Juvenile probation and the juvenile court shall consider the following factors, among others, in determining the early termination of supervision:

(A) The seriousness of the offense committed by the juvenile resulting in placement under the supervision of a probation officer;

(B) The results of a validated risk and needs assessment, which must be conducted at least every six months to determine whether the juvenile's risk of reoffending or risk scores in key domains have been reduced;

(C) The juvenile's progress in meeting the goals of the juvenile's individualized case plan; and

(D) The juvenile's offense history, if any, during the juvenile's probation term.

(e) Common criteria for when juvenile probation officers may recommend the use of out-of-home placements and commitment to the division of youth services. The court shall consider the results of a validated risk and needs assessment, a validated mental health screening, and, if applicable, a full mental health assessment to make decisions concerning the juvenile's placement.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 644, § 2, effective October 1. **L. 2022:** IP(1) and (1)(e) amended, (HB 22-1211), ch. 79, p. 394, § 8, effective December 31.

Editor's note: This section is similar to former § 19-2-925.2 as it existed prior to 2021.

19-2.5-1110. Sentencing - requirements imposed on parents - definition.

(1) In addition to any requirements specified in sections 19-2.5-1103 to 19-2.5-1106, 19-2.5-1111 to 19-2.5-1115, 19-2.5-1117, 19-2.5-1118, 19-2.5-1123, and 19-2.5-1126, any sentence imposed pursuant to section 19-2.5-1103 may require:

(a) The juvenile or both the juvenile and the juvenile's parent or guardian to perform volunteer service in the community designed to contribute to the juvenile's rehabilitation or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile;

(b) The juvenile's parent or guardian or both the parent or guardian and the juvenile to attend the parental responsibility training program described in section 19-2.5-1411. The court may make reasonable orders requiring proof of completion of the training course within a certain time period and may provide that any violation of such orders subjects the parent or guardian to the contempt sanctions of the court.

(c) The juvenile or both the juvenile and the juvenile's custodial parent or parent with parental responsibilities or guardian to perform services for the victim pursuant to section 19-2.5-1106, designed to contribute to the juvenile's rehabilitation, if the victim consents in writing to such services. However, the value of the services required to be rendered by the parent, guardian, legal custodian of, or parent with parental responsibilities with respect to the juvenile pursuant to this subsection (1)(c) must not exceed twenty-five thousand dollars for any one delinquent act.

(2) In addition to any sentence imposed pursuant to section 19-2.5-1103 or subsection (1) of this section and regardless of whether the court orders the juvenile to pay restitution pursuant to section 19-2.5-1104, the court may order:

(a) The juvenile's guardian or legal custodian or the parent allocated parental responsibilities with respect to the juvenile to make restitution to one or more victims pursuant to the terms and conditions set forth in this subsection (2); except that the liability of the juvenile's guardian or legal custodian or parent allocated parental responsibilities with respect to the juvenile pursuant to this subsection (2) must not exceed twenty-five thousand dollars for any one delinquent act. If the court finds, after a hearing, that the juvenile's guardian or legal custodian or the parent allocated parental responsibilities with respect to the juvenile has made diligent, good-faith efforts to prevent or discourage the juvenile from engaging in delinquent activity, the court shall absolve the guardian or legal custodian or parent allocated parental responsibilities with respect to the juvenile of liability for restitution pursuant to this subsection (2).

(b) The juvenile's parent, so long as the parent is a party to the delinquency proceedings, to make restitution to one or more victims pursuant to the terms and conditions set forth in this subsection (2)(b); except that the liability of the juvenile's parent pursuant to this subsection (2)(b) must not exceed the amount of twenty-five thousand dollars for any one delinquent act. Notwithstanding the requirements of this subsection (2), the court may not enter an order of restitution against a juvenile's parent unless the court, prior to entering the order of restitution, holds a restitution hearing at which the juvenile's parent is present. If the court finds, after the hearing, that the juvenile's parent has made diligent, good-faith efforts to prevent or discourage the juvenile from engaging in delinquent activity, the court shall absolve the parent of liability for restitution pursuant to this subsection (2)(b). For purposes of this subsection (2)(b), "parent" is defined in section 19-1-103.

(3) An order of restitution entered pursuant to this section may be collected pursuant to article 18.5 of title 16.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 646, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-919 as it existed prior to 2021.

ANNOTATION

Law reviews. For article, "Parental Financial Liability for Juvenile Delinquents", see 37 Colo. Law. 49 (Nov. 2008).

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

Three overriding requirements must be met before a restitution order can be

valid: The person who is required to pay restitution must receive adequate notice that the victim or the victim's family claims damages, there must be notice of the amount of restitution requested, and the person obligated to pay must be given the opportunity to controvert the victim's claimed monetary damages. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Restitution order was entered without adequate notice or an opportunity to be heard since the parent did not receive notice of her potential liability nor of her opportunity to challenge the validity of the amounts sought. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Legislative intent underlying this section is that whenever possible, restitution should be required. People v. T.R., 860 P.2d 559 (Colo. App. 1993).

Former subsection (4) (now subsection (2)) and § 13-21-107 (2) do not limit a parent's restitution obligation to $3,500 per delinquent act; rather, the "one delinquent act" limitation in that subsection, when read in conjunction with the "any person" language in § 13-21-107 provides that parental restitution payments cannot exceed $3,500 to each person entitled to restitution as a result of each delinquent act. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

Court not authorized to order a jail sentence against a parent pursuant to this section. People v. J.M., 22 P.3d 545 (Colo. App. 2000).

19-2.5-1111. Sentencing - community accountability program.

Except as otherwise required by section 19-2.5-1127, the court may sentence the juvenile to participate in the community accountability program as set forth in section 19-2.5-1410. Such a sentence is a condition of probation for higher-risk juveniles who would have otherwise been sentenced to detention or out-of-home placement or committed to the department of human services. A sentence pursuant to this section is conditioned on the availability of space in the community accountability program and on a determination by the division of youth services that the juvenile's participation in the program is appropriate. In the event that the division of youth services determines the program is at maximum capacity or that a juvenile's participation is not appropriate, the juvenile must be ordered to return to the sentencing court for another sentencing hearing.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 647, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-914 as it existed prior to 2021.

19-2.5-1112. Sentencing - placement with relative.

Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court may place the juvenile in the legal custody of a relative or other suitable person under such conditions as the court may impose, which may include placing the juvenile on probation pursuant to section 19-2.5-1106 or under protective supervision.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 647, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-912 as it existed prior to 2021.

19-2.5-1113. Sentencing - alternative services - detention.

Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender and except as required by section 19-2.5-1123, the court may sentence the juvenile to alternative services funded through section 19-2.5-1404 or other alternative services programs. If a juvenile who is thirteen years of age or older fails to make satisfactory progress in the alternative services to which the juvenile is sentenced or if the court finds that a sentence to alternative services would be contrary to the community interest, the court may sentence a juvenile adjudicated for an offense that would constitute a class 3, class 4, class 5, or class 6 felony or a misdemeanor weapons charge if committed by an adult to detention for a period not to exceed forty-five days. Release for purposes of work, therapy, education, or other good cause may be granted by the court. The court may not sentence to detention a juvenile adjudicated for an offense that would constitute a class 1 or class 2 felony if committed by an adult.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 648, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-911 (1) as it existed prior to 2021.

19-2.5-1114. Sentencing - placement based on special needs of the juvenile.

(1) Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court may order that the juvenile be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that the juvenile receive other special care and may place the juvenile in a hospital or other suitable facility for such purposes; except that a juvenile may not be placed in a mental health facility operated by the department of human services until the juvenile has received a mental health placement prescreening resulting in a recommendation that the juvenile be placed in a facility for an evaluation pursuant to section 27-65-106, or a hearing has been held by the court after notice to all parties, including the department of human services. An order for an emergency mental health hold must not be entered unless a hearing is held and evidence indicates that the prescreening report is inadequate, incomplete, or incorrect and that competent professional evidence is presented by a mental health professional that indicates that the juvenile has a behavioral or mental health disorder. The court shall make, prior to the hearing, orders regarding temporary custody of the juvenile as are deemed appropriate.

(2) Placement in any mental health facility operated by the department of human services must continue for such time as ordered by the court or until the professional person in charge of the juvenile's treatment concludes that the treatment or placement is no longer appropriate. If placement or treatment is no longer deemed appropriate, the court must be notified and a hearing held for further disposition of the juvenile within five days excluding Saturdays, Sundays, and legal holidays. The court shall make, prior to the hearing, orders regarding temporary custody of the juvenile as are deemed appropriate.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 648, § 2, effective October 1. **L. 2022:** (1) amended, (HB 22-1256), ch. 451, p. 3231, § 32, effective August 10.

Editor's note: This section is similar to former § 19-2-916 as it existed prior to 2021.

19-2.5-1115. Sentencing - legal custody - county department of human or social services.

Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court, following the criteria for out-of-home placement established pursuant to section 19-2.5-1404, may place legal custody of the juvenile in the county department of human or social services.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 648, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-915 as it existed prior to 2021.

19-2.5-1116. Orders - community placement - reasonable efforts required - reviews.

(1) If the court orders legal custody of a juvenile to a county department of human or social services pursuant to this article 2.5, the order must contain specific findings as follows:

(a) Whether placement of the juvenile out of the home would be in the juvenile's and the community's best interests;

(b) Whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the home, whether it is reasonable that such efforts are not made because an emergency situation exists that requires the immediate removal of the juvenile from the home, or whether such efforts are not required because of circumstances described in section 19-1-115 (7); and

(c) Whether reasonable efforts have been made to identify kin or a suitable adult with whom to place the juvenile.

(2) For all hearings and reviews concerning the juvenile, the court shall ensure that notice is provided to the juvenile and to the following persons with whom the juvenile is placed:

(a) Foster parents;

(b) Pre-adoptive parents;

(c) Relatives; or

(d) Kin, as defined in section 19-1-103.

(3) (a) Every six months after the sentencing hearing held pursuant to section 19-2.5-1102, the court shall hold a hearing to review an order of community placement or, if there is no objection by a party to the action, the court may require the department of human services to conduct an administrative review. The entity scheduling the review shall provide notice of the review to the juvenile; the juvenile's parents or guardian; any service providers working with the juvenile; the juvenile's guardian ad litem, if one has been appointed; and all attorneys of record to allow appearances of any of said persons at the review. At the review conducted pursuant to this subsection (3), the reviewing entity shall determine whether:

(I) Continued community placement is in the best interests of the juvenile and the community;

(II) The juvenile's safety is protected in the community placement;

(III) Reasonable efforts have been made to return the juvenile to the home or the juvenile should be permanently removed from the home;

(IV) Continued community placement is necessary and appropriate;

(V) There has been compliance with the juvenile's case plan;

(VI) Progress has been made toward alleviating or mitigating the causes that necessitated the community placement; and

(VII) There is a date projected by which the juvenile will be returned and safely maintained in the home, placed for legal guardianship, or placed in a planned permanent living arrangement.

(b) If the juvenile resides in an out-of-state placement, the entity conducting the review shall make a determination that the out-of-state placement continues to be appropriate and in the best interests of the juvenile.

(4) (a) If the juvenile is in the legal custody of a county department and is placed in a community placement for a period of twelve months or longer, the district court, another court of competent jurisdiction, or an administrative body appointed or approved by the court that is not under the county department's supervision shall conduct a permanency hearing within twelve months and every twelve months thereafter for as long as the juvenile remains in community placement. At the permanency hearing, the entity conducting the hearing shall determine whether:

(I) Continued community placement is in the best interests of the juvenile and the community;

(II) The juvenile's safety is protected in the community placement;

(III) Reasonable efforts have been made to finalize the juvenile's permanency plan that is in effect at that time;

(IV) Continued community placement is necessary and appropriate;

(V) There has been compliance with the juvenile's case plan;

(VI) Progress has been made toward alleviating or mitigating the causes that necessitated the community placement;

(VII) There is a date projected by which the juvenile will be returned and safely maintained in the home, placed for legal guardianship, or placed in a planned permanent living arrangement; and

(VIII) Procedural safeguards to preserve parental rights have been applied in connection with the removal of the juvenile from the home, any change in the juvenile's community placement, or any determination affecting family time.

(b) If the juvenile resides in an out-of-state placement, the entity conducting the review shall make a determination that the out-of-state placement continues to be appropriate and in the best interests of the juvenile.

(c) The entity conducting the permanency hearing shall consult with the juvenile, in an age-appropriate manner, concerning the juvenile's permanency plan.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 649, § 2, effective October 1. **L. 2023:** IP(4)(a) and (4)(a)(VIII) amended, (HB 23-1027), ch. 284, p. 1681, § 11, effective June 1.

Editor's note: This section is similar to former § 19-2-906.5 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

19-2.5-1117. Sentencing - commitment to the department of human services - definitions.

(1) (a) Except as otherwise required in subsection (6) of this section and section 19-2.5-1127 for an aggravated juvenile offender, the court may commit a juvenile to the department of human services for a determinate period of up to two years if the juvenile is adjudicated for an offense that would constitute a felony or a misdemeanor if committed by an adult; except that, if the juvenile is younger than twelve years of age and is not adjudicated an aggravated juvenile offender, the court may commit the juvenile to the department of human services only if the juvenile is adjudicated for an offense that would constitute a class 1, class 2, or class 3 felony if committed by an adult. If the court commits a justice-engaged student, as defined in section 22-108-102, to the department of human services for any offense that does not include a physical threat or bodily injury to another person, the court is encouraged to order that the commitment take place in a manner that allows the justice-engaged student to continue to attend school prior to commitment to avoid disruption of the justice-engaged student's academic progress and ability to achieve credits for a semester. When possible, the court may order commitment as follows:

(I) If the sentencing takes place in the fall semester, the justice-engaged student may remain in school to complete the fall semester and begin commitment at the beginning of the spring semester;

(II) If the sentencing takes place in the spring semester, the justice-engaged student may remain in school to complete the spring semester and begin commitment at the beginning of the summer semester; and

(III) If the sentencing takes place in the summer semester, the justice-engaged student may remain in school to complete the summer semester and begin commitment at the beginning of the fall semester.

(b) Any commitment to the department of human services pursuant to section 19-2.5-1127 or subsection (1)(a) of this section must be followed by a mandatory period of parole of six months, unless the period of parole is extended by the juvenile parole board pursuant to section 19-2.5-1203 (5).

(c) For purposes of this section:

(I) "Determinate period" is defined in section 19-2.5-102.

(II) "Period of parole" means the period between the parole period start date and the parole period end date as determined by the juvenile parole board. The period of parole applies to both mandatory six-month parole and extended parole pursuant to section 19-2.5-1203 (5). The period of parole continues unless the juvenile is deemed to be on escape status, parole has been suspended pursuant to section 19-2.5-1203, or the juvenile returns to commitment status pursuant to section 19-2.5-1206. In such circumstances, the period of parole stops until the juvenile has returned to parole status.

(d) Notwithstanding any other provision of this section, a local education provider retains the right to suspend or expel a justice-engaged student pursuant to sections 22-33-105 and 22-33-106.

(2) A juvenile committed to the department of human services may be placed in the Lookout Mountain school, the Mount View school, or any other training school or facility, or any other disposition may be made that the department may determine as provided by law.

(3) (a) When a juvenile is committed to the department of human services, the court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the juvenile's care and treatment.

(b) The department of human services shall provide the court with any information concerning a juvenile committed to its care that the court at any time may require.

(4) (a) When a court commits a juvenile to the state department of human services pursuant to this article 2.5, the court shall make the following specific determinations:

(I) Whether placement of the juvenile outside the home would be in the juvenile's and community's best interest; and

(II) Whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the home; whether it is reasonable that such efforts are not made because an emergency situation exists that requires the immediate removal of the juvenile from the home; or whether such efforts are not required because of circumstances described in section 19-1-115 (7).

(III) How to assist in the evaluation of the impact of Colorado's implementation of the federal "Family First Prevention Services Act" on the state's juvenile justice system and make a finding of whether the lack of available and appropriate congregate care placements is a contributing factor in committing a juvenile to the division of youth services.

(b) If a juvenile is making a transition from the legal custody of a county department of human or social services to commitment with the state department of human services, the court shall conduct a permanency hearing in combination with the sentencing hearing. The court shall consider multidisciplinary recommendations for sentencing and permanency planning. In conducting such a permanency hearing, the court shall make determinations pursuant to section 19-2.5-1116 (4)(a).

(5) (a) The department of human services shall designate receiving centers for juveniles committed to the department.

(b) If the department of human services makes a change in the designation of a receiving center, it shall notify the juvenile courts at least thirty-five days prior to the date that the change takes effect.

(6) (a) Pursuant to section 19-2.5-1103, commitment of a juvenile to the department of human services must be for a determinate period.

(b) (I) The juvenile court may commit any juvenile adjudicated as an aggravated juvenile offender pursuant to section 19-2.5-1127 for an offense other than an offense that would constitute a class 1 or class 2 felony if committed by an adult to the department of human services for a determinate period of up to five years.

(II) The juvenile court shall commit any juvenile adjudicated as an aggravated juvenile offender pursuant to section 19-2.5-1127 for an offense that would constitute a class 2 felony if committed by an adult to the department of human services for a determinate period of at least three but not more than five years.

(III) The juvenile court shall commit any juvenile adjudicated as an aggravated juvenile offender pursuant to section 19-2.5-1127 for an offense that would constitute a class 1 felony if

committed by an adult to the department of human services for a determinate period of at least three but not more than seven years.

(c) The juvenile court may commit any juvenile who is not adjudicated an aggravated juvenile offender pursuant to section 19-2.5-1127 but who is adjudicated for an offense that would constitute a felony or a misdemeanor to the department of human services, and the determinate period of commitment must not exceed two years; except that, if the juvenile is ten or eleven years of age and is not adjudicated an aggravated juvenile offender pursuant to section 19-2.5-1127, the juvenile may be committed to the department of human services only if the juvenile is adjudicated for an offense that would constitute a class 1, class 2, or class 3 felony if committed by an adult.

(7) (a) On or before January 1, 2021, the department of human services, in consultation with the committee on juvenile justice reform established pursuant to section 24-33.5-2401, as it existed prior to its repeal in 2022, shall develop a length of stay matrix and establish criteria to guide the release of juveniles from a state facility that are based on:

(I) A juvenile's risk of reoffending, as determined by the results of a validated risk and needs assessment adopted pursuant to section 24-33.5-2402 (1)(a), as it existed prior to its repeal in 2022;

(II) The seriousness of the offense for which the juvenile was adjudicated delinquent;

(III) The juvenile's progress in meeting treatment goals; and

(IV) Other criteria as determined by the department.

(b) In making release and discharge decisions, the department of human services shall use the matrix and release criteria developed pursuant to this subsection (7).

(8) For all hearings and reviews concerning a juvenile who is committed to the department of human services, the entity conducting the hearing or review shall ensure that notice is provided to the juvenile and to any of the following persons with whom the juvenile is placed:

(a) Foster parents;

(b) Pre-adoptive parents; or

(c) Relatives.

(9) The department of human services may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition must set forth the reasons why it would be in the best interest of the juvenile or the public to extend the commitment. Upon filing the petition, the court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 651, § 2, effective October 1. **L. 2022:** IP(7)(a), (7)(a)(I), and (7)(a)(IV) amended, (HB 22-1211), ch. 79, p. 395, § 9, effective December 31. **L. 2024:** (1)(a) amended and (1)(d) added, (HB 24-1216), ch. 314, p. 2115, § 4, effective August 7.

Editor's note: This section is similar to former §§ 19-2-909 and 19-2-921 (1), (1.5), (2), (3), (3.3), (3.5), and (4) as they existed prior to 2021.

Cross references: For the federal "Family First Prevention Services Act", see Pub.L. 115-123.

ANNOTATION

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

Acts not grounds for delinquency do not support commitment to institution for delinquents. It would be contrary to the obvious legislative intent to allow a child to be committed to an institution for juvenile delinquents where the only acts alleged, violation of child in need of supervision probation, were those which were not, in and of themselves, grounds for an adjudication of delinquency and for which the statute already provides a comprehensive and complete procedure for review and punishment. People in Interest of D.R. v. E.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Exclusive placement power in department. When the terms of this section are given their ordinary and generally accepted meaning, it appears that the general assembly has bestowed upon the department of institutions the exclusive power to place a delinquent in a particular facility once that child has been committed by the court to the department. Leidig v. Delaney, 189 Colo. 186, 539 P.2d 1264 (1975).

Juvenile court correctly noted that the maximum sentence the juvenile court can impose under the Colorado Children's Code in the first instance is two years. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

19-2.5-1118. Sentencing - persons eighteen years of age or older - county jail - community corrections - definitions.

(1) Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court may commit a person eighteen years of age or older but less than twenty-one years of

age to the department of human services if the person is adjudicated a juvenile delinquent for an act committed prior to the person's eighteenth birthday or upon revocation of probation.

(2) Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court may sentence a person who is eighteen years of age or older on the date of a sentencing hearing to the county jail for a period not to exceed six months or to a community correctional facility or program for a period not to exceed one year, which may be served consecutively or in intervals, if the person is adjudicated a juvenile delinquent for an act committed prior to the person's eighteenth birthday.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 654, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-910 as it existed prior to 2021.

ANNOTATION

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

Trial court cannot impose a more severe penalty upon a juvenile adjudicated a delinquent child than such child could have received as an adult for commission of the same offense. People in Interest of A.L., 713 P.2d 934 (Colo. App. 1985).

Trial court, once having committed an individual to the custody of the department of institutions pursuant to former § 19-2-703 (1)(a), may not limit the department's discretion regarding placement of that individual. McDonnell v. Juvenile Court, 864 P.2d 565 (Colo. 1993).

Where a person is adjudicated a delinquent child at age 17 and is 18 at the time of the dispositional order, equal protection is not violated where the juvenile court retains jurisdiction and proceeds with disposition, even though similarly situated adults are subject to different sanctions contained in the Colorado Criminal Code. People in Interest of M.C., 774 P.2d 857 (Colo. 1989).

A court may place legal custody with the department of human services only if, concurrently, physical placement outside the home is authorized. People in Interest of C.A.G., 903 P.2d 1229 (Colo. App. 1995).

19-2.5-1118.5. Sentencing - alternative options for pregnant and postpartum juveniles - legislative declaration - definitions.

(1) (a) The general assembly finds and declares that:

(I) While no system is perfect in responding to the medical conditions of pregnancy, juvenile facilities are particularly ill-equipped to do so;

(II) During juvenile delinquency cases involving a pregnant or postpartum juvenile, the physical and mental health needs of the pregnant juvenile or postpartum juvenile and newborn must be considered at all stages of the proceeding as a matter of community health and safety;

(III) Timely attention to medical conditions and mental health during the perinatal period can improve health and welfare for multiple generations of a family unit;

(IV) Pregnancy is a time-sensitive process that has many potential outcomes and variations. A pregnant person may feel healthy and experience no complications. A pregnant person may also experience sudden, harmful medical conditions, such as preeclampsia or placental abruption, or develop complex medical conditions that result in the early termination of a pregnancy or threaten the life of the pregnant person, such as an ectopic pregnancy. At any stage of the perinatal period, situations can occur that cause long-term physical and mental health trauma for the pregnant person.

(V) Adjudicatory proceedings are not responsive to the timeline or complexity of the perinatal period;

(VI) When a substance use disorder intersects with a pregnancy, it is best handled as a health condition. Increasing the time a pregnant person with a substance use disorder is in a juvenile facility is counter to public health and may drive the pregnant person away from medical care and support services.

(VII) The end of pregnancy does not immediately terminate the effects of the pregnancy on the person who was pregnant;

(VIII) The postpartum period is an essential time frame for both the person who gave birth and the newborn. It is an opportunity for the newborn:

(A) To develop healthy physiologic responses; and

(B) To benefit from the attachment and bonding that occurs during this period;

(IX) Bonding between a newborn and parent during the postpartum period can improve conditions for other children and care providers in the same family unit and prevent child abuse and neglect; and

(X) Bonding between a newborn and a parent can improve the overall health of the newborn and the parent and may prevent or reduce long-term health risks that may be increased by separating the newborn from the parent. For example:

(A) A postpartum person who does not breastfeed or chestfeed a newborn may have an increased likelihood of premenopausal breast cancer, ovarian cancer, or type 2 diabetes;

(B) A newborn who is not breastfed or chestfed may have an increased likelihood of childhood obesity, asthma, type 1 or type 2 diabetes, leukemia, or sudden infant death syndrome; and

(C) A child who is separated from any parent may experience stress hormones, which may lead to difficulty sleeping, developmental regression, heart disease, hypertension, obesity, diabetes, or decreased life span. A newborn who is separated from a parent may also experience permanent architectural changes in the brain, including a lower intelligence quotient or an increased likelihood of depression, suicidal ideation, or addiction to alcohol or gambling.

(b) The general assembly finds, therefore, that all alternatives to juvenile proceedings, adjudication, and commitment of a pregnant or postpartum juvenile must be considered, including a stay of criminal proceedings or sentencing to reduce the likelihood of negative health and social outcomes for the parent, newborn child, and community.

(c) It is the intent of the general assembly that a person who coerces or extorts a pregnant or postpartum person in the commission of crimes should be subject to being investigated and, as appropriate, prosecuted for a criminal act pursuant to title 18.

(2) As used in this section, unless the context otherwise requires:

(a) "Juvenile" means a person who is under eighteen years of age when the delinquent act is committed and under twenty-one years of age at the time of sentencing.

(b) "Newborn" means a person who has been born and who is less than one year old.

(c) "Postpartum period" means a period of one year after the end of a pregnancy, regardless of whether the pregnancy ends with a live birth.

(d) "Pregnant or postpartum juvenile" means a juvenile who is pregnant or in a postpartum period who has been accused of a delinquent act.

(e) "Stay of execution" means delaying the imposition of a sentence or the commitment portion of the sentence for a pregnant or postpartum juvenile after it is announced by a court.

(3) (a) There is a rebuttable presumption against detention and commitment of a pregnant or postpartum juvenile if the juvenile provides the court and district attorney with notice of the juvenile's status as a pregnant or postpartum juvenile at each applicable stage of the proceedings. Subject to subsection (5) of this section and if the court decides to detain or commit the pregnant

or postpartum juvenile after weighing the applicable legal standards and considerations set forth in subsections (3)(a)(I) to (3)(a)(VI) of this section, the court shall make specific findings on the record that the risk to public safety or any other factor the court is required to consider is substantial enough to outweigh the risk of detention or commitment. The court shall apply the rebuttable presumption described in this subsection (3)(a) to a pregnant or postpartum juvenile in determining whether to:

(I) Issue bond pursuant to section 19-2.5-306;

(II) Accept entry into the juvenile diversion program pursuant to section 19-2.5-402;

(III) Accept or continue deferred judgments pursuant to section 18-1.3-102;

(IV) Impose a sentence pursuant to section 19-2.5-1103, including whether to grant juvenile probation pursuant to section 19-2.5-1106;

(V) Impose an alternative sentence pursuant to section 19-2.5-1113; or

(VI) Grant a stay of execution pursuant to this section.

(b) A court shall not use a pregnant or postpartum juvenile's pregnancy or postpartum period as a basis for imposing a greater restriction on the juvenile's liberty than a similarly situated juvenile who is not pregnant or postpartum, including circumstances in which a pregnant or postpartum juvenile has a substance use disorder.

(4) (a) A juvenile who may be pregnant who is arrested or in custody in a juvenile facility may request a pregnancy test upon or following admission to the juvenile facility. Staff at the juvenile facility shall provide a pregnancy test upon request and allow the juvenile to take the pregnancy test within twenty-four hours after the request.

(b) Requesting a pregnancy test, taking a pregnancy test, and the results of a pregnancy test are confidential medical information. This confidential medical information must not be disclosed to outside parties unless the information is required for the juvenile to receive medical care or to allow staff at the juvenile facility to provide necessary care.

(c) If a juvenile is represented by an attorney in a criminal proceeding and the juvenile facility has a signed medical release from the juvenile, the juvenile facility shall notify the juvenile's attorney within forty-eight hours, excluding state holidays and weekends, concerning the juvenile's request for a pregnancy test pursuant to subsection (4)(a) of this section.

(5) (a) A pregnant or postpartum juvenile may raise that the juvenile is pregnant or postpartum at any time during adjudicatory proceedings or while serving a sentence. If the pregnancy or postpartum period is raised, the pregnant or postpartum juvenile shall provide notice to the district attorney by providing evidence of the pregnancy or the start of the postpartum period with a limited waiver of privilege. A positive pregnancy test or medical record

confirming pregnancy or the end of pregnancy, or a birth certificate of a newborn, is prima facie evidence of pregnancy or the start of the postpartum period.

(b) If the prosecution contests that the juvenile is pregnant or postpartum, the court shall hold a hearing to make a determination as soon as practicable, but no later than fourteen days after the issue is raised, unless the juvenile requests the hearing be held later than fourteen days after the issue is raised. If the juvenile requests a later hearing, the court shall make the determination within the timeline as requested. The court shall hold the hearing immediately if the circumstances of the juvenile or the juvenile's newborn require it. The juvenile shall prove, by a preponderance of the evidence, that the juvenile is a pregnant or postpartum juvenile.

(c) The court shall protect medical information provided to the court as confidential medical information. A juvenile's waiver of medical privilege to present medical evidence of pregnancy or the end of a pregnancy in court is limited to information relevant to determine whether the juvenile is or was pregnant and whether the pregnancy has ended.

(6) (a) Notwithstanding the provisions of this section, a court shall not:

(I) Set or release the pregnant or postpartum juvenile on bond if the pregnant or postpartum juvenile is ineligible for bond;

(II) Accept or impose an alternative sentence if the pregnant or postpartum juvenile is ineligible for a diversion program, deferred judgment, probationary sentence, or another form of alternative sentence; or

(III) Apply the rebuttable presumption pursuant to this section if a pregnant or postpartum juvenile was adjudicated of a crime of violence, as defined in section 18-1.3-406 (2).

(b) The court shall impose any mandatory sentence required by law on a pregnant or postpartum juvenile, but the court may grant a stay of execution as set forth in subsection (7) of this section.

(7) (a) Any pregnant or postpartum juvenile may request a stay of execution by filing a written request to the court if the pregnant or postpartum juvenile is detained or committed in a juvenile facility for any period of time through the end of the pregnancy or the postpartum period.

(b) The court shall hold a hearing to determine the matter as soon as practicable, but no later than fourteen days after the pregnant or postpartum juvenile requests a stay of execution, unless the pregnant or postpartum juvenile requests a later hearing. If the pregnant or postpartum juvenile requests a later hearing, the court shall make the determination within the timeline requested. The court shall hold the hearing immediately if the circumstances of the pregnant or postpartum juvenile or newborn require it. The juvenile shall prove, by a preponderance of the evidence, that the juvenile is a pregnant or postpartum juvenile.

(c) In ruling upon the pregnant or postpartum juvenile's request pursuant to subsection (7)(b) of this section, the court shall apply the rebuttable presumption set forth in subsection (3)(a) of this section.

(d) The district attorney and the court shall comply with the requirements of the "Victim Rights Act" pursuant to part 3 of article 4.1 of title 24 in any proceeding conducted pursuant to this section.

(e) Following the hearing conducted pursuant to subsection (7)(b) of this section, the court may order a stay of execution of the sentence for any period of time through the end of the pregnancy or the postpartum period. The court shall order a date, time, and place for the juvenile to appear to serve the sentence upon completion of the stay of execution.

(f) If the court grants a stay of execution pursuant to subsection (7)(e) of this section, the court shall order the bond and the conditions of the bond to remain in effect until the date the pregnant or postpartum juvenile is ordered to start serving the juvenile's sentence.

(g) Notwithstanding this section, a pregnant or postpartum juvenile who is ineligible for bail pursuant to section 19-2.5-306 is not eligible for a stay of execution.

(h) If the pregnant or postpartum juvenile is charged with a new violation or the court receives a verified motion from the district attorney or any agency responsible for supervising the pregnant or postpartum juvenile that establishes a prima facie case that the pregnant or postpartum juvenile has violated the conditions of the stay of execution and presents a substantial risk to public safety, the court shall set a hearing and require the pregnant or postpartum juvenile to appear. After the hearing, the court may end the stay of execution, add new conditions, issue a warrant, or continue the stay of execution.

(8) If a juvenile who is sentenced to detention or commitment learns that the juvenile is pregnant following the sentencing hearing, or a postpartum juvenile experiences changes to the juvenile's postpartum condition following the sentencing hearing, this section does not preclude the pregnant or postpartum juvenile from requesting reduction of the sentence pursuant to rule 35 (b) of the Colorado rules of criminal procedure. During the reconsideration hearing, this section applies.

Source: L. 2023: Entire section added, (HB 23-1187), ch. 246, p. 1342, § 7, effective August 7.

19-2.5-1119. Genetic testing of adjudicated offenders - definitions.

(1) Beginning July 1, 2007, each of the following adjudicated offenders shall submit to collection and a chemical testing of the offender's biological substance sample to determine the

offender's genetic markers, unless the offender has already provided a biological substance sample for such testing pursuant to a statute of this state:

(a) Every offender who, on or after July 1, 2007, is in the custody of the department of human services for a commitment imposed before that date, including an offender on parole, based on adjudication for an offense involving unlawful sexual behavior, or for which the underlying factual basis involved an offense involving unlawful sexual behavior. The department shall collect the sample as soon as possible.

(b) Every offender who, on or after July 1, 2007, is on probation or supervision for a sentence that was imposed before that date, or is on a deferred adjudication that was before that date, for an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The judicial department shall collect the sample at least thirty-five days prior to the offender's scheduled termination of probation, supervision, or deferred adjudication.

(c) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility for a sentence imposed before that date based on adjudication for an offense that would constitute a felony if committed by an adult. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(d) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility for a sentence imposed before that date based on adjudication for a misdemeanor offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(e) Every offender sentenced on or after July 1, 2007, for an offense that would constitute a felony if committed by an adult. This subsection (1)(e) does not apply to an offender granted a deferred adjudication, unless otherwise required to submit to a sample pursuant to this section or unless the deferred adjudication is revoked and a sentence is imposed. The sample must be collected:

(I) From an offender committed to the department of human services, by the department during the intake process but in any event within thirty-five days after the offender is received by the department;

(II) From an offender sentenced to county jail or to community corrections, by the sheriff or by the community corrections program within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(III) From an offender sentenced to probation, by the judicial department within thirty-five days after the offender is placed on probation; and

(IV) From an offender who receives any other sentence, by the judicial department within thirty-five days after the offender is sentenced.

(f) Every offender who, on or after July 1, 2007, is sentenced for an adjudication of, or who receives a deferred adjudication for, an offense involving unlawful sexual behavior or for which the underlying factual basis involves unlawful sexual behavior. The sample must be collected:

(I) From an offender committed to the department of human services, by the department during the intake process but in any event within thirty-five days after the offender is received by the department;

(II) From an offender sentenced to county jail or community corrections, by the sheriff or by the community corrections facility within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(III) From an offender sentenced to probation, by the judicial department within thirty-five days after the offender is placed on probation;

(IV) From an offender who receives a deferred adjudication, by the judicial department within thirty-five days after the offender is granted the deferred adjudication; and

(V) From an offender who receives any other sentence, by the judicial department within thirty-five days after the offender is sentenced.

(2) An order for payment toward the cost of care entered by the court pursuant to subsection (1) of this section constitutes a judgment enforceable by the state or the governmental agency that would otherwise incur the cost of care for the juvenile in the same manner as are civil judgments.

(a) "Adjudicated" means having received a verdict of guilty by a judge or jury or having pled guilty or nolo contendere. Except where otherwise indicated, "adjudicated" does not include deferred adjudication unless the deferred adjudication is revoked and a sentence is imposed.

(b) "Unlawful sexual behavior" has the same meaning as in section 16-22-102 (9).

(3) The judicial department, the department of human services, a sheriff, or a contractor may:

(a) Use reasonable force to obtain biological substance samples in accordance with this section using medically recognized procedures. In addition, an offender's refusal to comply with this section may be grounds for revocation or denial of parole, probation, or deferred adjudication.

(b) Collect biological substance samples notwithstanding that the collection was not accomplished within an applicable deadline set forth in this section.

(4) Repealed.

(5) The Colorado bureau of investigation shall conduct the chemical testing of the biological substance samples obtained pursuant to this section. The Colorado bureau of investigation shall file and maintain the results of the chemical testing of biological samples obtained pursuant to this section and shall furnish the results to a law enforcement agency upon request. The Colorado bureau of investigation shall store and preserve all biological substance samples obtained pursuant to this section.

(6) A juvenile must not be charged a processing fee for the procurement and analysis of samples described in this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 654, § 2, effective October 1; IP(1) and (3)(a) amended, (4) repealed, and (6) added, (HB 21-1315), ch. 461, p. 3117, § 26, effective October 1.

Editor's note: This section is similar to former § 19-2-925.6 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021.

ANNOTATION

Annotator's note. The following annotations include a case decided under a former provision similar to this section.

A juvenile offender granted a deferred adjudication supervised by probation, by virtue of the deferment, is not considered sentenced to probation for purposes of subsection (1)(e)(III). Casillas v. People, 2018 CO 78M, 427 P.3d 804.

The collection of a cheek swab from a juvenile under deferred adjudication violates this section and the fourth amendment. Evidence derived from such improper collection must be suppressed. Casillas v. People, 2018 CO 78M, 427 P.3d 804.

19-2.5-1120. Cost of care.

(1) (a) Notwithstanding section 19-1-115 (4)(d), if a juvenile is sentenced to an out-of-home placement or is granted probation as a result of an adjudication, deferral of adjudication, or direct

filing in or transfer to district court, the court may order the juvenile's parent to make payments toward the cost of care only as required pursuant to Title IV of the federal "Social Security Act".

(b) (Deleted by amendment, L. 2021.)

(2) and (3) (Deleted by amendment, L. 2021.)

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 656, § 2, effective October 1; entire section amended, (HB 21-1315), ch. 461, p. 3115 § 24, effective October 1.

Editor's note: This section is similar to former § 19-2-114 as it existed prior to 2021.

Cross references: (1) For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021.

(2) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

ANNOTATION

Law reviews. For article, "Parental Financial Liability for Juvenile Delinquents", see 37 Colo. Law. 49 (Nov. 2008).

Annotator's note. The following annotations include a case decided under a former provision similar to this section.

This section, and § 19-1-115 (4)(d) can be harmonized and the court should consider both in allocating costs. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

This section gives the court flexibility in allocating the cost of a juvenile's care. If appropriate, the court may order that the juvenile, in addition to his or her parents, also make reasonable payments, after considering the factors enumerated in the statute and making allowances for any restitution ordered to the victim or victims of a crime. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

Subsection (3) expressly places the burden of providing financial information on the juvenile and his or her parents. Thus, the county department of human services was not required to present information regarding the juvenile's and his or her parents' estates to calculate the amount of payment under § 19-2-114. People ex rel. M.L.M., 104 P.3d 324 (Colo. App. 2004).

19-2.5-1121. Fees for transporting juveniles.

It is the duty of the sheriff, undersheriff, or deputy, or in their absence any suitable person appointed by the court for such purpose, to convey any juvenile committed pursuant to section 19-2.5-1103 or 19-2.5-1127 to facilities of the division of youth services. All officers performing services pursuant to this part 11 must be paid the same fees as are allowed for similar services in criminal cases, to be paid by the county from which the juvenile was committed.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 657, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-415 as it existed prior to 2021.

SUBPART B

OFFENSE-SPECIFIC SPECIALIZED SENTENCING

19-2.5-1122. Sentencing - animal cruelty - anger management treatment.

(1) In addition to any sentence imposed pursuant to this section, a juvenile who has been adjudicated a juvenile delinquent for the commission of cruelty to animals, as described in section 18-9-202, in which the underlying factual basis has been found by the court to include the knowing torture or torment of an animal and that needlessly injured, mutilated, or killed an animal, may be ordered to complete an anger management treatment program, a mental health treatment program, or any other appropriate treatment program designed to address the underlying causative factors for the violation.

(2) The court may order an evaluation to be conducted prior to disposition if an evaluation would assist the court in determining an appropriate disposition. The parents or legal guardian of the juvenile ordered to undergo an evaluation shall pay the cost of the evaluation. If the evaluation results in a recommendation of treatment and if the court so finds, the juvenile must be ordered to complete an anger management treatment program, a mental health treatment program, or any other appropriate treatment program designed to address the underlying causative factors for the violation.

(3) The disposition for a juvenile who has been adjudicated a juvenile delinquent a second or subsequent time, the underlying factual basis of which has been found by the court to include an act of cruelty to animals, as described in section 18-9-202, must include the completion of an anger management treatment program, a mental health treatment program, or any other

appropriate treatment program designed to address the underlying causative factors for the violation.

(4) In addition to any sentence imposed pursuant to this section for any juvenile who has been adjudicated a juvenile delinquent for the commission of cruelty to animals, as described in section 18-9-202, the court may enter an order prohibiting the juvenile or other party from owning, possessing, or caring for a pet animal as defined in section 35-80-102 (10), unless the juvenile's treatment provider makes a specific recommendation not to impose the ban and the court agrees with the recommendation.

(5) Nothing in this section precludes the court from ordering treatment in any appropriate case.

(6) This section does not apply to the treatment of pack or draft animals by negligently overdriving, overloading, or overworking them, or the treatment of livestock and other animals used in the farm or ranch production of food, fiber, or other agricultural products when the treatment is in accordance with accepted animal husbandry practices, the treatment of animals involved in activities regulated pursuant to article 32 of title 44, the treatment of animals involved in research if the research facility is operating under rules set forth by the state or federal government, the treatment of animals involved in rodeos, the treatment of dogs used for legal hunting activities, or to statutes regulating activities concerning wildlife and predator control in the state, including trapping.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 657, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-918.5 as it existed prior to 2021.

19-2.5-1123. Sentencing - mandatory detention - weapons and crimes of violence.

(1) In the case of a juvenile who has been adjudicated a juvenile delinquent for the commission of one of the offenses described in section 19-2.5-305 (3)(a)(V), the court shall sentence the juvenile to a minimum mandatory period of detention of not fewer than five days.

(2) A juvenile who is less than thirteen years of age may not be sentenced to detention unless the juvenile has been adjudicated for a felony or weapons charge pursuant to section 18-12-102, 18-12-105, 18-12-106, or 18-12-108.5. As an alternative, the juvenile probation department may conduct a presentence investigation pursuant to section 19-2.5-1101. The investigation may result in the juvenile:

(a) Remaining in the custody of a parent, guardian, or legal custodian; or

(b) Being placed in the temporary legal custody of kin, for purposes of a kinship foster care home or noncertified kinship care placement, as defined in section 19-1-103, or other suitable person under such conditions as the court may impose; or

(c) Being placed in a shelter facility; or

(d) Being referred to a local county department of human or social services for assessment for placement.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 658, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-911 (2) and (3) as it existed prior to 2021.

ANNOTATION

There are two categories of people to whom the term "juvenile" in former § 19-2-911 (2) applies: (1) persons under eighteen years of age; and (2) persons over eighteen years of age who are under the continuing jurisdiction of the court for an alleged delinquent act committed before they turned eighteen. People in Interest of E.V., 2022 COA 53, 516 P.3d 542 (decided under former § 19-2-911).

The mandatory sentencing provision does not apply to a juvenile who is eighteen years old at the time of sentencing. People in Interest of E.V., 2022 COA 53, 516 P.3d 542 (decided under former § 19-2-911).

Because juvenile was not under eighteen at sentencing, he was not a child, and he could not be sentenced to any form of detention under former § 19-2-911 (2). Therefore, he was not subject to a mandatory minimum sentence, and his five-day jail sentence was not authorized by former § 19-2-911 (2). People in Interest of E.V., 2022 COA 53, 516 P.3d 542 (decided under former § 19-2-911).

19-2.5-1124. (Reserved)

SUBPART C

SENTENCING - SPECIAL OFFENDERS

19-2.5-1125. Petitions - special offenders.

(1) **Mandatory sentence offender.** A juvenile is a mandatory sentence offender if the juvenile:

(a) Has been adjudicated a juvenile delinquent twice; or

(b) Has been adjudicated a juvenile delinquent and if the juvenile's probation has been revoked for a delinquent act, and:

(I) Is subsequently adjudicated a juvenile delinquent; or

(II) Has probation revoked for a delinquent act.

(2) **Repeat juvenile offender.** A juvenile is a repeat juvenile offender if the juvenile has been previously adjudicated a juvenile delinquent and is adjudicated a juvenile delinquent for a delinquent act that constitutes a felony or if the juvenile's probation is revoked for a delinquent act that constitutes a felony.

(3) **Violent juvenile offender.** A juvenile is a violent juvenile offender if the juvenile is adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence as defined in section 18-1.3-406 (2).

(4) **Aggravated juvenile offender.**

(a) A juvenile offender is an aggravated juvenile offender if the juvenile is:

(I) Adjudicated a juvenile delinquent for a delinquent act that constitutes a class 1 or class 2 felony or if the juvenile's probation is revoked for a delinquent act that constitutes a class 1 or class 2 felony; or

(II) Adjudicated a juvenile delinquent for a delinquent act that constitutes a felony and either is subsequently adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406 (2), or has probation revoked for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406 (2); or

(III) Adjudicated a juvenile delinquent or if the juvenile's probation is revoked for a delinquent act that constitutes felonious unlawful sexual behavior pursuant to part 4 of article 3 of title 18, incest pursuant to section 18-6-301, or aggravated incest pursuant to section 18-6-302.

(b) Provisions concerning aggravated juvenile offenders are located in sections 19-2.5-503 and 19-2.5-1127.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 659, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-516 as it existed prior to 2021.

ANNOTATION

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

Statute meets equal protection and due process requirements. Statutory scheme under which juvenile may be classified as mandatory sentence offender either upon probation revocation or upon new adjudication of delinquency and under which prosecutor has discretion to seek revocation rather than new adjudication, thus avoiding necessity for preliminary hearing and jury trial, does not deny juveniles equal protection nor unconstitutionally delegate discretion to prosecutor. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

Because former § 19-2-703 (4) provides for notice and a hearing when a juvenile has allegedly violated probation and because the prosecution must establish the alleged criminal offense beyond a reasonable doubt, the statutory scheme under which probation revocation triggers mandatory sentence offender status does not deny due process. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

Constitutionally void dispositions cannot be used as basis for enhanced punishment. Where the referee in two prior delinquency hearings failed to comply with the mandates of C.R.J.P. 3, the prior dispositions are constitutionally void and cannot be used as the basis for enhanced punishment proceedings under this section. People v. M.A.W., 651 P.2d 433 (Colo. App. 1982).

Previous adjudication need not be based on felony. The unambiguous language of former subsection (2)(b) requires two prior acts by a child each of which would have constituted a crime if committed by an adult; there is no merit in the contention that the subsection must be read to include the definition of a repeat juvenile offender (former § 19-1-103 (23.5)) that would require one of the previous adjudications to be based on a felony. People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979).

A juvenile does not qualify as a mandatory sentence offender or a repeat juvenile offender when the multiple adjudications required by those provisions occur in the same hearing. A guilty plea that the court accepts plainly constitutes an adjudication under the statute; however, to be a mandatory sentence offender, a juvenile must, after having "been adjudicated a juvenile delinquent twice", be "subsequently adjudicated a juvenile delinquent". To be a

repeat juvenile offender, he or she must have "been previously adjudicated a juvenile delinquent"."Subsequently" and "previously" entail the passage of enough time for the juvenile to experience the consequences of his or her earlier adjudications. People in Interest of J.C., 2018 COA 22, 428 P.3d 617.

Subsection (1) makes no reference to the date of the commission of the offense underlying the prior adjudications. Although the delinquent act at issue occurred before the defendant's two previous adjudications as a juvenile delinquent, the statute requires only that a juvenile be adjudicated delinquent after the entry of two prior delinquency adjudications. People ex rel. J.C.P., 151 P.3d 635 (Colo. App. 2006).

The violent juvenile offender statute does not create a separate and distinct offense; rather, it is a dispositional statute associated with the underlying delinquent act and thus does not violate this constitutional guarantee of equal protection. People in Interest of D.G., 725 P.2d 1166 (Colo. App. 1986).

Juvenile's right to equal protection was not violated by trial court's refusal to grant juvenile, who was charged as being a violent juvenile offender, five rather than four peremptory challenges where juvenile failed to show that there was unequal treatment within the class of violent juvenile offenders. Although an aggravated juvenile offender is entitled to five peremptory challenges under former § 19-2-804 (4)(b)(I) (now § 19-2-601 (3)(b)(I)), the elements constituting an aggravated juvenile offender differ from those constituting a violent juvenile offender. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Although violent juvenile offender was granted four rather than the five peremptory challenges awarded to an aggravated juvenile offender, violent juvenile offender's right to equal protection was not violated where the elements constituting an aggravated juvenile offender differ from those constituting a violent juvenile offender. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Plain language of the statute does not require extra procedural requirements for enhanced sentencing of mandatory sentence offenders; state need not plead and prove previous adjudications beyond a reasonable doubt. People v. J.J.H., 17 P.3d 159 (Colo. 2001).

Comparison to adult habitual criminal prosecution not persuasive in interpreting the procedures for sentencing mandatory sentence offenders, since there are fundamental differences between the juvenile system of justice and the adult system of justice; the goals of the juvenile system are to remain informal, flexible, and focused on rehabilitation, whereas, the adult criminal system's approach is hardened in procedures, goals, and penalties. People v. J.J.H., 17 P.3d 159 (Colo. 2001).

19-2.5-1126. Sentencing - special offenders.

(1) The court shall sentence a juvenile adjudicated as a special offender as follows:

(a) **Mandatory sentence offender.** The court shall place or commit a juvenile adjudicated as a mandatory sentence offender, as described in section 19-2.5-1125 (1), out of the home for not less than one year, unless the court finds that an alternative sentence or a commitment of less than one year out of the home would be more appropriate; except that:

(I) If the person adjudicated as a mandatory sentence offender is eighteen years of age or older on the date of the sentencing hearing, the court may sentence that person to the county jail or to a community correctional facility or program for a period not to exceed two years, if the person has been adjudicated a mandatory sentence offender pursuant to this article 2.5 for acts committed prior to the person's eighteenth birthday; or

(II) The juvenile or person may be released by the committing judge upon a showing of exemplary behavior.

(b) **Repeat juvenile offender.** The court shall sentence a juvenile adjudicated as a repeat juvenile offender, as described in section 19-2.5-1125 (2), out of the home for not less than one year, unless the court finds that an alternative sentence or a commitment of less than one year out of the home would be more appropriate; except that:

(I) If the person adjudicated as a repeat juvenile offender is eighteen years of age or older on the date of the sentencing hearing, the court may sentence that person to the county jail or to a community correctional facility or program for a period not to exceed two years, if the person has been adjudicated a repeat juvenile offender pursuant to this article 2.5 for acts committed prior to the person's eighteenth birthday; or

(II) The juvenile or person may be released by the committing judge upon a showing of exemplary behavior.

(c) **Violent juvenile offender.**

(I) (A) Upon adjudication as a violent juvenile offender, as described in section 19-2.5-1125 (3), the juvenile must be placed or committed out of the home for not less than one year; except that this subsection (1)(c) does not apply to a juvenile who is ten years of age or older, but less than twelve years of age, when the court finds that an alternative sentence or a commitment of less than one year out of the home would be more appropriate.

(B) Upon adjudication as a violent juvenile offender, if the person is eighteen years of age or older on the date of the sentencing hearing, the court may sentence such person to the county jail or to a community correctional facility or program for a period not to exceed two years, if the person has been adjudicated a violent juvenile offender pursuant to this article 2.5 for acts committed prior to the person's eighteenth birthday.

(II) The court may commit a violent juvenile offender to the department of human services. The court may impose a minimum sentence during which the juvenile must not be released from a residential program without prior written approval of the court that made the commitment.

(d) **Aggravated juvenile offender.** The court shall sentence an aggravated juvenile offender as described in section 19-2.5-1127.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 660, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-908 as it existed prior to 2021.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "Toward an Integrated Theory of Delinquency Responsibility", see 60 Den. L.J. 485 (1983).

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

Statute meets equal protection and due process requirements. Statutory scheme under which juvenile may be classified as mandatory sentence offender either upon probation revocation or upon new adjudication of delinquency and under which prosecutor has discretion to seek revocation rather than new adjudication, thus avoiding necessity for preliminary hearing and jury trial, does not deny juveniles equal protection nor unconstitutionally delegate discretion to prosecutor. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

Because former § 19-2-703 (4) provides for notice and a hearing when a juvenile has allegedly violated probation and because the prosecution must establish the alleged criminal offense beyond a reasonable doubt, the statutory scheme under which probation revocation triggers mandatory sentence offender status does not deny due process. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

The violent juvenile offender statute does not create a separate and distinct offense; rather, it is a dispositional statute associated with the underlying delinquent act and thus does not violate this constitutional guarantee of equal protection. People in Interest of D.G., 725 P.2d 1166 (Colo. App. 1986).

Section requires court to impose specific disposition. The mandatory sentence provisions do not enhance the disposition but merely require the court to impose a specific disposition on the

offender, namely, that the court shall place or commit the offender out of the home for not less than one year. People in Interest of C.R.B., 662 P.2d 198 (Colo. App. 1983).

Mandatory placement or commitment for not less than one year pursuant to the introductory portion of former subsection (2)(b) does not extend to jail sentences imposed pursuant to former subsection (2)(b)(I). People v. T.O., 696 P.2d 811 (Colo. 1985).

Release upon a showing of exemplary behavior. Former subsection (2)(b)(II) does not apply to persons sentenced to jail and provisions relating to good time must be applied. People v. T.O., 696 P.2d 811 (Colo. 1985).

Juvenile's right to equal protection was not violated by trial court's refusal to grant juvenile, who was charged as being a violent juvenile offender, five rather than four peremptory challenges where juvenile failed to show that there was unequal treatment within the class of violent juvenile offenders. Although an aggravated juvenile offender is entitled to five peremptory challenges under former § 19-2-804 (4)(b)(I), the elements constituting an aggravated juvenile offender differ from those constituting a violent juvenile offender. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Trial court correctly sentenced juvenile to one-year commitment out of the home where former subsection (2) required that adjudicated violent juvenile offenders "shall" be so committed, where juvenile failed to argue that he fell within one of the statutory exceptions, and where he was not placed on probation so as to qualify for Juvenile Intensive Supervision Program, former § 19-2-1501, et seq. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Subsection (1)(c)(I)(A) does not allow a violent juvenile offender to be placed in a custodial placement as an initial sentencing option. The trial court did not err in interpreting the phrase "placed or committed out of the home" as requiring the court to place a juvenile offender in a facility or center operated or licensed by the department of human services. People ex rel. P.C., 80 P.3d 942 (Colo. App. 2003).

Enactment of juvenile intensive supervision program, former § 19-2-1501 et seq., does not change requirements of former subsection (2)(a), as such program applies to any juvenile who has been placed on probation and who presents a high risk of future placement within juvenile correctional facilities. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993).

Consecutive terms not authorized. In absence of express authorization in the Colorado Children's Code, court lacks authority to impose consecutive terms of commitment upon one adjudicated both a "repeat juvenile offender" and a "mandatory sentence offender". S.G.W. v. People, 752 P.2d 86 (Colo. 1988).

The sentencing options listed in § 19-2-907 are applicable to mandatory sentence offenders. This section is a supplement to, not a substitute for, § 19-2-907. People in

Interest of J.S.R., 2014 COA 98M, 338 P.3d 1088.

This section must be read together with other sentencing provisions of the children's code if the court is to have access to the sentencing options for special offenders that enhance supervision and accountability. People in Interest of J.S.R., 2014 COA 98M, 338 P.3d 1088.

A juvenile court cannot sentence a juvenile to an indeterminate term of DHS commitment. Sections 19-2-601(5)(a)(I), 19-2-909 (1)(a), and 19-2-921 (3)(b) plainly do not allow for sentences constituting a range, but rather require sentences of fixed, definite periods. People in Interest of J.C., 2018 COA 22, 428 P.3d 617.

Applied in People in Interest of C.B., 196 Colo. 362, 585 P.2d 281 (1978).

19-2.5-1127. Aggravated juvenile offender - definition.

(1) (a) (I) Upon adjudication as an aggravated juvenile offender:

(A) For an offense other than an offense that would constitute a class 1 or 2 felony if committed by an adult, the court may commit the juvenile to the department of human services for a determinate period of up to five years;

(B) For an offense that would constitute a class 2 felony if committed by an adult, the court shall commit the juvenile to the department of human services for a determinate period of at least three but not more than five years;

(C) For an offense that would constitute a class 1 felony if committed by an adult, the court shall commit the juvenile to the department of human services for a determinate period of at least three but not more than seven years; and

(D) When the petition alleges the offense of murder in the first degree or murder in the second degree, or sexual assault pursuant to section 18-3-402 (3.5) or (4) and the juvenile is adjudicated a delinquent for either murder in the first degree or murder in the second degree, then the court may sentence the juvenile consecutively or concurrently for any crime of violence as described in section 18-1.3-406 or for a delinquent act contained in the petition for which the juvenile is an aggravated juvenile offender.

(II) An aggravated juvenile offender thus committed to the department of human services must not be transferred to a nonsecure or community setting for a period of more than forty-eight hours, excluding Saturdays, Sundays, and court holidays, nor released before the expiration of the determinate term imposed by the court without prior order of the court.

(b) (I) Upon court order, the department of human services may transfer a juvenile committed to its custody pursuant to subsection (1)(a) of this section to the department of corrections if the juvenile has reached eighteen years of age and the department of human services has certified that the juvenile is no longer benefitting from its programs.

(II) The department of human services shall initiate such transfer by filing a request for transfer with the court of commitment that must state the basis for the request. Upon receipt of such a request, the court shall notify the interested parties and set the matter for a hearing.

(III) The court shall authorize the transfer only upon a finding by a preponderance of the evidence that the juvenile is no longer benefitting from the programs of the department of human services.

(IV) Upon entering an order of transfer to the department of corrections, pursuant to this subsection (1)(b), the court shall amend the mittimus and transfer all further jurisdiction over the juvenile to the department of corrections. Thereafter the juvenile is governed by the provisions for adult felony offenders in titles 16 and 17 as if the juvenile had been sentenced as an adult felony offender for the unserved portion of sentence that remains upon transfer to the department of corrections.

(2) (a) After a juvenile who is sentenced pursuant to subsection (1)(a)(I)(B) or (1)(a)(I)(C) of this section has been in the custody of the department of human services for three years or more, the department may petition the court for an order authorizing the department to place the juvenile on juvenile parole upon approval by the juvenile parole board pursuant to section 19-2.5-1203. After a juvenile who is sentenced pursuant to subsection (1)(a)(I)(A) of this section has served the minimum mandatory period of the commitment or three years, whichever is sooner, the department of human services may petition the court for an order authorizing the department to place the juvenile on juvenile parole upon approval by the juvenile parole board pursuant to section 19-2.5-1203. The department of human services shall conduct the parole supervision. Upon filing the petition, the court shall notify the interested parties and set the matter for a hearing. The court shall authorize the department of human services to place the juvenile on juvenile parole upon approval of the juvenile parole board pursuant to section 19-2.5-1203, only upon finding by a preponderance of the evidence that the safety of the community will not be jeopardized by the juvenile's release.

(b) Parole supervision of a juvenile who has been transferred to the department of corrections is governed by the provisions for adult felony offenders in titles 16, 17, and 18 as if the juvenile had been sentenced as an adult felony offender; except that, if the juvenile was adjudicated and sentenced for a class 1 felony, then the juvenile must serve a ten-year period of mandatory parole after completion of the juvenile's sentence.

(3) Upon filing a petition with the committing court for transfer of the juvenile to a nonsecure or community setting, or for early release from the custody of the department of corrections or human services, the court shall notify the interested parties and set the matter for a hearing. The court shall order such transfer or release only upon a finding by a preponderance of the evidence that the safety of the community will not be jeopardized by the transfer or release; except that early release of the juvenile from the department of corrections is governed by the

provisions for adult felony offenders in titles 16 and 17 as if the juvenile had been sentenced as an adult felony offender.

(4) (a) (I) When a juvenile in the custody of the department of human services pursuant to this section reaches the age of twenty years and six months, the department of human services shall file a motion with the court of commitment regarding further jurisdiction of the juvenile. Upon the filing of such a motion, the court shall notify the interested parties, appoint counsel for the juvenile, and set the matter for a hearing. The court shall, as part of this hearing, reconsider the length of the remaining sentence and consider the factors as set forth in subsection (4)(c) of this section.

(II) When the court notifies the interested parties, the court shall order that the juvenile submit to and cooperate with a psychological evaluation and risk assessment by a mental health professional to determine whether the juvenile is a danger either to himself or herself or to others. The mental health professional shall prepare a written report and provide a copy of the report to the court that ordered it, the prosecuting attorney, and counsel for the juvenile at least fourteen days before the hearing.

(b) At the hearing upon the motion, the court may either transfer the custody of and jurisdiction over the juvenile to the department of corrections for placement in a correctional facility, the youthful offender system, or a community corrections program; authorize early release of the juvenile pursuant to subsection (3) of this section; place the juvenile on adult parole for a period of five years; or order that custody and jurisdiction over the juvenile must remain with the department of human services; except that the custody of and jurisdiction over the juvenile by the department of human services terminates when the juvenile reaches twenty-one years of age.

(c) In considering whether to transfer the custody of and jurisdiction over the juvenile to the department of corrections, the court shall consider all relevant factors including, but not limited to, the court-ordered psychological evaluation and risk assessment; the nature of the crimes committed; the offender's prior criminal history; the offender's maturity; the offender's behavior in custody; the offender's progress and participation in classes, programs, and educational improvement; the impact of the crimes on the victims; the likelihood of rehabilitation; the placement where the offender is most likely to succeed in reintegrating in the community; and the interest of the community in the imposition of punishment commensurate with the gravity of the offense.

(5) At any postadjudication hearing held pursuant to this section, the state is represented by the district attorney and the attorney general; except that the attorney general may be excused from participation in the hearing with the permission of the district attorney and of the court. At any postadjudication hearing held pursuant to this section, the department of corrections is considered an interested party and must be sent notice of such hearing.

(6) As used in this section, "mental health professional" means a person who is employed by the department of human services or is employed under contract with the department of human services and is:

(a) A licensed physician with the appropriate training and expertise in psychiatry; or

(b) A licensed psychologist.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 661, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-601 (5) to (10) as it existed prior to 2021.

ANNOTATION

Law reviews. For article, "New Juvenile Justice Laws Increase Options for Youth", see 42 Colo. Law. 37 (Apr. 2013).

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

Former subsection (5)(a)(I)(A) (now subsection (1)(a)(I)(A)) gives a court discretion in sentencing an aggravated juvenile offender and does not require a commitment sentence to the department of human services. The court's decision to suspend the commitment sentence on condition of successfully completing probation for an offense that did not constitute a class 1 or 2 felony if committed by an adult was permitted by the sentencing law. A.S. v. People, 2013 CO 63, 312 P.3d 168.

Section does not address appropriate sentencing options for an aggravated juvenile offender who, at 22 years of age, is already an adult at the time of sentencing for acts committed as a juvenile. Since aggravated juvenile offenders must be sentenced pursuant to this section, there is a gap in the statute that must be filled by the legislature. Therefore, courts sentencing aggravated juvenile offenders who have aged out of the department of human services at the time of sentencing may apply the provisions of former subsection (8) (now subsection (4)) that do not require participation by the department of human services and consider all available sentencing options listed under former subsection (8) (now subsection (4)). People in Interest of E.G., 2015 COA 18M, 371 P.3d 693, aff'd on other grounds, 2016 CO 19, 368 P.3d 946.

PART 12

JUVENILE PAROLE

19-2.5-1200.3. Definitions.

As used in this part 12, unless the context otherwise requires:

(1) "Board" means the juvenile parole board created in section 19-2.5-1201 (1).

Source: L. 2025: Entire section added, (SB 25-275), ch. 377, p. 2046, § 76, effective August 6.

19-2.5-1201. Juvenile parole board - creation - membership - authority - rules.

(1) There is created a juvenile parole board. The board consists of nine members appointed by the governor and confirmed by the senate. Members are appointed for terms of three years; except that the terms shall be staggered so that one-third of the membership of the board becomes vacant each year. There are no term limits for the members of the board. Any vacancy that occurs when the general assembly is not in session may be filled by the governor, and such member serves temporarily until confirmed at the next regular session of the general assembly. The board is a **type 1** entity, as defined in section 24-1-105.

(2) All nine members are voting members. All members must be residents of the state of Colorado. Of the nine members:

(a) One member is from the department of human services;

(b) One member is from the department of education;

(c) One member is from the department of public safety;

(d) One member is from the department of labor and employment; and

(e) Five members are from the public at large and must not be employees of the state government. At least one of the members from the public at large must be a resident of the area west of the continental divide.

(3) All members serve at the pleasure of the governor, and the governor shall designate one member of the board to act as chairperson.

(4) The full board meets not less than once a month, and the presence of five members, at least two of whom are members described in subsection (2)(e) of this section, constitutes a quorum to transact official business of the full board.

(5) All members of the board are reimbursed for expenses necessarily incurred in the performance of their duties. In addition to the reimbursement of expenses, the five at-large board members shall receive a per diem of one hundred fifty dollars per full day and seventy-five dollars per half day spent transacting official business of the board.

(6) The department of human services shall furnish clerical and other assistance for the board. A juvenile parole board administrator appointed by the executive director of the department of human services shall supervise such clerical and other assistance provided pursuant to this subsection (6).

(7) (a) The board may grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole for any juvenile committed to the department of human services pursuant to section 19-2.5-1103 or 19-2.5-1127 in a manner that is in the best interests of the juvenile and the public. In addition to any other conditions, the board may require, as a condition of parole, any adjudicated juvenile to attend school or an educational program or to work toward the attainment of a high school diploma or the successful completion of a high school equivalency examination, as that term is defined in section 22-33-102 (8.5); except that the board shall not require any such juvenile to attend a school from which the juvenile has been expelled without the prior approval of that school's local board of education. The board shall promulgate rules that establish criteria under which its parole decisions are made. The board has the duties and responsibilities specified in this part 12.

(b) Unless inconsistent with other conditions imposed by the board, the board shall allow a juvenile to have periodic meetings with the juvenile parole officer at reasonable times through a telephone call or audio-visual communication technology. Unless inconsistent with other conditions imposed by the board, in directing the juvenile to have periodic meetings with a juvenile parole officer at reasonable times, the juvenile parole officer shall schedule, in good faith, the meetings with the juvenile on parole at mutually agreeable times that do not conflict with the juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other parole requirements.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 664, § 2, effective October 1. **L. 2022:** (1), IP(2), and (5) amended, (SB 22-013), ch. 2, p. 26, § 31, effective February 25; (1) amended, (SB 22-162), ch. 469, p. 3375, § 64, effective August 10. **L. 2024:** (7) amended, (HB 24-1445), ch. 353, p. 2408, § 7, effective September 1. **L. 2025:** (1) amended, (SB 25-275), ch. 377, p. 2046, § 77, effective August 6.

Editor's note: (1) This section is similar to former §§ 19-2-206 and 19-2-207 as they existed prior to 2021.

(2) Amendments to subsection (1) by SB 22-013 and SB 22-162 were harmonized.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

19-2.5-1202. Juvenile parole - organization.

(1) Juvenile parole services are administered by the division of youth services in the department of human services, under the direction of the director of the division of youth services, appointed pursuant to section 19-2.5-1501.

(2) The director of the division shall appoint juvenile parole officers and other personnel of the division of youth services pursuant to section 13 of article XII of the state constitution and with the consent of the department of human services. Juvenile parole officers have the powers and duties specified in section 19-2.5-1204 and the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138.

(3) The division of youth services may divide juvenile parole supervision into regions throughout the state. Within each region there may be more than one office location for parole officers.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 665, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-209 as it existed prior to 2021.

19-2.5-1203. Juvenile parole - hearing panels - definition.

(1) **Juvenile parole board - hearing panels authority.**

(a) The juvenile parole board, established pursuant to section 19-2.5-1201, may grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole for any juvenile committed to the department of human services pursuant to sections 19-2.5-1103 and 19-2.5-1127. In addition to any other conditions, the board may require, as a condition of parole, any adjudicated juvenile to attend school or an educational program or to work toward the attainment of a high school diploma or the successful completion of a high school equivalency examination, as that term is defined in section 22-33-102 (8.5); except that the board shall not require any

juvenile to attend a school from which the juvenile has been expelled without the prior approval of that school's local board of education. The board may modify any of its decisions, or those of the hearing panel, except an order of discharge.

(b) Unless inconsistent with other conditions imposed by the board, the board shall allow a juvenile to have periodic meetings with a juvenile parole officer at reasonable times through a telephone call or audio-visual communication technology. Unless inconsistent with other conditions imposed by the board, in directing the juvenile to have periodic meetings with a juvenile parole officer at reasonable times, the juvenile parole officer shall schedule, in good faith, meetings with the juvenile on parole at mutually agreeable times that do not conflict with the juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other parole requirements.

(2) (a) The board or a hearing panel has subpoena power and the power to administer oaths to secure attendance and testimony at hearings before the board. All relevant records pertaining to the juvenile must be made available to the board.

(b) (I) The board or hearing panel shall take into consideration the results of the validated risk and needs assessment administered by the department of human services.

(II) In making release and discharge decisions, the board or hearing panel shall use the length of stay matrix and release criteria developed pursuant to section 19-2.5-1117 (7).

(3) (a) Hearing panels consisting of two members of the board shall interview and review the record of each juvenile who comes before the board for the granting of parole. Whenever possible, one of the hearing panel members must be a representative of an executive department, and the other must be a member from the public at large. A hearing panel may grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole of a juvenile that are in the best interests of the juvenile and the public; except that:

(I) If the members of a hearing panel disagree, a review of that case must be referred to the board for review and a decision made by a majority vote of the board members present. At least a quorum of the board, as defined in section 19-2.5-1201 (4), must be present to make a decision pursuant to this subsection (3)(a)(I).

(II) The hearing panel does not have authority to grant parole to juveniles committed as violent juvenile offenders as described in section 19-2.5-1125 (3) or aggravated juvenile offenders as described in section 19-2.5-1125 (4). In such cases, the board shall conduct a hearing and make a decision by a majority vote of the board members present at the hearing. However, if expiration of the juvenile's commitment is imminent, as defined by the board, the hearing panel shall hold a hearing and make a recommendation to the board. The board shall review the case and make a decision by a majority vote of the board members present.

(III) If a written request is made by the juvenile, the juvenile's parents or guardian, or the executive director of the department of human services or the executive director's designee, the board may review the case of any juvenile who has been interviewed by a hearing panel. If such a review is made, the board has the authority to affirm or reverse the decision of the hearing panel or to impose such additional conditions for parole as the board deems appropriate.

(b) If a juvenile, while under a juvenile commitment, is in jail pending adult charges, the board may conduct a parole hearing without the juvenile's presence.

(c) When the board conducts a hearing pursuant to subsection (3)(a) or (3)(b) of this section, a quorum, as defined in section 19-2.5-1201 (4), must be present.

(d) In addition to any other conditions, the hearing panel may require, as a condition of parole, any adjudicated juvenile to attend school or an educational program or to work toward the attainment of a high school diploma or the successful completion of a high school equivalency examination, as that term is defined in section 22-33-102 (8.5); except that the hearing panel shall not require any such juvenile to attend a school from which the juvenile has been expelled without the prior approval of that school's local board of education.

(4) The juvenile parole board administrator appointed pursuant to section 19-2.5-1201 (6) shall assist the hearing panel in its duties. The administrator shall also arrange training for the members of the board in all aspects of the juvenile justice system. It is mandatory for members of the board to attend such training.

(5) (a) If the hearing panel or the board determines that parole should be granted, the hearing panel shall establish six months as the length of the parole supervision. However, for a juvenile committed to the department of human services due to an adjudication for an offense specified in subsection (5)(b) of this section, the hearing panel may extend the period of parole supervision up to an additional fifteen months if the hearing panel makes findings of special circumstances that warrant an extended period of parole services for the juvenile.

(b) Subsection (5)(a) of this section allowing for extension of the period of parole applies to juveniles committed to the department of human services due to an adjudication for one or more of the following offenses:

(I) Any offense specified in article 3 of title 18 or in part 3 of article 4 of title 18 that would constitute a felony if committed by an adult;

(II) Incest, as described in section 18-6-301;

(III) Aggravated incest, as described in section 18-6-302;

(IV) Child abuse, as described in section 18-6-401, that would constitute a felony if committed by an adult;

(V) Fourth degree arson, as described in section 18-4-105, that would constitute a felony if committed by an adult;

(VI) Assault during escape, as described in section 18-8-206, that would constitute a felony if committed by an adult;

(VII) Felony illegal possession of a handgun by a juvenile, as described in section 18-12-108.5, that would constitute a felony if committed by an adult;

(VIII) Misdemeanor illegal possession of a handgun by a juvenile, as described in section 18-12-108.5, that would constitute a misdemeanor if committed by an adult, if the juvenile is contemporaneously committed to the department of human services for an offense that would constitute a felony if committed by an adult; or

(IX) Attempt, conspiracy, or solicitation to commit any of the offenses specified in this subsection (5)(b), which attempt, conspiracy, or solicitation would constitute a felony if committed by an adult.

(c) Upon completion of the period of parole supervision as established by the board, the juvenile is deemed to have discharged the juvenile's sentence to commitment in the same manner as if the sentence were discharged pursuant to law.

(d) (I) If the juvenile court commits a juvenile to the department of human services for concurrent sentences based on the commission of two or more offenses or consecutive sentences based on commission of two or more offenses, the juvenile is subject to one six-month mandatory period of parole, unless the period of parole is extended pursuant to subsection (5)(a) of this section.

(II) As used in this subsection (5)(d), "concurrent sentence" means sentences identified by the court as concurrent and any sentences, or portions thereof, that are served simultaneously and that are the basis of the juvenile's treatment services during the juvenile's commitment.

(e) (I) If a juvenile's parole is revoked pursuant to section 19-2.5-1206, the juvenile shall serve all or a portion of the remainder of the sentence to commitment, and the period of reparole or extended period of reparole imposed pursuant to subsection (5)(a) of this section must be reduced by any time served on parole prior to the revocation. This subsection (5)(e) does not limit the board's authority to grant, deny, defer, suspend, revoke, or modify a juvenile's parole within the period of parole.

(II) If a juvenile's parole is revoked or modified pursuant to section 19-2.5-1206, and the juvenile has completed the period of commitment imposed by the court, the period of parole, or extended period of parole imposed pursuant to subsection (5)(a) of this section must continue pursuant to section 19-2.5-1117 (1)(c)(II). The period of parole continues regardless of whether the revocation or modification authorizes the department of human services to place the juvenile

in a residential placement while on parole status. This does not limit the board's authority to grant, deny, defer, suspend, revoke, or modify a juvenile's parole within the period of parole.

(6) If the hearing panel or the board determines that parole should be granted, the hearing panel or board shall order the parolee to pay any unpaid restitution that has previously been ordered as a condition of parole.

(7) **Notice.**

(a) The board, prior to consideration of the case of a juvenile for parole, shall notify the committing court, any affected juvenile community review board, the prosecuting attorney, and any victims of the juvenile's actions whose names and addresses have been provided by the district attorney of the time and place of the juvenile's hearing before the board or a hearing panel of the board. The notice must be given in order that the persons notified have an opportunity to present written testimony to the hearing panel or the board. The board, in its sole discretion, may allow oral testimony at any hearing and has sole discretion regarding who may attend a juvenile parole hearing.

(b) (I) (A) Prior to consideration of the case of a juvenile for parole, the board shall provide notice of the time and place of the juvenile's hearing before the board or a hearing panel of the board to a victim who has provided to the division of youth services or the board a written statement pursuant to sections 24-4.1-302.5 and 24-4.1-303. The notice and subsequent interactions with the victim must be consistent with article 4.1 of title 24.

(B) The board shall notify the victim of changes in the juvenile's parole pursuant to section 24-4.1-303 (14.3).

(II) For a juvenile who is currently serving parole that implicates article 4.1 of title 24, the division of youth services shall notify the board of any discharge as a matter of law and any placement change that may impact public safety or victim safety as determined by the division of youth services, including any escape or recapture.

(8) **Representation of juvenile - parent.** The juvenile and the juvenile's parents or guardian must be informed that they may be represented by counsel in any hearing before the board or a hearing panel to grant, modify, or revoke parole.

(9) **Parole discharge.**

(a) The board may discharge a juvenile from parole after the juvenile has served the mandatory parole period of six months but prior to the expiration of the period of parole supervision when it appears to the board that there is a reasonable probability that the juvenile will remain at liberty without violating the law.

(b) (I) Based upon a request and recommendation by the division of youth services, the board may discharge all or a portion of a juvenile's period of parole, as defined in section 19-2.5-

1117 (1)(b), without holding a hearing before the board or a hearing panel of the board, if the board finds that:

(A) The juvenile is unavailable to complete the period of parole or the extended period of parole and the juvenile is not likely to become available in a time or manner in which the juvenile will benefit from parole services and neither community safety nor restorative justice interests will be served through the imposition or continuation of the juvenile's parole; or

(B) The community interest in safety or restorative justice will not be served through the imposition or continuation of juvenile parole because the juvenile is under the adult probation supervision of the district court.

(II) As used in this subsection (9), a juvenile is unavailable to complete the period of parole if:

(A) The juvenile, pursuant to an adult sentence, has been placed in a department of corrections facility, adult community corrections, the youthful offender system, or a local jail, as defined in section 17-1-102; or

(B) The juvenile has been or will be transferred out of the state of Colorado and the division of youth services determines that the discharge is not in conflict with the interstate compact on juveniles, part 7 of article 60 of title 24; or

(C) The juvenile is in a medical, mental health, treatment facility, or similar institution; or

(D) The board finds any other circumstance that constitutes unavailability as established in rule.

(c) The board may discharge a juvenile from parole before completion of the mandatory six-month parole period when the board finds that the juvenile meets, at a minimum, all of the following conditions of special achievement:

(I) Graduation from a high school or successful completion of a high school equivalency examination, as that term is defined in section 22-33-102 (8.5);

(II) Payment of one hundred percent of any restitution the juvenile has been ordered to pay;

(III) Certification by the juvenile's parole officer that the juvenile is ready for discharge from parole, that takes into consideration the results of an objective risk assessment conducted by the department of human services and is based upon researched factors that have been demonstrated to be correlative to risk to the community; and

(IV) Presentation to the board of a plan of action prepared by the juvenile that includes the steps the juvenile will accomplish to ensure a transition to law-abiding citizenship. If the juvenile's plan of action includes an intent to enlist in military service, the plan must specify the interim steps that the juvenile will take prior to entering military service.

(d) A discharge from parole pursuant to this subsection (9) has the same legal effect as if parole had been discharged upon completion of juvenile parole or when the sentence to commitment was discharged as a matter of law.

(e) (I) If the board of parole decides to discharge parole supervision pursuant to this subsection (9) for a juvenile adjudicated of any offenses described in section 16-22-102 (9) or 24-4.1-302 (1) prior to the juvenile's mandatory parole supervision discharge date, the board shall set the juvenile's date of parole supervision discharge at least fifteen days after notice is provided to the victim of the discharge. If the victim elected not to receive notifications otherwise required by law, the board shall set the date of discharge at least fifteen days after the decision to grant early discharge of parole supervision.

(II) Notwithstanding subsection (9)(e)(I) of this section, the board shall not set a juvenile's discharge of parole supervision date later than the juvenile's mandatory parole supervision discharge date.

(10) Notwithstanding any provisions of law to the contrary, the department of human services shall not retain custody of or jurisdiction over an individual who reaches twenty-one years of age. The sentence to commitment and the period of parole are discharged as a matter of law when a juvenile reaches twenty-one years of age.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 665, § 2, effective October 1. **L. 2023:** (9)(e) added, (SB 23-193), ch. 307, p. 1878, § 3, effective August 7. **L. 2024:** (1) amended, (HB 24-1445), ch. 353, p. 2408, § 8, effective September 1.

Editor's note: This section is similar to former § 19-2-1002 as it existed prior to 2021.

19-2.5-1204. Parole officers - powers - duties.

(1) Under the direction of the director of the division of youth services, the juvenile parole officer or officers in each region established in section 19-2.5-1202 (3) shall supervise all juveniles living in the region who, having been committed to the department of human services, are on parole from one of its facilities.

(2) (a) The juvenile parole officer shall give to each juvenile granted parole a written statement of the conditions of the juvenile's parole, explain such conditions fully, and aid the juvenile to observe them. The juvenile parole officer shall have periodic meetings with the juvenile. The juvenile parole officer may conduct investigations or other activities as necessary to determine whether the conditions of parole are being met and to accomplish the juvenile's rehabilitation.

(b) Unless inconsistent with other conditions imposed by the board, in directing that a juvenile on parole have a periodic meeting with a juvenile parole officer, the juvenile parole officer shall:

(I) Schedule, in good faith, meetings with the juvenile on parole at mutually agreeable times that do not conflict with the juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other parole requirements; and

(II) Allow a juvenile to meet with a parole officer through a telephone call or audio-visual communication technology.

(3) All juvenile parole officers have the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138, in performing the duties of their position.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 671, § 2, effective October 1. **L. 2024:** (2) amended, (HB 24-1445), ch. 353, p. 2409, § 9, effective September 1.

Editor's note: This section is similar to former § 19-2-1003 as it existed prior to 2021.

19-2.5-1205. Administrative law judges.

An administrative law judge shall assist any hearing panel of the juvenile parole board that is considering the suspension, modification, or revocation of a juvenile's parole.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 671, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-208 as it existed prior to 2021.

19-2.5-1206. Parole violation and revocation.

(1) The director of the division of youth services or any juvenile parole officer may arrest any parolee when:

(a) The director or officer has a warrant commanding that the parolee be arrested; or

(b) The director or officer has probable cause to believe that a warrant for the parolee's arrest has been issued in this state or another state for any criminal offense or for violation of a condition of parole; or

(c) Any offense under the laws of this state has been or is being committed by the parolee in the director's or officer's presence; or

(d) The director or officer has probable cause to believe that a violation of law has been committed by the parolee; or

(e) The director or officer has probable cause to believe that the parolee has violated a condition of the juvenile's parole and probable cause to believe that the parolee is leaving or about to leave the state, or that the parolee will fail or refuse to appear before the hearing panel to answer charges of violations of one or more conditions of parole, or that the parolee's arrest is necessary to prevent physical harm to the parolee or another person or to prevent the violation of a law.

(2) When an alleged parole violator is taken into custody, the director of the division of youth services or the juvenile parole officer shall notify the juvenile's parents, guardian, or legal custodian without unnecessary delay.

(3) When a juvenile parole officer has reasonable grounds to believe that a parolee has violated a condition of parole, the juvenile parole officer may issue a summons requiring the parolee to appear before the hearing panel at a specified time and place to answer charges of violation of one or more conditions of parole. The summons, unless accompanied by a copy of a complaint filed before the hearing panel seeking revocation or suspension of parole or modification of parole conditions, must contain a brief statement of the alleged parole violation and the date and place of the alleged parole violation. Failure of the parolee to appear before the hearing panel as required by the summons is a violation of a condition of parole.

(4) If, rather than issuing a summons, a parole officer arrests a parolee with or without a warrant or takes custody of a parolee who has been arrested by another, the parole officer shall place the parolee in the nearest local juvenile detention facility or shelter care facility approved by the department of human services, if under eighteen years of age, or in the nearest county jail, if eighteen years of age or older. Within forty-eight hours, not including Saturdays, Sundays, and legal holidays, the parole officer shall take one of the following actions:

(a) Notify the juvenile parole board that the parolee has been arrested or taken into custody and request that a juvenile parole preliminary hearing be conducted by an administrative law judge; or

(b) Obtain from the parolee a written agreement that the parolee waives the right to a juvenile parole preliminary hearing. The parolee's parent or guardian shall also sign the waiver of the parolee if the parolee is a juvenile; or

(c) Release the parolee if the parolee is not subject to other actions that require further detention.

(5) An administrative law judge shall, upon the request of the juvenile parole board, conduct a preliminary hearing in a case in which a parole violation has been alleged to determine whether there is probable cause to believe that the parolee has violated a condition of parole, pursuant to subsection (4) of this section.

(6) Whenever an administrative law judge schedules a preliminary hearing pursuant to subsection (5) of this section, the juvenile parole officer shall notify the parolee and the parolee's parent, guardian, or legal custodian of the following information:

(a) The date, the time, and the place of the preliminary hearing and the name of the administrative law judge;

(b) That the purpose of the hearing is to determine whether there is probable cause to believe that the parolee has violated parole;

(c) That at the preliminary hearing the parolee will be permitted to present evidence, either oral or documentary, in person or by other witnesses, in defense of any alleged parole violation;

(d) A statement of any alleged parole violation;

(e) A brief summary of the evidence tending to establish any alleged parole violation; and

(f) That the parolee has the right to counsel at the preliminary hearing.

(7) (a) At any preliminary hearing held pursuant to subsection (5) of this section, the administrative law judge shall hear any offered testimony and determine whether there is probable cause to believe that the parolee has violated parole. If probable cause has not been shown, the administrative law judge shall order the parolee's release and make a written report of the judge's findings to the juvenile parole board within fourteen days of the hearing.

(b) If the administrative law judge finds that probable cause exists to believe that the parolee has violated parole, the administrative law judge shall order that the parolee be held to answer the charge before a hearing panel and shall order that the juvenile parole officer return the parolee without unnecessary delay to any of the juvenile corrections facilities of the department of human services pending a hearing before a hearing panel on the complaint for revocation, suspension, or modification of the juvenile's parole.

(8) Within fourteen working days after the finding of probable cause by the preliminary administrative law judge, the juvenile parole officer shall complete the officer's investigation and either:

(a) File a complaint before the hearing panel in which the facts are alleged upon which a revocation of parole is sought; or

(b) Recommend to the director of the division of youth services, or the director's designee, that the parolee, if detained, be released and the violation proceedings be dismissed. The director, or the director's designee, shall determine whether to cause the violation proceedings to be dismissed, and, if he or she elects to cause dismissal, the parolee must be released or notified that the parolee is relieved of obligation to appear before the hearing panel. In such event, the director, or the director's designee, shall give written notification to the board of such action.

(9) A complaint filed by a juvenile parole officer in which revocation of parole is sought must contain the name of the parolee, identify the violation charged and the condition or conditions of parole alleged to have been violated, including the date and approximate location of the violation, and be signed by the juvenile parole officer. A copy must be given to the parolee and the parolee's parents, guardian, or legal custodian at least seven days before a hearing on the complaint is held before the hearing panel.

(10) The board may order the detention of any parolee for failure to appear as required by the summons issued pursuant to subsection (3) of this section.

(11) At least seven days before the appearance of a parolee before the hearing panel, the juvenile parole officer shall provide, in writing, to the parolee and the parolee's parents, guardian, or legal custodian the following:

(a) A statement of the nature of the charges that are alleged to justify revocation or suspension of parole and the substance of the evidence sustaining the charges;

(b) A copy of the complaint unless he or she has already received one;

(c) A listing of the consequences that may follow in the event parole is revoked; and

(d) An advisement that, if the parolee denies the charges, a hearing will be held before the hearing panel, that, at the hearing, the parolee may testify and present witnesses and documentary evidence in defense of the charges or in mitigation or explanation, and that the parolee has the right to counsel at the hearing.

(12) At the hearing before the hearing panel, if the parolee denies the violation, the division of youth services has the burden of establishing by a preponderance of the evidence the violation of a condition or conditions of parole. The hearing panel shall, when it appears that the alleged violation of conditions of parole consists of an offense with which the parolee is charged in a criminal case then pending, continue the parole violation hearing until the termination of the criminal proceeding. Any evidence having probative value is admissible regardless of its admissibility under exclusionary rules of evidence if the parolee is accorded a fair opportunity to rebut hearsay evidence. The parolee has the right to confront and to cross-examine adverse witnesses unless the administrative law judge specifically finds good cause for not allowing confrontation.

(13) If the hearing panel determines that a violation of a condition or conditions of parole has been committed, it shall hear further evidence related to the parolee's disposition. At the conclusion of the hearing, the hearing panel shall advise the parties of its findings and recommendations and of their right to request a review before the board. Such review may be held if a written request is filed within fourteen days after the conclusion of the hearing before the hearing panel. If a review before the board is not requested or the right to review is waived, the findings and recommendations of the hearing panel, if unanimous, become the decision of the juvenile parole board unless the board on its own motion orders a review.

(14) The case of a juvenile alleged or found to have violated the conditions of parole outside the state of Colorado must be handled according to the interstate compact on juveniles, part 7 of article 60 of title 24.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 671, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1004 as it existed prior to 2021.

PART 13

APPEALS

19-2.5-1301. Appeals.

(1) Appellate procedure is governed by the Colorado appellate rules. Initials must appear on the record on appeal in place of the juvenile's and other respondents' names. Appeals must be advanced on the calendar of the appellate court and decided at the earliest practical time.

(2) The prosecution in a delinquency case may appeal any decision of the trial court as provided in section 16-12-102.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 675, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-903 as it existed prior to 2021.

ANNOTATION

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

Juvenile court's finding that a juvenile cannot be restored to competency is a final appealable order. People ex rel. C.Y., 2012 COA 31, 275 P.3d 762.

Juvenile delinquency cases may be appealed to the supreme court after trial. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

An interlocutory appeal is not available to either the state or the respondent in a delinquency proceeding under the Colorado Children's Code. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

Neither the state nor the respondent can prosecute interlocutory appeals in delinquency proceedings. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

C.A.R. 4.1 does not apply. C.A.R. 4.1 cannot be stretched to permit an interlocutory appeal in a delinquency proceeding without doing violence to the distinction carefully drawn by the supreme court between a criminal proceeding and a proceeding in delinquency. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970).

C.A.R. 4.1, which authorizes certain interlocutory appeals in criminal cases, has no application to delinquency proceedings. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

Application of C.A.R. 1(a)(1). Delinquency proceedings are no less subject to the finality requirements of C.A.R. 1(a)(1) than any other type of proceeding. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

Applied in People in Interest of R.R., 43 Colo. App. 208, 607 P.2d 1013 (1979).

19-2.5-1302. Posttrial bail.

A juvenile's application for posttrial bail is governed by part 2 of article 4 of title 16 and section 19-2.5-306, as it relates to bail.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 675, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-904 as it existed prior to 2021.

PART 14

ADMINISTRATION

SUBPART A

IN GENERAL

19-2.5-1401. Responsible agencies.

The department of human services is the single state agency responsible for the oversight of the administration of juvenile programs and the delivery of services for juveniles and their families in this state. In addition, the department of human services is responsible for juvenile parole. The state judicial department is responsible for the oversight of juvenile probation. The department of public safety is responsible for the oversight of community diversion programs and programs funded through the allocation authorized in section 19-2.5-402 (2). The state agencies described in this section shall jointly oversee the application by judicial districts of the placement criteria established by the working group pursuant to section 19-2.5-1404.

Source: L. 2021: Entire section amended, (SB 21-066), ch. 64, p. 254, § 1, effective April 29; entire article added with relocations, (SB 21-059), ch. 136, p. 675, § 2, effective October 1.

Editor's note: (1) This section is similar to former § 19-2-202 as it existed prior to 2021.

(2) This section was numbered as 19-2-202 in SB 21-066 (see L. 2021, p. 254). Those provisions were harmonized with this section as they appear in SB 21-059.

19-2.5-1402. Juvenile community review board.

(1) A board of county commissioners or the city council of the city and county of Denver or more than one board of county commissioners may adopt a written resolution requiring approval by a juvenile community review board of residential community placements within its county of juveniles under commitment to the department of human services. Upon the effective date of such resolution and notice to the department of human services, a juvenile committed to the custody of the department of human services shall not be placed into a residential community placement in that county or region unless and until the placement is approved by the juvenile community review board.

(2) A juvenile community review board may be consolidated with other local advisory boards pursuant to section 24-1.7-103.

(3) Notification of any placement of a juvenile under the jurisdiction of the juvenile parole board must be made to the juvenile community review board prior to or at the time of placement.

(4) (a) Prior to placement of a juvenile in a residential community placement, the juvenile community review board shall review the juvenile's case file. It is the responsibility of the department of human services to provide accurate information regarding the juvenile and the proposed placement to the juvenile community review board. The information must include, but not be limited to, a history of delinquent adjudications, a social history, an educational history, a mental health treatment history, a drug and alcohol treatment history, and a summary of institutional progress. Each juvenile case referred to the board must be reviewed within fourteen days from the date the referral is received.

(b) The board shall review the juvenile's case file and make a decision regarding residential community placement, taking into consideration the results of a validated risk and needs assessment adopted pursuant to section 24-33.5-2402 (1), as it existed prior to its repeal in 2022, by the department of human services, the criteria established by the juvenile community review board based on the interests of the community, and guidance established by the department of human services in consultation with the committee on juvenile justice reform established pursuant to section 24-33.5-2401, as it existed prior to its repeal in 2022. The criteria must be based upon researched factors that have been demonstrated to be correlative to risk to the community.

(c) All names, addresses, and information regarding a juvenile case reviewed by the juvenile community review board are confidential and not disclosed except to the board or its designees, the Colorado bureau of investigation, and any law enforcement agency, without express written permission of the juvenile and the legal custodian.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 675, § 2, effective October 1. **L. 2022:** (4)(b) amended, (HB 22-1211), ch. 79, p. 395, § 10, effective December 31.

Editor's note: This section is similar to former § 19-2-210 as it existed prior to 2021.

19-2.5-1403. Division of youth services - community boards. (Repealed)

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 676, § 2, effective October 1. **L. 2023:** Entire section repealed, (SB 23-210), ch. 251, p. 1426, § 1, effective May 24.

Editor's note: This section is similar to former § 19-2-203.5 as it existed prior to 2021.

19-2.5-1404. Working group for criteria for placement of juvenile offenders - establishment of formula - review of criteria - report.

(1) (a) The executive director of the department of human services and the state court administrator of the judicial department, or any designees of such persons, shall form a working group that includes representatives from:

(I) The division of criminal justice of the department of public safety;

(II) The office of state planning and budgeting;

(III) The Colorado district attorneys' council;

(IV) Law enforcement, including at least one representative from a statewide organization of county sheriffs;

(V) The public defender's office and the office of alternate defense counsel;

(VI) The office of the child representative;

(VII) Juvenile probation;

(VIII) Juvenile court judges and magistrates;

(IX) Local and county governments, including at least three representatives from county departments of human or social services;

(X) The division of youth services;

(XI) The division of child welfare;

(XII) The local juvenile services planning committees, created in section 19-2.5-302; and

(XIII) Organizations that advocate for youth involved in the juvenile justice system.

(a.5) The working group must also include at least two persons directly affected by the incarceration of youth, of whom, at least one person who is or was a youth in the custody of a division of youth services facility.

(b) The working group shall carry out the following duties:

(I) To establish a set of criteria for both detention and commitment for the purposes of determining which juvenile offenders are appropriate for placement in the physical or legal custody of the department of human services. The criteria must conform with section 19-2.5-305.

This set of criteria, when adopted by the department of human services and the judicial department, must promote a more uniform system of determining which juveniles should be placed in the physical custody of the department of human services or in the legal custody of the department of human services so that decisions for placement of a juvenile are made based upon a uniform set of criteria throughout the state. In addition, the criteria must specifically take into account the juvenile's educational needs and ensure the juvenile's access to appropriate educational services. The working group established pursuant to this subsection (1) shall hold a meeting at least four times each year and as necessary to review and propose revision to the criteria established pursuant to this subsection (1) and the formula created pursuant to subsection (1)(b)(V) of this section.

(II) Before January 1, 2021, to develop or adopt by a majority vote of the working group a research-based detention screening instrument to be used statewide to inform placement of juveniles in a detention facility. In developing or adopting the detention screening instrument, the working group shall consult with expert organizations and review research and best practices from other jurisdictions. The working group is also responsible for:

(A) Ensuring that the instrument identifies and mitigates any disparate impacts based on disability, race or ethnicity, gender, sexual orientation, national origin, economic status, or child welfare involvement;

(B) Identifying measures and scoring for the detention screening instrument to determine eligibility for placement in a juvenile detention facility;

(C) Identifying how the instrument is validated and piloted; and

(D) Establishing statewide scoring override policies that minimize subjective decisions to hold a juvenile in a detention facility, while allowing for local flexibility;

(III) Before January 1, 2021, to develop a plan to provide training and technical assistance to screening teams on the implementation of the detention screening instrument, including at least annual refresher training;

(IV) Before January 1, 2021, to develop a plan for the division of youth services to collect, compile, and report to the judiciary committees of the senate and the house of representatives, the health and human services committee of the senate, and the public health care and human services committee of the house of representatives, or any successor committees, annually on the use of secure detention; number and justification of overrides of the detention screening instrument as conducted pursuant to section 19-2.5-303; and, if possible, an analysis of detention screening instrument data to determine if any disparate impacts resulted based on race, ethnicity, gender, sexual orientation, national origin, economic status, or child welfare involvement. The division of youth services shall recommend any necessary changes to appropriations that need to be made prior to fully implementing this section's recommendations. Notwithstanding section 24-1-136 (11)(a)(I), this reporting requirement continues indefinitely.

(V) To establish a formula for the purpose of allocating funds by each judicial district in the state of Colorado for alternative services to placing juveniles in the physical custody of the department of human services or in the legal custody of the department of human services. The allocation must take into consideration such factors as the population of the judicial district, the incidence of offenses committed by juveniles in such judicial district, and other factors as deemed appropriate. The working group shall consider and take into account whether any federal money or matching funds are available to cover the costs of juveniles within the system, including parent fees and third-party reimbursement as authorized by law or reimbursements under Title IV-E of the federal "Social Security Act", as amended.

(VI) Before January 1, 2021, to establish criteria for juveniles served through alternative services funded pursuant to subsection (1)(b)(V) of this section. The criteria must prioritize:

(A) Preadjudicated juveniles eligible for placement in a detention facility as determined by results from a detention screening instrument;

(B) Juveniles who are in secure detention; and

(C) Juveniles under the supervision of probation when the results of a detention screening instrument indicate that the juvenile is eligible for detention.

(VII) At least annually review data collected by the division of youth services on the use of funding pursuant to subsection (1)(b)(V) of this section and its impact on the use of juvenile detention. The working group shall identify the measures that it will collect as part of its review of the impact of preadjudicated funding on detention pursuant to this section.

(VIII) Before January 1, 2021, to adopt a relative information form concerning a juvenile's potential need for services or placement. The information form must be available at each judicial district to each parent or legal guardian of a juvenile screened for detention and participation in alternative services. The information form must:

(A) Advise the parent or legal guardian that he or she is required to provide the requested information fully and completely; and

(B) Require the parent or legal guardian to list the names, addresses, email addresses, and telephone numbers of every grandparent, relative, kin, and person with a significant relationship with the juvenile and any comments concerning the appropriateness of the juvenile's potential need for services from or placement with those persons.

(IX) Before January 1, 2021, to develop a system of graduated responses and rewards to guide parole officers in determining how best to motivate positive juvenile behavior change and the appropriate response to a violation of terms and conditions of juvenile parole. Graduated responses means an accountability-based series of sanctions and services designed to respond to a juvenile's violation of parole quickly, consistently, and proportionally and incentives to

motivate positive behavior change and successful completion of parole and the juvenile's reentry and treatment goals.

(X) Repealed.

(2) Of the members of the working group established pursuant to subsection (1) of this section, the executive director of the department of human services and the state court administrator of the judicial department, or any designees of such persons, have final authority to carry out the duty of creating the set of criteria pursuant to subsections (1)(b)(I) to (1)(b)(IV) of this section and creating the formula pursuant to subsections (1)(b)(V) to (1)(b)(VII) of this section. This authority can only be exercised after working with and participating in the working group process established in this section.

(3) (a) On or before October 31, 2021, and at least four times each year thereafter and as necessary to perform the duties described in this subsection (3), the working group shall convene for the purpose of examining the availability of alternatives to youth detention and the use of detention beds, and examining necessary investments in alternatives to youth detention, including less restrictive placements that serve alleged and adjudicated juvenile offenders and community-based services that allow alleged and adjudicated juvenile offenders to live with family or kin. The working group shall carry out the following duties:

(I) By October 31, 2022, the working group shall develop performance standards and outcome measures to evaluate the degree to which alleged and adjudicated offenders are in the least restrictive setting with appropriate services. The performance standards and outcome measures must:

(A) Evaluate whether the number of alternative placements, range of services offered by such placements, and community-based services available meet the needs of youth in each judicial district and county; and

(B) Determine whether and how specific data and outcome measures must be reported to evaluate the efficacy of less restrictive placements and community-based services.

(II) The working group shall advise the department of human services concerning policies, procedures, and best practices related to serving youth in the least restrictive setting.

(III) The working group shall review the data provided by the department of human services pursuant to subsection (3)(b) of this section, and provide recommendations:

(A) To enhance the continuum of community-based services and placement options for alleged and adjudicated juvenile offenders, including recommendations to improve availability and quality of less restrictive alternative placements and community-based services for youth;

(B) Regarding any changes to secure detention bed capacity limits and the allocation of detention beds across the state; and

(C) For future data collection and reporting to assist the working group in completing its duties.

(b) On or before July 1, 2023, and on or before July 1 each year thereafter, the department of human services shall submit a report to the working group, the judiciary committees of the senate and the house of representatives, or any successor committees, and the health and human services committee of the senate and the public and behavioral health and human services committee of the house of representatives, or any successor committees. The report must include the data collected pursuant to subsection (3)(d) of this section for the prior calendar year and the following:

(I) An analysis of the data collected in accordance with the performance standards and outcome measures developed pursuant to subsection (3)(a)(I) of this section, and an analysis of the progress toward meeting the performance standards and outcome measures developed pursuant to subsection (3)(a)(I) of this section;

(II) The status of implementation of efforts guided by the working group's recommendations pursuant to subsection (3)(a)(II) of this section;

(III) An analysis of the continuum of in-home and out-of-home placement options and supports for alleged juvenile offenders, including the current availability capacities of the options and supports, including:

(A) An analysis of the availability of and demand for less restrictive alternative placements in each judicial district and county, including but not limited to residential treatment facilities, qualified residential treatment programs, nonqualified residential treatment programs, residential community placements, shelter placements, and family-type settings, including but not limited to foster care;

(B) An analysis of the availability and use of funding for less restrictive alternative placements in each judicial district and county, including but not limited to residential treatment facilities, qualified residential treatment programs, nonqualified residential treatment programs, residential community placements, shelter placements, and family-type settings, including but not limited to foster care;

(C) An analysis of the availability of and demand for community-based services in each judicial district and county offered to alleged and adjudicated juvenile offenders that assist in allowing children to live with family or kin, including the types of community-based services available and capacity for each type of service in each judicial district and county; and

(D) An analysis of the availability and use of funding for community-based services in each judicial district and county offered to alleged and adjudicated juvenile offenders, including the amount of funding spent on different types of services;

(IV) An analysis of barriers to placing youth in less restrictive alternative placements;

(V) The number of youth in detention awaiting placement in a less restrictive community setting;

(VI) The number of youth in detention charged by direct filing pursuant to section 19-2.5-801 by judicial district or county, and the average length of stay in detention for these youth;

(VII) An analysis of the number of youth placed in less restrictive alternative placements, including but not limited to residential treatment facilities, qualified residential treatment programs, nonqualified residential treatment programs, residential community placements, shelter placements, and family-type settings, including but not limited to foster care, and the length of stay in these placements for alleged and adjudicated offenders;

(VIII) An analysis of the involvement of youth and their families, and their satisfaction with less restrictive alternative placements;

(IX) An analysis of the number of alleged and adjudicated juvenile offenders who are served by county departments through their child welfare systems and the impact on those county departments;

(X) The number of youth, by age and by judicial district, who at the time they received services from a county department, including, but not limited to, services received through prevention services, an assessment, or an open dependency and neglect case:

(A) Had an open delinquency case in a district court;

(B) Were on juvenile probation; or

(C) Had a juvenile deferred sentence;

(XI) The number of youth, by age and by judicial district, who at the time they were placed in out-of-home placement by a county department:

(A) Had an open delinquency case in a district court;

(B) Were on juvenile probation; or

(C) Had a juvenile deferred sentence;

(XII) The age, race, gender, and disability status for the children described in subsections (3)(b)(X) and (3)(b)(XI) of this section; and

(XIII) The recommendations of the working group made pursuant to subsection (3)(a)(III) of this section.

(c) Notwithstanding section 24-1-136 (11)(a)(I), the report required in subsection (3)(b) of this section continues indefinitely.

(d) Beginning for state fiscal year 2023-24, and for each fiscal year thereafter, the state department shall collect data statewide concerning the following:

(I) The demographic information, including race, ethnicity, gender, age, sexual orientation, gender identity, and disability status, to the extent the information is available, of the youth in each detention facility who are eligible for release from a detention facility without an additional court order if services or a placement are available for the youth but who are being held in detention due to lack of available services or placement;

(II) The number of temporary emergency detention beds, described in section 19-2.5-1407.3 (4), used each day in each catchment area; and

(III) The number of youth released from detention solely because the number of youth detained statewide exceeded the statewide detention bed cap established in section 19-2.5-1514.

(e) (I) The working group shall conduct a study to determine how to identify, who possesses, and the best method to collect and report the following data and information related to juveniles who are detained:

(A) The number of court orders requested in each judicial district to release a youth who could not otherwise be released from detention and the order was requested solely because the number of youth detained in the judicial district exceeded the number of juvenile detention beds allocated by the division of youth services to the judicial district;

(B) The number of youth in each judicial district who could not otherwise be released from detention who were released pursuant to a court order to make a detention bed available in the catchment area; and

(C) The number of youth eligible for release from a detention facility without an additional court order who, after being held in detention for a period of time due to a lack of available services or placement, are released from detention without the identified services or placement, and the number of days between the identification of the need for services or placement and release, for each youth.

(II) The working group shall include the results of the study in its recommendations made pursuant to subsection (3)(a)(III) of this section.

(f) If the department is unable to provide any of the data required in the annual report pursuant to subsection (3)(b) of this section, the department shall include in the report its plan to collect and report on the data that is currently unavailable in the following year. The department shall report the missing data the following year.

Source: L. 2021: IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), and (1)(b)(I) amended and (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), and (3) added, (SB 21-071), ch. 463, p.

3336, § 7, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 677, § 2, effective October 1. **L. 2022:** (1)(b)(X) added, (HB 22-1056), ch. 383, p. 2740, § 2, effective June 7. **L. 2023:** (1)(b)(VII) and IP(3)(b) amended and (3)(d) and (3)(e) added, (HB 23-1307), ch. 442, p. 2588, § 4, effective June 7; (3)(b)(IX) and (3)(b)(X) amended and (3)(b)(XI), (3)(b)(XII), (3)(b)(XIII), (3)(b)(XIV), and (3)(f) added, (HB 23-1249), ch. 287, p. 1721, § 2, effective August 7. **L. 2024:** (3)(b) amended, (HB 24-1450), ch. 490, p. 3409, § 25, effective August 7. **L. 2025:** (1)(b)(X) repealed, (SB 25-235), ch. 139, p. 527, § 2, effective April 28.

Editor's note: (1) This section is similar to former § 19-2-212 as it existed prior to 2021.

(2) Subsections IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3) were numbered as 19-2-212 IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3) in SB 21-071 (see L. 2021, p. 3336). Those provisions were harmonized with subsections IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3) of this section as they appear in SB 21-059.

Cross references: (1) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

(2) For the legislative declaration in HB 23-1307, see section 1 of chapter 442, Session Laws of Colorado 2023. For the legislative declaration in HB 23-1249, see section 1 of chapter 287, Session Laws of Colorado 2023.

19-2.5-1405. Working group - allocation of beds.

(1) The executive director of the department of human services and the state court administrator in the judicial department, or their designees, in consultation with the division of criminal justice of the department of public safety, the office of state planning and budgeting, the Colorado district attorneys' council, and law enforcement representatives, shall form a working group that has the following duties:

(a) To allocate and reallocate, as necessary, a number of juvenile detention beds to each catchment area in the state created pursuant to section 19-2.5-1513, as limited by the number of juvenile beds established pursuant to section 19-2.5-1514. The working group may allocate or reallocate any portion of the detention beds allocated to catchment areas to the judicial districts within those catchment areas. Judicial districts shall not exceed the number of beds allocated to them except for circumstances provided for in subsection (1)(b) of this section.

(b) To develop a mechanism for judicial districts to collaboratively use detention beds allocated to catchment areas but unallocated to judicial districts and a mechanism to loan detention beds to other judicial districts; and

(c) To develop emergency release guidelines that must be used by each judicial district to prevent placement of a juvenile in a juvenile detention facility in excess of the total number of juvenile detention beds established pursuant to section 19-2.5-1514.

(d) (Deleted by amendment, L. 2025).

Source: L. 2021: IP(1) and (1)(b) amended, (SB 21-071), ch. 463, p. 3335, § 5, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 680, § 2, effective October 1. **L. 2025:** Entire section amended, (HB 25-1146), ch. 358, p. 1931, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 19-2-1202 as it existed prior to 2021.

(2) Subsections IP(1) and (1)(b) were numbered as 19-2-1202 IP(1) and (1)(b) in SB 21-071 (see L. 2021, p. 3335). Those provisions were harmonized with subsections IP(1) and (1)(b) of this section as they appear in SB 21-059.

19-2.5-1406. Juvenile probation departments or divisions - service agreements.

(1) The juvenile court is authorized to establish juvenile probation departments or divisions.

(2) Subject to section 13-3-105, the juvenile court is authorized to appoint juvenile probation officers and such other professional and clerical personnel as may be required. Juvenile probation officers have the powers and duties specified in section 19-2.5-1107 and have the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138.

(3) Upon the agreement of the juvenile court judges, the approval of the chief judge in each district or, for the second judicial district, the presiding judge of the Denver juvenile court, and the approval of the chief justice of the supreme court, two or more contiguous judicial districts may combine to form an interdistrict juvenile probation department.

(4) (a) The juvenile court judges are authorized to enter into agreements with the state department of human services, county departments of human or social services, other public agencies, private agencies, or with other juvenile courts to provide supervision or other services for juveniles placed on probation by the court.

(b) The conditions and terms of any such agreement must be set forth in writing, including any payments to be made by the court for the services provided.

(c) Any agreement made pursuant to this subsection (4) may be terminated with ninety-one days written notice by either party.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 681, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-204 as it existed prior to 2021.

ANNOTATION

Juvenile court had no jurisdiction to order the placement of a juvenile in the custody of the department of human services when the district court ordered that juvenile held in county jail awaiting trial on charges filed against the juvenile as an adult. People v. Juvenile Court, 915 P.2d 1274 (Colo. 1996) (decided under former law).

19-2.5-1407. Appropriations to department of human services for services to juveniles - definition.

(1) The general assembly shall appropriate money for the provision of services to juveniles to the department of human services. The department of human services shall allocate such money by each judicial district in the state. The appropriation and allocation must be made based upon the formula developed pursuant to section 19-2.5-1404 (1)(b)(V). The department of human services shall administer the appropriated money. The money appropriated to the department of human services for allocation by each judicial district must be expended in the judicial district by the department of human services for services to juveniles that are intended to prevent the juvenile from being held in detention prior to adjudication, including implementing options provided in the screening instrument described in section 19-2.5-1404; sentenced to detention; or committed to the department of human services or to reduce the length of time the juvenile is held in preadjudication or postadjudication detention or held in a commitment facility operated pursuant to section 19-2.5-1502. If a judicial district has a local juvenile services planning committee, the expenditure of money for juvenile services in the judicial district must be made in accordance with the plan developed pursuant to section 19-2.5-302.

(2) For the purposes of this section, a "juvenile" also includes a youth ten years of age or older but less than seventeen years of age who is habitually truant, as defined in section 22-33-102 (3.5), and who the court has ordered to show cause why the juvenile should not be held in contempt of court pursuant to section 22-33-108 (7), when funds are expended for services that are intended to prevent the youth from being held in detention or sentenced to detention.

(3) Repealed.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 681, § 2, effective October 1. **L. 2022:** (1) amended and (3) added, (HB 22-1056), ch. 383, p. 2738, § 1, effective June 7. **L. 2025:** (3)(f) amended, (SB 25-235), ch. 139, p. 527, § 1, effective April 28.

Editor's note: (1) This section is similar to former § 19-2-310 as it existed prior to 2021.

(2) Subsection (3)(c)(I)(B) provided for the repeal of subsection (3)(c)(I), effective July 1, 2023. (See L. 2022, p. 2738.)

(3) Subsection (3)(f) was amended in SB 25-235, effective April 28, 2025. For the amendments in SB 25-235 in effect from April 28, 2025, to June 30, 2025, see chapter 139, Session Laws of Colorado 2025. (L. 2025, p. 527.)

(4) Subsection (3)(f) provided for the repeal of subsection (3), effective June 30, 2025. (See L. 2025, p. 527.)

19-2.5-1407.3. Appropriation to the department of human services - allocation to judicial districts - provider incentives - appropriation.

(1) For state fiscal year 2023-24, and for each state fiscal year thereafter, the general assembly shall appropriate three million three hundred forty thousand one hundred nineteen dollars from the general fund to the department for youth who are detained or can be placed in lieu of detention.

(2) Of the money appropriated pursuant to subsection (1) of this section, the department shall allocate two hundred thousand dollars for use by the division of youth services to support services for youth who are detained or can be placed in lieu of detention. The division may use the money for any of the following:

(a) Community-based outpatient therapeutic services, including mental and behavioral health services, family therapy services, and substance use treatment and therapy;

(b) Mentorship services for youth, including ensuring continuity of mentorship services after a youth is released from detention; and

(c) Supports to assist with moving youth who require out-of-home placement quickly from detention to the out-of-home placement, including, but not limited to:

(I) Support for a grandparent, kin, or other suitable person for care of a juvenile released to the person's care;

(II) Support for foster parents;

(III) Recruitment of foster parents; and

(IV) Respite child care.

(3) Of the money appropriated pursuant to subsection (1) of this section, the department shall use one million seven hundred eighty thousand one hundred thirty-seven dollars to provide incentives and remove barriers for licensed providers to serve youth who may be placed in community residential facilities or family-like settings in lieu of detention. In order to be eligible to receive an incentive or other funding pursuant to this subsection (3), a provider must be licensed to provide or operate any of the following: Temporary shelter, as defined in section 19-1-103; a residential child care facility, as defined in section 26-6-903; a qualified residential treatment program, as defined in section 26-5.4-102; a psychiatric residential treatment facility, as defined in section 25.5-4-103; therapeutic foster care or treatment foster care, as each is defined in section 26-6-903; or a foster care home, as defined in section 26-6-903 (10).

(4) (a) Of the money appropriated pursuant to subsection (1) of this section, the department shall use one million three hundred fifty-nine thousand nine hundred eighty-two dollars for the provision of temporary emergency detention beds described in subsection (4)(b) of this section.

(b) Thirty-nine emergency detention beds are available statewide. An emergency detention bed does not count toward the limit of juvenile detention beds available pursuant to section 19-2.5-1514. The department shall allocate and reallocate, as necessary, the number of emergency detention beds to each catchment area in the state created pursuant to section 19-2.5-1513. An available emergency detention bed within a judicial district's catchment area may be used by a judicial district in the catchment area if:

(I) The judicial district is presented with a juvenile who meets the criteria for detention pursuant to sections 19-2.5-303 and 19-2.5-304;

(II) All available detention beds allocated to the judicial district by the working group pursuant to section 19-2.5-1405 are fully utilized;

(III) No nonemergency detention beds within the judicial district's catchment area at the initial receiving juvenile detention facility are available;

(IV) Each detention bed loaned by the judicial district to another judicial district, as described in section 19-2.5-1405 (1)(b), has been reverted to the loaning judicial district, unless doing so would require a juvenile to be transported to another facility; and

(V) Services that would mitigate the substantial risk of harm to others that are presented by the juvenile or the juvenile's risk of flight from prosecution are unavailable for a juvenile currently placed in detention in the judicial district as demonstrated in the report pursuant to subsection (4)(c)(IV) of this section.

(c) (I) and (II) (Deleted by amendment, L. 2025).

(III) If a detention bed within the judicial district's allocation becomes available, the juvenile utilizing an emergency detention bed shall revert to the nonemergency detention bed and the requirements in this subsection (4) no longer apply. If a detention bed becomes available within the judicial district's allocation or catchment area but at a different facility, the juvenile may, at the discretion of the judicial district, remain in the emergency detention bed in lieu of transferring to the nonemergency detention bed in a different facility.

(IV) Beginning August 15, 2025, the department shall report on a monthly basis an aggregated report of the status of all youth who are in detention and who are awaiting services that would mitigate the substantial risk of harm to others that are presented by the juvenile or the juvenile's risk of flight from prosecution and the number of emergency beds used by each judicial district or facility.

(5) Repealed.

Source: L. 2023: Entire section added, (HB 23-1307), ch. 442, p. 2584, § 2, effective June 7. **L. 2025:** (4)(b) and (4)(c) amended, (HB 25-1146), ch. 358, p. 1932, § 3, effective July 1.

Editor's note: Subsection (5)(b) provided for the repeal of subsection (5), effective June 30, 2024. (See L. 2023, p. 2584.)

Cross references: For the legislative declaration in HB 23-1307, see section 1 of chapter 442, Session Laws of Colorado 2023.

19-2.5-1407.5. Juvenile placement survey and cost report - repeal.

(1) On or before July 1, 2027, the division of youth services shall publish a report concerning available placements for juveniles who are awaiting mitigating services in the state. The report must include, at a minimum:

(a) The number of available placements for juveniles who are awaiting mitigating services, reported for the state as a whole and for each catchment area;

(b) The number of each type of available placement for juveniles who are awaiting mitigating services, reported for the state as a whole and for each catchment area;

(c) Findings concerning challenges experienced in placing juveniles in each type of placement for juveniles who are awaiting mitigating services, including information concerning costs associated with each type of available placement; and

(d) Findings and recommendations for legislation or policy solutions to alleviate challenges identified pursuant to completing the report.

(2) The division of youth services shall work with providers statewide to identify barriers to placing juveniles in mitigating services and make recommendations to mitigate the barriers. Directives include examining, at a minimum:

(a) Staffing required to coordinate potential placements; and

(b) Identifying placement options and negotiation of daily rates.

(3) On or before July 1, 2027, the division of youth services shall provide its report to the house of representatives health and human services committee and the senate health and human services committee, or their successor committees.

(4) This section is repealed, effective July 1, 2028.

Source: L. 2025: Entire section added, (HB 25-1146), ch. 358, p. 1934, § 4, effective July 1.

SUBPART B

PROGRAMS

19-2.5-1408. Victim-offender conferences - pilot program.

The division of youth services is authorized to establish a pilot program, when funds become available, in its facilities to facilitate victim-initiated victim-offender conferences whereby a victim of a crime may request a facilitated conference with the juvenile who committed the crime, if the juvenile is in the custody of the division of youth services. After such a pilot program is established, the division of youth services may establish policies and procedures for the victim-offender conferences using volunteers to facilitate the conferences. The volunteers shall complete the division of youth services' volunteer and facility-specific training programs and complete high-risk victim-offender training and victim-advocacy training. The division of youth services shall not compensate or reimburse a volunteer or victim for any expenses. If a pilot program is available, and subsequent to the victim's or the victim representative's request, the division of youth services shall arrange a conference only after determining that the conference would be safe and only if the juvenile agrees to participate. The purposes of the conference are to enable the victim to meet the juvenile, to obtain answers to questions only the

juvenile can answer, to assist the victim in healing from the impact of the crime, and to promote a sense of remorse and acceptance of responsibility by the juvenile that may contribute to the juvenile's rehabilitation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 682, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-311 as it existed prior to 2021.

19-2.5-1408.5. Body-worn cameras - pilot program - report.

(1) The division of youth services shall establish a pilot program in one detention facility and one commitment facility requiring each division of youth services staff member who is responsible for direct supervision of youth to wear a body-worn camera while in the facility while interacting with youth. After the pilot program is established, the division of youth services shall establish policies and procedures concerning body-worn cameras, which are subject to review by the division of youth services' policy review committee. The policies and procedures must address, at a minimum:

(a) When body-worn cameras must be activated;

(b) The retention of body-worn camera footage; and

(c) Access to body-worn camera footage, which must ensure appropriate protections of youth privacy, including compliance with laws and regulations, and addresses access by the office of the child protection ombudsman, youth, and youth's counsel who have alleged abuse.

(2) In January of 2028, the department of human services shall make a recommendation regarding whether to continue and expand or eliminate the pilot program to the house of representatives health and human services committee and the senate health and human services committee, or their successor committees, as part of the "SMART Act" presentation required pursuant to part 2 of article 7 of title 2.

Source: L. 2025: Entire section added, (HB 25-1146), ch. 358, p. 1935, § 5, effective July 1.

19-2.5-1409. Juvenile intensive supervision program - creation - elements - role of judicial department.

(1) The judicial department may establish and operate, either directly or by contracting with one or more private organizations, a juvenile intensive supervision program, which may be utilized by any judge in sentencing any juvenile who has been placed on probation and who presents a high risk of future placement within juvenile correctional facilities according to assessment criteria developed pursuant to this section.

(2) The juvenile intensive supervision program created pursuant to subsection (1) of this section must include, but is not limited to, utilization of any or all of the following elements:

(a) Increased supervision of the juvenile by probation officers;

(b) Utilization of specific youth case management approaches;

(c) Community service work assignments;

(d) Restitution programs;

(e) Structured group training regarding problem solving, social skills, negotiation skills, emotion management, creative thinking, value enhancement, and critical reasoning;

(f) Use of electronic or global position monitoring and substance abuse testing to monitor the juvenile's compliance with the program and providing sanctions for failure to comply with the program; and

(g) Individual and family treatment.

(3) The judicial department, with the assistance of a juvenile intensive supervision advisory committee, shall develop assessment criteria for placement in the juvenile intensive supervision program, including the results of a validated risk and needs assessment tool, and judicial department guidelines for implementation of the program and measurement of the outcome of the program. The advisory committee is appointed by the state court administrator and includes, but is not limited to, representatives of the division of youth services in the department of human services and the division of criminal justice of the department of public safety.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 682, § 2, effective October 1.

Editor's note: This section is similar to former §§ 19-2-306 and 19-2-307 as they existed prior to 2021.

ANNOTATION

The enactment of the Juvenile Intensive Supervision Program does not change requirements of former § 19-2-803 (2)(a) (now § 19-2-908 (1)(c)(I)(A)), as such program applies to any juvenile who has been placed on probation and who presents a high risk of future placement within juvenile correctional facilities. People in Interest of M.M.O.P., 873 P.2d 24 (Colo. App. 1993) (decided under former law).

19-2.5-1410. Community accountability program - legislative declaration - creation.

(1) It is the intent of the general assembly that the program established pursuant to this section benefit the state by providing a structured program combining residential and community reintegration components under which certain adjudicated juveniles are subject to an ordered environment affirming the dignity of self and others; promoting the value of education, work, and accountability; adhering to the principals of restorative justice; and developing useful skills that can be applied when the juvenile is reintegrated into the community.

(2) (a) The division of youth services, pursuant to a contract with one or more private entities, shall establish, maintain, and operate a community accountability program, referred to in this section as the "program".

(b) The program must provide a sentencing option for adjudicated juveniles who are at least fourteen years of age but younger than eighteen years of age. An adjudicated juvenile may be sentenced to participate in the program only as a condition of probation. A sentence to the program may be in addition to, but must not be in lieu of, a mandatory sentence required by section 19-2.5-1123. The juvenile court shall consider the program as a sentencing option for higher risk juveniles who would have otherwise been sentenced to detention or out-of-home placement or committed to the department of human services.

(c) A sentence imposed pursuant to this section is conditioned on the availability of space in the program and the division of youth services' determination of whether the juvenile's participation in the program is appropriate. A juvenile may be denied participation in the program upon a determination by the division of youth services that a physical or mental health condition, including severe substance abuse, will prevent the juvenile's full participation in the program. Any juvenile denied participation in the program must be returned to the juvenile court for resentencing.

(d) The judicial department shall provide information to the division of youth services concerning the juvenile's sentencing, including but not limited to the juvenile's criminal history, the presentence investigation report, the risk-need assessment, and demographics pertaining to the juvenile.

(e) The program must be established for up to eighty beds. Pursuant to the contract entered into pursuant to subsection (2)(a) of this section, the division of youth services shall pay only for the actual number of juveniles placed in the program.

(3) If feasible, the program may be established regionally, one in each of the division of youth services' regions. The division of youth services, through a competitive bid process, shall select one or more private entities to operate the program.

(4) (a) The program consists of two integrated components. Each selected entity shall provide both components within the contracted region as follows:

(I) **Component I.** Component I consists of a sixty-day residential program, which may contain, but need not be limited to, the following program elements:

(A) Assessment and treatment planning;

(B) Behaviorally based programming with appropriate sanctions and reinforcements;

(C) Life and cognitive skill development;

(D) Treatment interventions;

(E) Educational and vocational training;

(F) Competency development;

(G) Victim awareness and empathy;

(H) Gender-specific programming; and

(I) Restorative justice programming.

(II) **Component II.** The division of youth services shall administer component II, which consists of a community reintegration phase. For each juvenile entering component II, the division of youth services and the local probation department shall jointly establish a reintegration plan. Component II may contain, but need not be limited to, the following program elements:

(A) Multi-systemic therapy;

(B) Functional family therapy;

(C) Aggression replacement training;

(D) Life skills;

(E) Skills development;

(F) Behaviorally based programming with appropriate sanctions and reinforcements;

(G) Education and vocational training;

(H) Work experience;

(I) Victim empathy;

(J) Victim-offender mediation;

(K) Gender-specific programming; and

(L) Restorative justice programming.

(b) The program may be housed in a privately owned and operated facility or in a state-owned and privately operated facility. The state department of human services and any private contractors in each region shall involve local governments in identifying locations for residential facilities.

(c) The division of youth services shall include a community involvement component in the development of reintegration plans, which may include the creation of community advisory boards.

(5) If a juvenile in the first component of the program would substantially benefit, the division of youth services shall notify the local department of probation who may petition the court for an extension of up to fifteen days in addition to the initial sixty-day period for the first component of the program. The period of time a juvenile spends in the second component of the program must not exceed one hundred twenty days. The entire period of a juvenile's participation in the program must not exceed the length of the juvenile's probation sentence. Whenever a juvenile fails to progress through or complete the first or second component of the program, the juvenile is subject to section 19-2.5-1108 (8) for violating a condition of probation.

(6) The division of youth services and the judicial department shall jointly establish guidelines for the program and for each of the components described in subsection (4) of this section. The division of youth services shall make available necessary support services for the juvenile and the juvenile's family under both components of the program.

(7) The division of youth services shall conduct an ongoing evaluation of the program. On or before January 15 each year, the division of youth services shall submit a report of the evaluation results to the general assembly. Notwithstanding section 24-1-136 (11)(a)(I), the reporting requirements in this subsection (7) continue indefinitely. The division of youth services may contract for the services and labor necessary to perform the ongoing evaluation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 683, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-309.5 as it existed prior to 2021.

19-2.5-1411. Parental responsibility training programs - criteria.

(1) The state department of human services, after consultation with the state department of public safety and the judicial department, shall establish standards and guidelines for parental responsibility training programs for the parent, guardian, or legal custodian of a juvenile or juvenile delinquent. The standards and guidelines must include, but are not limited to, instruction in the following:

(a) Physical, mental, social, and emotional child growth and development;

(b) Skill development for parents in providing for the juvenile's learning and development, including teaching the juvenile responsibility for the juvenile's actions;

(c) Prevention of substance abuse;

(d) Family structure, function, and management; and

(e) The physical, mental, emotional, social, economic, and psychological aspects of interpersonal and family relationships.

(2) The state department of human services is authorized and directed to establish such standards and guidelines within the available resources of the state government and each of the state departments described in subsection (1) of this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 686, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-304 as it existed prior to 2021.

19-2.5-1412. Youth corrections monetary incentives award program - designated monetary custodian.

(1) The division of youth services in the department of human services is authorized to establish, at its discretion, a youth corrections monetary incentives award program, referred to in this section as the "program". The purpose of the program is to provide monetary awards and incentives for academic, social, and psychological achievement to juveniles who were formerly committed to the division of youth services who are on parole, in community corrections, or now off of parole.

(2) If the division of youth services establishes a program, it shall devise, in collaboration with the nonprofit organization designated pursuant to subsection (3) of this section, appropriate participation criteria, application procedures, any necessary organizational structure, and criteria for awarding individual scholarships. Criteria may, but are not required to, include that the juvenile:

(a) Maintains the highest grades possible each academic term;

(b) Makes consistent progress in the juvenile's therapy or other assigned program, if applicable, during each academic term, as determined by the team of professionals who worked with the juvenile while committed to the division of youth services; and

(c) Uses the money earned only for expenses approved as necessary and valid by the division of youth services and the nonprofit organization designated pursuant to subsection (3) of this section.

(3) If the division of youth services establishes a program, it shall, in conjunction with the director of the legislative council, use a request for proposal process to contract with and designate a nonprofit organization, referred to in this section as the "designated nonprofit", to serve as the custodian of money donated to the program through the designated nonprofit. The designated nonprofit shall work with the division of youth services for the purpose of designing the program criteria, accepting funds for program scholarships, and providing a distribution mechanism for such scholarships.

(4) (a) The designated nonprofit and the division of youth services are authorized to solicit, accept, and expend monetary and in-kind gifts, grants, and donations on behalf of the program and for payment of scholarships to juveniles in the program. Any money donated or awarded to the designated nonprofit for the benefit of the program is not subject to appropriation by the general assembly. The designated nonprofit is not the custodian of any money appropriated by the state, which must be annually appropriated by the general assembly to the division of youth services in the department of human services. Any money obtained by the division of youth services or the designated nonprofit that is unexpended and unencumbered at such time the program is dissolved must be distributed according to appropriate federal and state laws governing nonprofit organizations.

(b) If a different nonprofit or private organization is subsequently designated as the custodian of donated money in accordance with this subsection (4), the former designated nonprofit shall promptly transfer to the newly designated nonprofit or private organization any money that is unexpended and unencumbered at the time of the change in designation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 686, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-312 as it existed prior to 2021.

PART 15

FACILITIES

SUBPART A

IN GENERAL

19-2.5-1501. Division of youth services - created - interagency agreements - duties of administrators of facilities in connection with voter registration and casting of ballots - reports - definitions.

(1) (a) There is created within the department of human services the division of youth services, referred to within this section as the "division", the head of which is the director of the division. The executive director of the department of human services shall appoint the director of the division pursuant to section 13 of article XII of the state constitution and the laws and rules governing the state personnel system. The director is a **type 2** entity, as defined in section 24-1-105, who exercises the director's powers and performs the director's duties and functions within the office of the executive director of the department of human services in accordance with this article 2.5.

(b) The purposes of the division are to:

(I) Increase public safety by providing rehabilitative treatment to help youth in the division's care make lasting behavioral changes to prepare themselves for successful transition back to the community;

(II) Promote the physical safety of youth and staff within the division;

(III) Promote a seamless continuum of care from the time of detention or commitment to discharge, in which youths' needs are met in a safe, structured environment with well-trained, caring staff who help youth identify and address their issues, be accountable, and accept responsibility for their actions;

(IV) Enable youth to develop healthy, supportive relationships with peers, adults, family, and members of their neighborhoods and communities;

(V) Provide youth with the tools necessary to become law-abiding, contributing members of the community upon their release; and

(VI) Ensure that the state department of human services upholds the rights established pursuant to sections 19-2.5-1502.5 and 19-2.5-1511 for youth detained or committed to the care and physical custody of a facility operated by the state department of human services.

(2) The division may enter into agreements with the judicial department to combine provision of juvenile parole and probation services. Juvenile probation and parole supervision programs implemented pursuant to such agreements may not include provisions for supervision of juveniles sentenced to the department of corrections.

(3) (a) This subsection (3) applies to any individual committed to a juvenile facility and in the custody of the division who is eighteen years of age or older on the date of the next election.

(b) The administrator of a facility in which an individual described in subsection (3)(a) of this section is committed shall facilitate the voting rights of the individual. In connection with such requirements, the administrator shall provide the individual with information regarding voting rights and how to register to vote and cast a mail ballot, provide the individual with voter information materials upon the individual's request, and ensure that any mail ballot cast by the individual is timely delivered to the designated election official. Notwithstanding any other provision of law, to satisfy the requirements of this subsection (3)(b), the administrator is exempt from any restriction under law on the number of mail ballots an eligible elector may deliver in person to the designated election official.

(c) The administrator and the secretary of state shall post the type or kind of verification satisfying the requirements of section 1-1-104 (19.5)(d) in a prominent place on the public websites maintained by the department of human services and the secretary, respectively. The secretary shall provide notice to the county clerk and recorders as well as other designated election officials throughout the state that such verification constitutes an acceptable form of identification pursuant to section 1-1-104 (19.5) permitting the individuals possessing such identification to register to vote and cast a ballot.

(d) The administrator shall forward applications made pursuant to this subsection (3) on a weekly basis, or on a daily basis during the last week allowed for registration prior to any election, to the county clerk and recorder of the county in which the facility is located, and, if the applicant resides in a different county from the facility, the application must then be forwarded to the county clerk and recorder of the county in which the applicant resides.

(e) For purposes of this subsection (3), "administrator" and "voter information materials" have the same meaning as set forth in section 1-2-210.5 (5).

(4) On or before July 1, 2018, and on or before each July 1 thereafter, the department of human services shall collect recidivism data and calculate the recidivism rates and the educational outcomes for juveniles committed to the custody of the department of human services. Notwithstanding section 24-1-136 (11)(a)(I), the department of human services shall report the recidivism data, recidivism rates, and educational outcomes to the general assembly

annually. The report must denote the demographic characteristics of the population considered in the report. In reporting on recidivism rates, the report must denote the types of criminal offenses committed, delineating between felonies and misdemeanors.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 687, § 2, effective October 1. **L. 2022:** (1)(a) amended, (SB 22-162), ch. 469, p. 3375, § 65, effective August 10. **L. 2024:** (4) amended, (SB 24-030), ch. 13, p. 33, § 2, effective March 6; (1)(b)(IV) and (1)(b)(V) amended and (1)(b)(VI) added, (HB 24-1170), ch. 386, p. 2632, § 2, effective August 7.

Editor's note: This section is similar to former § 19-2-203 as it existed prior to 2021.

Cross references: (1) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

(2) For the legislative declaration in HB 24-1170, see section 1 of chapter 386, Session Laws of Colorado 2024.

19-2.5-1502. Human services facilities - authority.

(1) The department of human services shall establish and operate facilities necessary for the care, education, training, treatment, and rehabilitation of juveniles legally committed to its custody pursuant to section 19-2.5-1127 or 19-2.5-1103. As necessary and when money is available for such purposes, the facilities may include but are not limited to:

(a) Group care facilities and homes, including halfway houses, nonresidential transition programs, day reporting and day treatment centers, and staff secure facilities;

(b) Training schools;

(c) Conservation camps;

(d) Diagnostic and evaluation centers and receiving centers; and

(e) Any programs necessary to implement the purposes of this section for juveniles in community placement.

(2) The department of human services shall cooperate with other governmental units and agencies, including appropriate local units of government, state departments and institutions, and agencies of the federal government in order to facilitate youth training and rehabilitation.

(3) Once a juvenile is committed to the department of human services, the juvenile shall remain in a facility directly operated by the department of human services or in a secure facility contracted for by the department of human services until the juvenile's commitment expires as provided by law, parole status is granted pursuant to part 12 of this article 2.5, or a community placement is approved by order of the juvenile court and by a juvenile community review board, if one exists in the county of proposed placement.

(4) The department of human services shall contract with the department of corrections to house in an appropriate facility operated by the department of human services and, as appropriate, to provide services to any juvenile under the age of fourteen years who is sentenced as an adult to the department of corrections. On reaching fourteen years of age, any juvenile sentenced to the department of corrections shall be transferred to an appropriate facility operated by the department of corrections for the completion of the juvenile's sentence.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 689, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-403 as it existed prior to 2021.

19-2.5-1502.5. Bill of rights for youth in a juvenile facility.

(1) To realize a vision of greater youth success and safer Colorado communities, the state's policy is that a youth detained or committed to the care and physical custody of a facility, as described in section 19-2.5-1502 (1), has the right to:

(a) Be treated with dignity;

(b) Be free to practice the youth's religious faith, provided that the practices or activities do not pose a threat to the safety, order, or security of the juvenile facility;

(c) Be free from discrimination on the basis of race, color, religion, sex, pregnancy, disability, age, marital status, ethnicity, national origin, gender orientation, or sexual identity;

(d) Receive reasonable accommodations related to a disability;

(e) Vote if the youth has the legal right to do so; and

(f) Be free from corporal punishment; harassment; mental or physical abuse; intimidation; property damage; humiliation; or interference with the normal bodily functions of eating, sleeping, or using the bathroom.

(2) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the right to:

(a) Have reasonable access to media and information about the world outside the facility, both locally and nationally;

(b) Review the youth's own record, as allowed by law;

(c) Have reasonable access to phone calls to approved friends, family, and other supports;

(d) Exercise physically on a daily basis, in accordance with the youth's preferences, if reasonable and practicable;

(e) Be informed of facility rules within twenty-four hours after the youth's placement in the facility and have the same rules available on the division of youth services' website, at the juvenile facility, and upon request to the youth's parent or legal guardian;

(f) Be free from mandatory unpaid work outside of basic youth responsibilities such as daily clean-up and maintenance of living areas; and

(g) Live in a trauma-responsive environment informed by trauma-informed practices.

(3) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the following rights related to medical care:

(a) Access to a health-care provider within seventy-two hours after a request for care, or sooner if the circumstances warrant, to assess the need for medically necessary care;

(b) Access to behavioral health services within seventy-two hours after a request for care, or sooner if the circumstances warrant, to assess the need for medically necessary care;

(c) Under the direction of a division of youth services qualified health-care provider, access to necessary and appropriate medications, including medications for substance withdrawal and medication-assisted treatment;

(d) The right to refuse the administration of any pharmaceutical product;

(e) Access to health care related to pregnancy and reproductive health, including prenatal, perinatal, and postnatal care;

(f) The rights provided to a pregnant or postpartum juvenile pursuant to section 19-2.5-1118.5, including, but not limited to, the right to access a pregnancy test and keep the results

confidential; the right to have the pregnancy and postpartum periods considered in seeking a stay of execution of sentence; and a consideration of sentence reduction;

(g) Freedom from leg and waist restraints while pregnant and immediately after delivery; and

(h) Access to gender-affirming care.

(4) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the following rights related to legal issues:

(a) Access to the youth's legal representative, unencumbered access to courts, confidential phone calls and visits with the youth's legal counsel, and the timely delivery of letters to the youth's legal counsel;

(b) Unimpeded phone access to the office of the child protection ombudsman hotline and the agency designated pursuant to the federal "Protection and Advocacy for Individuals with Mental Illness Act", 42 U.S.C. sec. 10801 et seq., as amended, as the state's protection and advocacy system;

(c) The right to file a grievance with staff or a complaint with the office of the child protection ombudsman or the agency designated pursuant to the federal "Protection and Advocacy for Individuals with Mental Illness Act", 42 U.S.C. sec. 10801 et seq., as amended, as the state's protection and advocacy system and not to be subject to punishment or retaliation as a result;

(d) The right to file a grievance in accordance with the division of youth services' policies if the youth feels any of the rights accorded to the youth pursuant to this section have been violated and not to be subject to punishment or retaliation as a result; and

(e) The right to due process in a disciplinary proceeding.

(5) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the following rights:

(a) To not be placed in housing units solely allocated to groups of youth based on the youth's sexual orientation or status as a transgender, non-binary, or intersex youth;

(b) Freedom from searches that are intended solely to determine the youth's physical anatomy;

(c) After review and approval, use of the youth's preferred name and gender, even if not legally updated;

(d) The provision of clothing that fits appropriately; is in accordance with the youth's gender identity; and ensures the youth's safety, dignity, and comfort;

(e) Freedom of expression, provided the expression does not interfere with the rights or safety of others or the safety of the facility;

(f) Personal appearance of the youth's choosing, including facial and head hair, regardless of the youth's gender or gender identity, if it does not interfere with safety and allows for reasonable identification by staff;

(g) Participation in all activities, regardless of the youth's gender identity, unless the activity is a gender-responsive program and the facility director determines that participants of differing genders would be disruptive to the group;

(h) Searches that take into account the youth's privacy and dignity and access to written policies concerning who may perform searches at any time, including policies on cross-gender searches of transgender youth;

(i) After review and approval, an intake and search with an employee matching the youth's gender identity;

(j) Completion of a form with the youth upon intake that details the youth's gender identity;

(k) Confidentiality concerning the youth's gender identity and medical and mental health history, in accordance with existing law; and

(l) Access to separate showers and bathrooms consistent with the youth's gender identity.

(6) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the following rights related to education:

(a) Access to grade-level work and transferable credit for educational courses that will count toward a diploma, whether the youth is from a facility operated by the department of human services or a public school;

(b) The opportunity to take classes, to the extent feasible, that prepare the youth for the youth's desired future, including courses required for college admission, if that is the youth's goal;

(c) If the youth is committed to the care and physical custody of the department of human services and has obtained a GED or a high school diploma, access to post-secondary education;

(d) The full, fair, and equal opportunity to participate, to the extent feasible, in educational and vocational programs, including a school-to-work alliance program, if eligible. Before the department of human services may deny a youth the right to educational or vocational services, the department of human services shall present substantial evidence to justify the denial of this right.

(e) For a youth with a disability recognized by section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended; the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq., as amended; or Colorado's "Exceptional Children's Educational Act", article 20 of title 22, access to a free and appropriate public education.

(7) The department of human services shall update the handbook used by the division of youth services to include the bill of rights set forth in subsections (1) to (6) of this section. The division of youth services shall ensure that every youth who is committed to the care and physical custody of the department of human services receives a copy of the handbook, including the bill of rights.

Source: L. 2024: Entire section added, (HB 24-1170), ch. 386, p. 2632, § 3, effective August 7.

Cross references: For the legislative declaration in HB 24-1170, see section 1 of chapter 386, Session Laws of Colorado 2024.

19-2.5-1503. Eminent domain - detention facility site.

(1) (a) Subject to the provisions of subsection (2) of this section, the department of human services has the right to acquire by eminent domain any real property that is located within the Denver metropolitan area that is necessary for the establishment of one or more juvenile detention facilities. Such real property must be acquired in accordance with articles 1 to 7 of title 38.

(b) Any real property specified in subsection (1)(a) of this section that is already devoted to a public use may be acquired by the department of human services pursuant to this section; except that property owned by the federal government may not be acquired without the consent of the federal government.

(2) Prior to the acquisition of any real property pursuant to subsection (1) of this section, the joint budget committee, established pursuant to section 2-3-201, must review and approve the proposed acquisition.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 690, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-403.5 as it existed prior to 2021.

19-2.5-1504. Facility directors - duties.

(1) The director of the division of youth services shall appoint a director of each state-operated facility established by section 19-2.5-1502 and sections 19-2.5-1527 to 19-2.5-1529 pursuant to section 13 of article XII of the state constitution.

(2) It is the duty of the director of each facility established by section 19-2.5-1502 and sections 19-2.5-1527 to 19-2.5-1529 to:

(a) Report to the executive director of the department of human services at such times and on such matters as the director may require;

(b) Receive juveniles committed to the custody of the department of human services and placed in the director's care pursuant to this article 2.5 and to keep them for rehabilitation, education, and training until discharged by law or pursuant to the rules of the department of human services or released on parole;

(c) Make a careful and thorough evaluation, at intervals no greater than six months, of every juvenile placed under the director's care. The purpose of each evaluation is to ascertain whether:

(I) The juvenile's program should be modified;

(II) The juvenile's transfer to another facility should be recommended to the director; or

(III) The juvenile's release should be recommended to the juvenile parole board;

(d) Take such measures as are necessary to prevent recruitment of new gang members from among the juveniles committed to the custody of the department of human services.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 691, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-205 as it existed prior to 2021.

19-2.5-1505. Juvenile facility employees - rules.

(1) On and after April 1, 2004, the department of human services shall not hire a person who is required to register as a sex offender pursuant to the "Colorado Sex Offender Registration Act", article 22 of title 16, to work at a juvenile facility.

(2) The department of human services shall ensure that any person who is employed to work at a juvenile facility as of April 1, 2004, and who is required to register as a sex offender pursuant to the "Colorado Sex Offender Registration Act", article 22 of title 16, does not have unsupervised contact with a juvenile in the facility on and after April 1, 2004.

(3) If a person, while employed by the department of human services, is convicted of an offense that requires the employee to register as a sex offender pursuant to the "Colorado Sex Offender Registration Act", article 22 of title 16, the employee shall immediately notify the department of human services of the conviction and the registration requirement. The department of human services shall ensure that the employee does not have unsupervised contact with a juvenile in the facility on and after the date it receives notice pursuant to this subsection (3).

(4) The executive director of the department of human services shall adopt such rules as may be necessary to ensure compliance with the requirements of this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 692, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-403.3 as it existed prior to 2021.

19-2.5-1506. Detention center sexual assault prevention program - reports.

(1) The division of youth services created in section 19-2.5-1501 shall develop, with respect to sexual assaults that occur in juvenile facilities, policies and procedures to:

(a) Require disciplinary action for employees who fail to report incidences of sexual assault to the inspector general;

(b) Require the inspector general, after completing an investigation for sexual assault, to submit the findings to the district attorney with jurisdiction over the facility in which the alleged sexual assault occurred;

(c) Prohibit retaliation and disincentives for reporting sexual assaults;

(d) Provide, in situations in which there is reason to believe that a sexual assault has occurred, reasonable and appropriate measures to ensure victim safety by separating the victim from the assailant, if known;

(e) Ensure the confidentiality of prison rape complaints and protection of juveniles who make complaints of prison rape;

(f) Provide acute trauma care for sexual assault victims, including treatment of injuries, HIV prophylaxis measures, and testing for sexually transmitted infections;

(g) Provide, at intake and periodically thereafter, division-of-youth-services-approved, easy-to-understand information developed by the division of youth services on sexual assault prevention, treatment, reporting, and counseling in consultation with community groups with expertise in sexual assault prevention, treatment, reporting, and counseling;

(h) Provide sexual-assault-specific training to division of youth services mental health professionals and all employees who have direct contact with juveniles regarding treatment and methods of prevention and investigation;

(i) Provide confidential mental health counseling to victims of sexual assault;

(j) Monitor victims of sexual assault for suicidal impulses, post-traumatic stress disorder, depression, and other mental health consequences resulting from the sexual assault; and

(k) Require termination of an employee who engages in a sexual assault on or sexual conduct with a juvenile consistent with constitutional due process protections and state personnel system laws and rules.

(2) Investigators trained in the investigation of sex crimes shall investigate allegations of sexual assault. The investigation must include, but need not be limited to, use of forensic rape kits, questioning of suspects and witnesses, and gathering and preserving relevant evidence.

(3) The division of youth services shall annually report the data that it is required to compile and report to the federal bureau of justice statistics as required by the federal "Prison Rape Elimination Act of 2003", Pub.L. 108-79, as amended, to the judiciary committees of the house of representatives and the senate, or any successor committees. Notwithstanding section 24-1-136 (11)(a)(I) to the contrary, the reporting requirements in this subsection (3) continue indefinitely.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 692, § 2, effective October 1. **L. 2022:** IP(1) amended, (SB 22-212), ch. 421, p. 2972, § 39, effective August 10.

Editor's note: This section is similar to former § 19-2-214 as it existed prior to 2021.

19-2.5-1507. Facilities - control and restraint - liability - duty to pursue runaways.

(1) Any facility that houses or provides nonresidential services to adjudicated juveniles pursuant to this article 2.5, whether publicly or privately operated, for short-term or long-term commitment or detention is authorized to respond in a reasonable manner to issues of control and restraint of adjudicated juveniles when necessary. Each facility or program shall establish clearly defined policies and procedures for the short-term restraint and control of adjudicated juveniles housed within the facility or receiving services in the nonresidential program.

(2) Any facility that houses or provides nonresidential services to adjudicated juveniles pursuant to this article 2.5 and any person employed by the facility or program is not liable for damages arising from acts committed in the good-faith implementation of this section; except that the facility or program and any person employed by the facility or program may be liable for acts that are committed in a willful and wanton manner.

(3) Any facility that houses adjudicated juveniles pursuant to this article 2.5 has a duty to notify the court and the local law enforcement agency as soon as possible after discovering that an adjudicated juvenile housed at the facility has run away.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-404 as it existed prior to 2021.

ANNOTATION

Annotator's note. Since § 19-2.5-1507 is similar to § 19-2-404 as it existed prior to the 2021 amendments relocating repealed article 2 of title 19 to this article 2.5, a relevant case decided under that provision has been included in the annotations to this section.

The immunity provided in subsection (2) applies only to actions committed in the good faith implementation of this section. Gilmore v. Concerned Parents of Pueblo, 28 P.3d 963 (Colo. App. 2000), aff'd on other grounds, 47 P.3d 311 (Colo. 2002).

Where the defendant neither alleged nor presented any evidence indicating that the juvenile had been "adjudicated", the immunity provided in subsection (2) does not apply. Gilmore v. Concerned Parents of Pueblo, 28 P.3d 963 (Colo. App. 2000), aff'd on other grounds, 47 P.3d 311 (Colo. 2002).

19-2.5-1508. Out-of-home placement - runaways - duty to notify.

When a juvenile who is sentenced to detention, committed to the department of human services, or otherwise sentenced or placed in out-of-home placement pursuant to section 19-2.5-1103 runs away from the facility or home in which the juvenile is placed, the person in charge of the facility or the foster parent shall notify the court and the local law enforcement agency as soon as possible after discovering that the juvenile has run away from the facility or home.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-920 as it existed prior to 2021.

19-2.5-1509. Administration or monitoring of medications to persons in juvenile institutional facilities.

The executive director of the department of human services has the power to direct the administration or monitoring of medications to persons in juvenile institutional facilities, as defined in section 25-1.5-301 (2)(b), in a manner consistent with part 3 of article 1.5 of title 25.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-416 as it existed prior to 2021.

19-2.5-1510. Facility publications.

Publications of any of the facilities established pursuant to section 19-2.5-1502 and sections 19-2.5-1527 to 19-2.5-1529 intended for circulation in quantity outside such facility is subject to the "Information Coordination Act", section 24-1-136.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-413 as it existed prior to 2021.

SUBPART B

BEDS AND FACILITIES

19-2.5-1511. Juvenile detention services and facilities to be provided by department of human services - education - expenses - definition.

(1) (a) Except as set forth in subsection (1)(c) of this section, the department of human services shall provide detention services for temporary care of a juvenile, pursuant to this article 2.5. The department of human services shall consult on a regular basis with the court in any district where a detention facility is located concerning the detention program at that facility. The department of human services may use staff secure facilities to provide preadjudication and postadjudication detention services.

(b) Detention facilities operated by or under contract with the department of human services, subject to limitations on physical capacity and programs, shall receive and provide care for any juvenile arrested for or convicted of a violation of any provision of articles 1 to 15 of title 33, or any rule promulgated thereunder, or any article of title 42, or any municipal or county ordinance and for any juvenile found in contempt of court in connection with a violation or an alleged violation of any of those articles or any municipal or county ordinance.

(c) The department of human services is not required to receive and provide care for any juvenile who is ten years of age and older but less than thirteen years of age, unless such juvenile has been arrested or adjudicated for a felony or weapons charge pursuant to section 18-12-102, 18-12-105, 18-12-106, or 18-12-108.5.

(2) Detention facilities operated in part by a state court, pursuant to section 13-3-108, must be operated in the same manner by the department of human services, within the limits of available funds appropriated for such purpose.

(3) (a) (I) Juveniles in a juvenile detention facility are exempt from compulsory school attendance requirements pursuant to section 22-33-104 (2)(f). However, it is the intent of the general assembly that the juvenile detention facility and school district in which the facility is located cooperate to ensure that each juvenile who is in detention is offered educational services at the grade level identified for the juvenile in a time frame that aligns with the hourly requirements for attendance specified in section 22-33-104 (1).

(II) The school boards of the school districts that a juvenile detention facility serves or in which the juvenile detention facility is located, when requested by the judge of the juvenile court, shall furnish teachers and any books or equipment needed to provide educational services that align with, and are designed to assist each juvenile in achieving, the statewide model content

standards adopted pursuant to section 22-7-1005 for each juvenile's identified grade level. The school districts and the personnel at the detention facility shall cooperate to ensure that the educational services are available to the juveniles in the facility in a time frame that aligns with the hourly requirements for attendance specified in section 22-33-104 (1).

(b) The expenses incurred by a school district pursuant to subsection (3)(a) of this section, minus the total amount of per-pupil revenues that the school district receives pursuant to article 54 of title 22 for the juveniles in the juvenile detention facility, shall be shared and paid by each school district served in the proportion that the enrollment of each school district bears to the total enrollment of all the districts served.

(c) (I) For the 2006-07 budget year and each budget year thereafter, the expenses incurred by a school district pursuant to subsection (3)(b) of this section shall be shared and paid by the school district, each charter school of the district, and each institute charter school located in the school district. Each charter school of the district and institute charter school shall pay in the proportion that the charter school of the district's or institute charter school's enrollment bears to the total district enrollment.

(II) As used in this subsection (3)(c), "total district enrollment" means:

(A) For the 2022-23 budget year, the total of the pupil enrollment in the school district, plus the district online enrollment, the district preschool program enrollment, and the pupil enrollment in each institute charter school that is located within the school district, as determined in accordance with article 54 of title 22;

(B) For the 2023-24 budget year and budget years thereafter, the total of the pupil enrollment in the school district, plus the district online enrollment and the pupil enrollment in each institute charter school that is located within the school district, as determined in accordance with article 54 of title 22.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1. **L. 2022:** (3)(c)(II) amended, (HB 22-1295), ch. 123, p. 834, § 36, effective July 1.

Editor's note: This section is similar to former § 19-2-402 as it existed prior to 2021.

ANNOTATION

Law reviews. For article, "The Evolution of Colorado's School Attendance Laws:

Moving Toward Prevention and Restoration", see 43 Colo. Law. 63 (July 2014).

Duty of department of institutions to provide detention services is mandatory under subsection (1)(a). People in Interest of S.C., 802 P.2d 1101 (Colo. App. 1989) (decided under former law).

19-2.5-1511.5. Policies concerning use of telephones and other communications services by juvenile detention facilities.

(1) The department of human services shall provide voice communications services to juveniles in the department's custody and who are confined in a juvenile detention facility. The department of human services may supplement voice communications services with other communications services, including, but not limited to, video communication and electronic mail or messaging services. In administering the use of communications services, the department of human services shall not receive any revenue, including commissions or fees.

(2) In administering the use of communications services pursuant to subsection (1) of this section, access to communications services must not be limited beyond what is necessary for routine facility operations. Any communications service provided must be free of charge to the person initiating and the person receiving the communications service.

Source: L. 2023: Entire section added, (HB 23-1133), ch. 421, p. 2477, § 2, effective August 7.

19-2.5-1512. Use of juvenile detention beds.

A juvenile committed to the department of human services pursuant to article 3 of this title 19 must not be placed in a juvenile detention bed unless the juvenile is subject to an action proceeding pursuant to this article 2.5.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 696, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1204 as it existed prior to 2021.

19-2.5-1513. Juvenile detention facilities - catchment areas.

(1) (a) The executive director of the department of human services and the state court administrator in the judicial department shall together establish geographical catchment areas for the juvenile detention facilities operated by or under contract with the department of human services. To the extent practicable, the detention catchment areas must be established to ensure that the juvenile is held in a juvenile detention facility located within the judicial district in which the juvenile's offense is committed. For judicial districts in which a juvenile detention facility is not located, the department of human services shall establish the catchment areas based on considerations of proximity, bed availability, workload, and cost efficiency.

(b) On or before October 1, 1998, and each October 1 thereafter, the working group established in section 19-2.5-1404 shall submit recommendations to the executive director of the department of human services and the state court administrator concerning configuration of the detention catchment areas and the placement of detained juveniles.

(2) On or before December 1, 1998, the executive director of the department of human services and the state court administrator shall submit a description of the detention catchment areas to the joint budget committee and to the judiciary committees of the senate and house of representatives. The executive director and the state court administrator shall annually reexamine the detention catchment areas and submit a description of any changes in the detention catchment area boundaries to the joint budget committee and to the judiciary committees of the senate and house of representatives, or any successor committees, by December 1.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 696, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-402.5 as it existed prior to 2021.

19-2.5-1514. Juvenile detention bed cap.

For the fiscal year 2021-22 and each fiscal year thereafter, the number of available juvenile detention beds statewide is limited to two hundred fifteen.

Source: L. 2021: (4) amended and (5) added, (SB 21-071), ch. 463, p. 3335, § 4, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 696, § 2, effective October 1. **L. 2022:** Entire section amended, (SB 22-212), ch. 421, p. 2972, § 40, effective August 10.

Editor's note: (1) This section is similar to former § 19-2-1201 as it existed prior to 2021.

(2) Subsections (4) and (5) were numbered as § 19-2-1201 (4) and (5) in SB 21-071 (see L. 2021, p. 3335). Those provisions were harmonized with this section as it appears in SB 21-059.

19-2.5-1515. Judicial districts - plans for the cap.

Each judicial district shall annually develop a plan to manage the number of juvenile detention beds allocated or reallocated to the judicial district by the working group pursuant to section 19-2.5-1405 (1)(a). The judicial district shall consider the emergency release guidelines and placement guidelines developed pursuant to section 19-2.5-1405 in its annual plan to manage the beds.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 697, § 2, effective October 1. **L. 2025:** Entire section amended, (HB 25-1146), ch. 358, p. 1932, § 2, effective July 1.

Editor's note: This section is similar to former § 19-2-1203 as it existed prior to 2021.

19-2.5-1516. Juvenile detention facilities - behavioral or mental health disorder screening.

(1) The executive director of the department of human services may implement a behavioral or mental health disorder screening program to screen juveniles held in juvenile detention facilities following adjudication. If the executive director chooses to implement a behavioral or mental health disorder screening program, the executive director shall use the standardized behavioral or mental health disorder screening developed pursuant to section 16-11.9-102 and conduct the screening in accordance with procedures established pursuant to said section.

(2) Prior to implementation of a behavioral or mental health disorder screening program pursuant to this section, if implementation of the program would require an increase in appropriations, the executive director shall submit to the joint budget committee a request for funding in the amount necessary to implement the behavioral or mental health disorder screening program. If implementation of the behavioral or mental health disorder screening program would require an increase in appropriations, implementation of the program is conditional upon approval of the funding request.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 697, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-417 as it existed prior to 2021.

19-2.5-1517. Transfer of detention facilities and equipment.

Whenever the department of human services determines that any property, facilities, and equipment are no longer needed for juvenile detention facilities, the department shall transfer said property, facilities, and equipment back to the county without any cost to the county.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 697, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-412 as it existed prior to 2021.

SUBPART C

FACILITIES - COMMITMENT

19-2.5-1518. Commitment to department of human services.

(1) (a) When a juvenile is placed in a community placement by the department of human services following commitment pursuant to section 19-2.5-1127 or 19-2.5-1103, an administrative review must be conducted every six months after the placement for as long as the juvenile remains in a community placement under the department of human services.

(b) When a juvenile is placed in a community placement for a period of twelve months or longer, a court of competent jurisdiction or an administrative body appointed or approved by the court that is not under the supervision of the department of human services shall conduct a permanency hearing pursuant to the federal "Social Security Act", 42 U.S.C. sec. 675 (5)(C) no later than the twelfth month of the community placement and at least every twelve months thereafter while the juvenile remains in a community placement. At the permanency hearing, the entity conducting the hearing shall determine whether:

(I) Continued community placement is in the best interests of the juvenile and the community;

(II) The juvenile's safety is protected in the community placement;

(III) Reasonable efforts have been made to finalize the juvenile's permanency plan that is in effect at that time;

(IV) Continued community placement is necessary and appropriate;

(V) There has been compliance with the juvenile's case plan;

(VI) Progress has been made toward alleviating or mitigating the causes that necessitated the community placement;

(VII) There is a date projected by which the juvenile will be returned and safely maintained in the home, placed for legal guardianship, or placed in a planned and permanent living arrangement; and

(VIII) Procedural safeguards to preserve parental rights have been applied in connection with the removal of the juvenile from the home, any change in the juvenile's community placement, or any determination affecting family time.

(c) The entity conducting the permanency hearing shall consult with the juvenile, in an age-appropriate manner, concerning the juvenile's permanency plan.

(2) Parole supervision of juveniles committed to the department of human services pursuant to section 19-2.5-1127 or 19-2.5-1103, as determined by the juvenile parole board, must not exceed six months, except as otherwise provided by statute.

(3) When a juvenile is released or released to parole supervision by the department of human services or escapes from the department, the department shall notify the committing court, the district attorney, the Colorado bureau of investigation, and the initiating law enforcement agency. If the juvenile is on parole status, the division of youth services shall notify the juvenile parole board, pursuant to section 19-2.5-1203 (7)(b)(II), of any discharge as a matter of law, any placement change that may impact public safety or victim safety as determined by the division of youth services, and any escape and recapture that occurs during the period of parole.

(4) If the terms and conditions of a juvenile's parole include the condition that the juvenile attend school, the department of human services shall notify the school district in which the juvenile will be enrolled of this condition.

(5) When a juvenile is released by the department of human services to parole supervision, the payment of any remaining restitution must be a condition of parole.

(6) At least ninety-one days prior to expiration of commitment to the department of human services, notification must be given to the responsible person who had custody of the juvenile immediately prior to the commitment. Reasonable efforts must be made to return custody of the juvenile to the family or responsible person who had custody of the juvenile immediately prior to

the commitment, unless a court of competent jurisdiction orders that custody of the juvenile is with a different person.

(7) When custody of a juvenile who will be under the age of eighteen years at the time of expiration of commitment cannot be determined or none of the resources described in subsection (6) of this section exist, the division of youth services shall make a referral to the last-known county of residence of the responsible person having custody of the juvenile immediately prior to the commitment. The referral to the county must be made by the division of youth services at least ninety-one days prior to the expiration of the juvenile's commitment. The county department of human or social services shall conduct an assessment of the juvenile's child protection needs and, pursuant to rules adopted by the state board, provide services in the best interest of the juvenile. The division of youth services shall work in collaboration with the county department of human or social services conducting the assessment and shall provide parole supervision services as described in section 19-2.5-1204.

(8) If a juvenile who is committed to the department of human services escapes from a facility operated by the department or a facility with which the department contracts, the department shall not count the time the juvenile is on escape status toward completion of the juvenile's commitment.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 697, § 2, effective October 1. **L. 2023:** (1)(b)(VIII) amended, (HB 23-1027), ch. 284, p. 1682, § 12, effective June 1.

Editor's note: This section is similar to former § 19-2-921 (5) to (11) as it existed prior to 2021.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

ANNOTATION

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

Construction of consecutive sentence provisions. Statute requiring the mandatory imposition of consecutive sentences for attempted escape, statute applying the statute on attempted escapes to juvenile offenders, and general children's code statute on commitment of persons to the department of institutions were construed to be in

accord with each other, and the imposition of consecutive sentences was held to be an exception to the general children's code section limiting commitments of persons 18 years of age or older to a total of two years. People in Interest of E.Z.L., 815 P.2d 987 (Colo. App. 1991).

There is nothing unfair or shocking to the conscience either in the trial court's imposition of a two-year commitment for juvenile as provided by former § 19-2-704 (3) or in its refusal to grant credit for pre-dispositional detention. People v. T.S.R., 843 P.2d 105 (Colo. App. 1992).

Juvenile court correctly noted that the maximum sentence the juvenile court can impose under the Colorado Children's Code in the first instance is two years. People v. Rivera, 968 P.2d 1061 (Colo. App. 1997).

Subsection (3)(c) sets a ceiling of two years but sets no floor. A court therefore is not limited to imposing any particular minimum period of commitment in sentencing a juvenile. People in Interest of J.C., 2018 COA 22, 428 P.3d 617.

Applied in J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982); Rocha v. People, 713 P.2d 350 (Colo. 1986).

19-2.5-1519. Contracts and agreements with public and private agencies.

(1) The executive director of the department of human services shall, subject to available appropriations, enter into agreements or contracts deemed necessary and appropriate with any governmental unit or agency or private facility or provider cooperating or willing to cooperate in a program to carry out the purposes of this article 2.5. The contracts or agreements may provide, among other things, for the type of work to be performed at a camp or other facility, the rate of payment for such work, and other matters relating to the care and treatment of juveniles.

(2) Placement of juveniles by the department of human services in any public or private facility not under the jurisdiction of the department shall not terminate the legal custody of the department.

(3) The department of human services has the right to inspect all facilities used by it and to examine and consult with persons in its legal custody who have been placed in any such facility.

(4) (a) On and after April 1, 2004, an entity that contracts with the department of human services for the operation of a private juvenile facility shall not employ a person who is required to register pursuant to the "Colorado Sex Offender Registration Act", article 22 of title 16, to work in the private juvenile facility.

(b) For the purposes of a contract in existence as of April 1, 2004, if a contractor employs a person in a private juvenile facility who is required to register as a sex offender pursuant to the "Colorado Sex Offender Registration Act", article 22 of title 16, the contractor shall ensure that the person does not have unsupervised contact with a juvenile in the facility on and after April 1,

2004. Failure to comply with this subsection (4) constitutes a breach and grounds for termination of the contract.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 699, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-410 as it existed prior to 2021.

ANNOTATION

This section contains no express or implied prohibition on the placement of juveniles in out-of-state facilities. McDonnell v. Juvenile Court, 864 P.2d 565 (Colo. 1993) (decided under former law).

19-2.5-1520. Private facilities for juvenile offenders - requests for proposals - rules.

The executive director of the department of human services shall adopt rules and implement a process to issue requests for proposals with respect to contracts for designing, financing, acquiring, constructing, and operating private facilities for juvenile offenders. The process to issue requests for proposals and privatization contracts must meet the requirements set forth in part 2 of article 1 of title 17 with respect to private adult correctional facilities.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 700, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-411 as it existed prior to 2021.

19-2.5-1521. Juvenile facility - contract for operation. (Repealed)

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 700, § 2, effective October 1. **L. 2022:** (4) amended, (HB 22-1270), ch. 114, p. 518, § 21, effective April 21; entire section repealed, (SB 22-211), ch. 288, p. 2064, § 3, effective May 31.

Editor's note: (1) This section was similar to former § 19-2-411.5 as it existed prior to 2021.

(2) Subsection (4) was amended in HB 22-1270. Those amendments were superseded by the repeal of this section in SB 22-211.

19-2.5-1522. Juveniles committed to department of human services - emergency release.

The department of human services and the judicial department shall establish guidelines for the emergency release of juveniles committed to the custody of the department of human services during periods of crisis overcrowding of facilities operated by the department of human services. The guidelines must take into consideration the best interests of juveniles, the capacity of individual facilities, and the safety of the public.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 701, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-924 as it existed prior to 2021.

19-2.5-1523. Receiving centers - designation.

(1) The department of human services shall designate receiving centers for juvenile delinquents committed to the department pursuant to section 19-2.5-1127 or 19-2.5-1103.

(2) If a change is made in the designation of a receiving center by the department of human services, it shall notify the juvenile courts at least thirty-five days prior to the date that the change takes effect.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 702, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-405 as it existed prior to 2021.

19-2.5-1524. Juveniles - medical benefits application assistance - county of residence - rules.

(1) Beginning as soon as practicable, but no later than January 1, 2009, no later than one hundred twenty days prior to release, commitment facility personnel or state personnel shall assist the parent or legal guardian of the following juveniles in applying for medical assistance pursuant to part 1 or 2 of article 5 of title 25.5 or in applying to the children's basic health plan pursuant to section 25.5-8-109:

(a) A juvenile who was receiving medical assistance pursuant to section 25.5-5-101 (1)(f) or 25.5-5-201 (1)(j), or pursuant to the children's basic health plan pursuant to section 25.5-8-109, immediately prior to entering the juvenile commitment facility and is likely to be terminated from receiving medical assistance while committed or is reasonably expected to meet the eligibility criteria specified in section 25.5-5-101 (1)(f), 25.5-5-201 (1)(j), or 25.5-8-109 upon release; and

(b) A juvenile who is committed to a juvenile commitment facility.

(2) If a juvenile is committed or placed for fewer than one hundred twenty days, commitment facility personnel or state personnel shall make a reasonable effort to assist the juvenile's parent or legal guardian in applying for medical assistance as soon as practicable.

(3) The department of health care policy and financing shall provide information and training on medical assistance eligibility requirements and assistance to the personnel at each commitment facility to assist in and expedite the application process for medical assistance for a juvenile held in custody who meets the requirements of subsection (1)(a) of this section.

(4) (a) For purposes of determining eligibility pursuant to section 25.5-4-205, a juvenile's county of residence is the county specified by the juvenile upon the juvenile's release.

(b) The executive director of the department of health care policy and financing shall promulgate rules to simplify the processing of applications for medical assistance pursuant to subsection (1) of this section and to allow a juvenile determined to be eligible for medical assistance to access the medical assistance upon release and thereafter. If a county department of human or social services determines that a juvenile is eligible for medical assistance, the county shall enroll the juvenile in medical assistance or the children's basic health plan effective upon release of the juvenile. At the time of the juvenile's release, the commitment facility shall give the juvenile or the juvenile's parent or legal guardian information and paperwork necessary for the juvenile to access medical assistance. The applicable county department of human or social services shall provide the commitment facility with the necessary information.

(c) Each juvenile commitment facility administrator shall attempt to enter into prerelease agreements, if appropriate, with the county department of human or social services, the state department of human services, or the department of health care policy and financing in order to:

(I) Simplify the processing of applications for medical assistance or for the children's basic health plan benefits pursuant to section 25.5-8-109, to enroll, effective upon release, a juvenile who is eligible for medical assistance pursuant to section 25.5-5-101 (1)(f) or 25.5-5-201 (1)(j) or the children's basic health plan pursuant to section 25.5-8-109; and

(II) Provide the juvenile or the juvenile's parent or legal guardian with the information and paperwork necessary to access medical assistance immediately upon release.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 702, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-418 as it existed prior to 2021.

19-2.5-1525. Juveniles committed to department of human services - evaluation and placement.

(1) (a) Each juvenile committed to the custody of the department of human services shall be examined and evaluated by the department prior to institutional placement or other disposition.

(b) The evaluation and examination must be conducted at a detention facility and be completed within thirty-five days. The department of human services may, by rule, determine the extent and scope of the evaluation and examination. To the extent possible and relevant, the evidence, reports, examination, studies, and other materials utilized in a sentencing hearing conducted pursuant to section 19-2.5-1102 must also be utilized in evaluation and examination conducted pursuant to this section. This subsection (1)(b) does not apply to an examination and evaluation conducted pursuant to section 19-2.5-1532 (1).

(c) The examination and evaluation must include the use of an objective risk assessment that is based upon researched factors that correlate to a risk to the community. The results of the objective risk assessment must be used to help identify treatment services for the juvenile during the juvenile's commitment and period of parole supervision.

(2) The department of human services shall then place each juvenile in the appropriate state institution or facility as provided in section 19-2.5-1530 or 19-2.5-1519, as indicated by the examination and evaluation.

(3) (a) When the department of human services determines that a juvenile requires placement in a state facility for children with intellectual and developmental disabilities, as defined in article 10.5 of title 27, it shall initiate proceedings pursuant to article 10.5 of title 27 and notify the court.

(b) (I) When the department of human services determines that a juvenile may require treatment for a behavioral or mental health disorder, it shall conduct or have a mental health professional conduct a mental health hospital placement prescreening on the juvenile.

(II) If the mental health hospital placement prescreening report recommends that the juvenile be evaluated, the juvenile may be transferred to a mental health facility operated by the department of human services for evaluation.

(III) If the evaluation report states that the juvenile has a mental health disorder, as described in section 27-65-106, the department of human services shall initiate proceedings pursuant to article 65 of title 27 and notify the court.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 703, § 2, effective October 1. **L. 2022:** (3)(b)(III) amended, (HB 22-1256), ch. 451, p. 3231, § 33, effective August 10.

Editor's note: This section is similar to former § 19-2-922 as it existed prior to 2021.

ANNOTATION

Applied in Leidig v. Delaney, 189 Colo. 186, 539 P.2d 1264 (1975) (decided under former law).

19-2.5-1526. Facility rules - academic and vocational courses.

(1) It is the duty of the department of human services to develop rules necessary for imparting instruction, preserving health, and enforcing discipline of juveniles committed to the department of human services.

(2) The academic courses of study and vocational training and instruction given in the facilities established by section 19-2.5-1502 and sections 19-2.5-1527 to 19-2.5-1529 must include those approved by the department of education for the instruction of pupils in the primary and secondary schools of the state. Full credit must be given by school districts in this state for completion of any semester, term, or year of study instruction by any juvenile who has such earned credit.

(3) The director of the division of youth services may appoint, pursuant to section 13 of article XII of the state constitution, a director and such other officers, teachers, instructors,

counselors, and other personnel as the director considers necessary to transact the business of the schools and may designate their duties. A person shall not be appointed as a teacher or instructor in the schools who is not qualified to serve as a teacher or instructor in the schools under the laws of the state and the standards established by the department of education.

(4) Repealed.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 704, § 2, effective October 1. **L. 2022:** (4) added, (HB 22-1383), ch. 365, p. 2604, § 2, effective August 10.

Editor's note: (1) This section is similar to former § 19-2-414 as it existed prior to 2021.

(2) Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2024. (See L. 2022, p. 2604.)

Cross references: For the legislative declaration in HB 22-1383, see section 1 of chapter 365, Session Laws of Colorado 2022.

ANNOTATION

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

The department of human services has considerable latitude to make assignments and transfers to effectuate its goals. Coupled with the state personnel system sections, the statutory scheme as a whole demonstrates that the legislature intended that the department have significant discretion in directing personnel to carry out its mission. Dept. of Human Servs. v. May, 1 P.3d 159 (Colo. 2000).

Corrections student need not complete final semester at district school. For a district school to require a department of corrections student to complete his final semester at a district school in order to receive his diploma from that school is violative of this section. Department of Insts. ex rel. S.L.G. v. Bushnell, 195 Colo. 566, 579 P.2d 1168 (1978).

Academic work done at department of corrections facilities will be considered the equivalent of work in Colorado school districts. Department of Insts. ex rel. S.L.G. v. Bushnell, 195 Colo. 566, 579 P.2d 1168 (1978).

19-2.5-1527. Lookout Mountain school.

(1) There is established at Golden, Jefferson county, a training school known as the Lookout Mountain school, under the supervision and control of the department of human services.

(2) The school shall provide care, education, training, and rehabilitation for juveniles ten years of age or older who have been committed to the custody of the department of human services pursuant to section 19-2.5-1127 or 19-2.5-1103. In addition, the school may provide care, education, training, and rehabilitation for any juvenile who has been sentenced to the department of corrections and is being housed in a facility operated by the department of human services pursuant to a contract with the department of corrections pursuant to section 19-2.5-1502 (4).

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 704, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-406 as it existed prior to 2021.

ANNOTATION

This section does not dictate that the department of human services alone must perform the education and training services. Rather, the department may contract with other public and private agencies to assist in carrying out its responsibilities. Dept. of Human Servs. v. May, 1 P.3d 159 (Colo. 2000) (decided under former law).

19-2.5-1528. Mount View school.

(1) There is established near Morrison, Jefferson county, a training school known as the Mount View school under the supervision and control of the department of human services.

(2) The school shall provide care, education, training, and rehabilitation for juveniles ten years of age or older who have been committed to the custody of the department of human services pursuant to section 19-2.5-1127 or 19-2.5-1103. In addition, the school may provide care, education, training, and rehabilitation for any juvenile who has been sentenced to the department of corrections and is being housed in a facility operated by the department of human services pursuant to a contract with the department of corrections pursuant to section 19-2.5-1502 (4).

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 705, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-407 as it existed prior to 2021.

19-2.5-1529. Youth camps.

The department of human services may establish and administer youth camps. Staff at youth camps shall provide care, education, training, rehabilitation, and supervision for juveniles ten years of age or older who have been committed to the custody of the department of human services pursuant to section 19-2.5-1127 or 19-2.5-1103.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 705, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-408 as it existed prior to 2021.

19-2.5-1530. Alternate placement.

The executive director of the department of human services may assign any juvenile placed by the department of human services in any facility established pursuant to section 19-2.5-1502, 19-2.5-1527, or 19-2.5-1528 to any other facility established by said sections for educational training, treatment, or rehabilitation programs. The assignment and the transportation of a juvenile to and from such programs on a daily basis does not constitute a transfer or change of placement of the juvenile.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 705, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-409 as it existed prior to 2021.

19-2.5-1531. Juveniles committed to the department of human services - prohibition against the use of restraints on pregnant juveniles.

(1) The staff of the department of human services, in restraining a female juvenile committed to the department of human services or detained in a juvenile facility, shall use the least restrictive restraints necessary to ensure safety if the staff have actual knowledge or a reasonable belief that the juvenile is pregnant. The requirement that staff use the least restrictive restraints necessary to ensure safety must continue during postpartum recovery and transport to or from a juvenile facility.

(2) (a) (I) Staff of the department of human services or medical facility staff shall not use restraints of any kind on a pregnant juvenile during labor and delivery of the child; except that staff may use restraints if:

(A) The medical staff determine that restraints are medically necessary for safe childbirth;

(B) The staff of the department of human services or medical staff determine that the juvenile presents an immediate and serious risk of harm to herself, to other patients, or to medical staff; or

(C) The staff of the department of human services determine that the juvenile poses a substantial risk of escape that cannot reasonably be reduced by the use of other existing means.

(II) Notwithstanding subsection (2)(a)(I) of this section to the contrary, under no circumstances shall staff use leg shackles or waist restraints on a juvenile during labor and delivery of the child, postpartum recovery while in a medical facility, or transport to or from a medical facility for childbirth.

(b) The staff of the department of human services or medical facility authorizing the use of restraints on a pregnant juvenile during labor or delivery of the child shall make a written record of the use of restraints. The record must include, at a minimum, the type of restraint used, the circumstances that necessitated the use of the restraint, and the length of time the restraint was used. The department of human services staff shall retain the record for a minimum of five years and shall make the record available for public inspection with individually identifying information redacted from the record unless the juvenile who is the subject of the record gives prior written consent for the public release of the record. The written record of the use of restraint does not constitute a medical record under state or federal law.

(3) Upon return to a department of human services facility after childbirth, the juvenile is entitled to have a member of the department of human services' medical staff present during any strip search.

(4) When a juvenile's pregnancy is determined, the staff of the department of human services shall inform a pregnant juvenile committed to the department of human services in writing in a

language and in a manner understandable to the juvenile of the provisions of this section concerning the use of restraints and the presence of medical staff during a strip search.

(5) The executive director of the department of human services shall ensure that the staff of the department of human services receive adequate training concerning the provisions of this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 705, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-924.7 as it existed prior to 2021.

19-2.5-1532. Juveniles committed to department of human services - transfers.

(1) The executive director of the department of human services may transfer a juvenile committed pursuant to section 19-2.5-1127 or 19-2.5-1103 among the facilities established pursuant to sections 19-2.5-1502 and 19-2.5-1527 to 19-2.5-1529; except that, before the juvenile is transferred, the juvenile shall be examined and evaluated, and the executive director shall review the evaluation before approving the transfer.

(2) When the executive director of the department of human services finds that the welfare and protection of a juvenile or of others requires the juvenile's immediate transfer to another facility, the executive director shall make the transfer prior to having the juvenile examined and evaluated.

(3) (a) A juvenile committed to the department of human services may be transferred temporarily to any state treatment facility for persons with behavioral or mental health disorders or intellectual and developmental disabilities for purposes of diagnosis, evaluation, and emergency treatment; except that a juvenile may not be transferred to a state treatment facility for persons with mental health disorders until the juvenile has received a mental health hospital placement prescreening resulting in a recommendation that the juvenile be placed in a facility for evaluation pursuant to section 27-65-106. A juvenile committed to the department of human services as an aggravated juvenile offender pursuant to section 19-2.5-1127 or violent juvenile offender pursuant to section 19-2.5-1126 (1)(c) must not be transferred until the treatment facility has a secure setting in which to house the juvenile. The period of temporary transfer pursuant to this subsection (3)(a) must not exceed sixty days.

(b) When a juvenile has remained in the treatment facility for sixty days, the treatment facility shall determine whether the juvenile requires further treatment or services, and, if so, the treatment facility shall confer with the sending facility concerning continued placement. If both

facilities agree that the juvenile should remain in the treatment facility, the executive director of the department of human services shall be notified of the recommendation and may authorize an additional sixty-day placement. When an additional placement is authorized, the court must be notified of the transferred placement.

(c) During each subsequent sixty-day placement period, the juvenile shall be reevaluated by both the treatment facility and the sending facility to determine the need for continued transferred placement. The juvenile remains in transferred placement until the facilities agree that such placement is no longer appropriate. At that time the juvenile must be transferred back to the sending facility or to any other facility that the department of human services determines to be appropriate. The period of placement must not exceed the length of the original commitment to the department of human services unless authorized by the court after notice and a hearing.

(d) When a juvenile is in continued transferred placement and the treatment facility and the sending facility agree that the need for placement of the juvenile is likely to continue beyond the original period of commitment to the department of human services, the treatment facility shall initiate proceedings with the court having jurisdiction over the juvenile pursuant to article 65 of title 27 if the juvenile has a mental health disorder or pursuant to article 10.5 of title 27 if the juvenile has intellectual and developmental disabilities.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 706, § 2, effective October 1. **L. 2022:** (3)(a) amended, (HB 22-1256), ch. 451, p. 3231, § 34, effective August 10.

Editor's note: This section is similar to former § 19-2-923 as it existed prior to 2021.

ANNOTATION

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

The general assembly intended to segregate children found to be in need of supervision from delinquents by providing that the former may not be initially placed in institutions for juvenile delinquents nor may they be transferred by the director of institutions to such institutions without approval of court. The general assembly also set up separate sections of the statute to separate the disposition and punishment of those adjudicated as children in need of supervision from those adjudicated as delinquent. People in Interest of D.R., 29 Colo. App. 525, 487 P.2d 824 (1971).

Applied in Leidig v. Delaney, 189 Colo. 186, 539 P.2d 1264 (1975).

ARTICLE 3

Dependency and Neglect

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PART 1

DEFINITIONS

19-3-100.5. Legislative declarations - reasonable efforts - movement of children and sibling groups.

(1) The general assembly hereby finds and declares that the stability and preservation of the families of this state and the safety and protection of children are matters of statewide concern. The general assembly finds that the federal "Adoption Assistance and Child Welfare Act of 1980", federal Public Law 96-272, requires that each state make a commitment to make "reasonable efforts" to prevent the placement of abused and neglected children out of the home and to reunify the family whenever appropriate.

(2) The general assembly further finds that the federal "Adoption and Safe Families Act of 1997", federal Public Law 105-89, clarifies what constitutes "reasonable efforts" by decreeing that when deciding whether to make such efforts and in the process of making such efforts, the health and safety of the child is the paramount concern. This federal law further encourages expediting permanency planning for children in out-of-home placement by removing barriers to permanency and streamlining entitlement services. The law specifies that one of the goals of all placement decisions, whether leaving the child in the home or placing the child outside the home, is safety for the child.

(3) The general assembly further finds that the implementation of the federal "Adoption Assistance and Child Welfare Act of 1980", federal Public Law 96-272, is not the exclusive responsibility of the state department of human services or of county or district departments of human or social services. Elected officials at the state and local levels must ensure that resources and services are available through state and local social services agencies and through the involvement of the resources of public and private sources. Judges, attorneys, and guardians ad litem must be encouraged to take independent responsibility to ensure that "reasonable efforts" to prevent out-of-home placements have been made only when appropriate, that permanency occurs for children in foster care, and that safe child placements occur in each case.

(4) (a) The general assembly also hereby finds that:

(I) The American Academy of Pediatrics has found that emotional and cognitive disruptions in the early lives of children have the potential to impair brain development. Paramount in the lives of children in foster care is their need for continuity with their primary attachment figures and a sense of permanence that is enhanced when the child's placement is stable.

(II) The American Academy of Pediatrics has found that attachment to a primary caregiver is essential to the development of emotional security and social conscience; and

(III) According to the American Academy of Pediatrics, optimal child development occurs when a spectrum of needs is consistently met over an extended period. Separation of a child from his or her primary caregiver occurring between six months and three years of age is more likely to result in subsequent emotional disturbances for the child than if the separation occurs when the child is older. Repeated moves from home to home compound the adverse consequences of separation. Further, the younger the child and the more extended the period of uncertainty or separation, the more detrimental the separation will be to the child's well-being. Any intervention that separates a child from the child's primary caregiver or person who provides psychological support to the child should be cautiously considered and treated as a matter of urgency and profound importance.

(b) The general assembly further finds that older children in foster care are at a high risk of having long-term mental health issues, dropping out of school, developing alcohol and drug dependence, experiencing promiscuity, and interacting with the criminal justice system. Multiple moves for older children lead to disruption in schooling and meaningful relationships and attachments, including relationships with peers and family of origin. As a result these children have few, if any, long-term connections when they leave foster care, resulting in little support for their growth into independent adults.

(c) The general assembly therefore declares that multiple moves for children in the dependency and neglect system should be discouraged in favor of permanent planning upon which these children can rely for their healthy mental, physical, and emotional development.

(5) Therefore, in order to carry out the requirements addressed in this section, to ensure stability in placements, to preserve families, and to decrease the need for out-of-home placement, the general assembly shall define "reasonable efforts" and identify the services and processes that must be in place to ensure that "reasonable efforts" have been made. The general assembly provides that "reasonable efforts" are deemed to be met when a county or city and county provides services in accordance with section 19-3-208 and when full consideration has been given to the provisions of section 24-34-805 (2).

Source: L. 93: Entire section added, p. 2012, § 1, effective July 1. **L. 94:** Entire section amended, p. 1053, § 2, effective May 4. **L. 98:** Entire section amended, p. 1416, § 1, effective July 1. **L. 2015:** Entire section amended, (HB 15-1337), ch. 328, p. 1340, § 1, effective June 5. **L. 2018:** (5) amended, (HB 18-1104), ch. 164, p. 1134, § 5, effective April 25. **L. 2024:** (3) amended, (HB 24-1222), ch. 155, p. 688, § 5, effective August 7.

ANNOTATION

Questions concerning a child's health and safety are purview of trial court, which retains ultimate decision-making authority in the case. The trial court itself must make decisions regarding visitation and may not delegate this function to third parties. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

An appellate court reviews de novo the juvenile court's ultimate conclusion whether a child protection agency's actions in a dependency and neglect case satisfies its obligations to make reasonable efforts to reunify the family and avoid out-of-home placement of the child. People in Interest of A.S.L., 2022 COA 146, 527 P.3d 404.

Whether the child protection agency satisfied its obligation to make reasonable efforts to reunify the family and avoid out-of-home placement of the child is a mixed question of fact and law. People in Interest of A.S.L., 2022 COA 146, 527 P.3d 404.

A child protection agency's actions in a dependency and neglect case satisfied its obligations to make reasonable efforts to reunify the family and avoid out-of-home placement of the child. People in Interest of A.S.L., 2022 COA 146, 527 P.3d 404.

Articles 3 and 5 of the Children's Code are not interchangeable for purposes of termination of parental rights. Parental rights cannot be terminated under article 5 if a dependency and neglect action under this article 3 is still active. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875.

19-3-101. Definitions. (Repealed)

Source: L. 87: Entire title R&RE, p. 759, § 1, effective October 1. **L. 93:** Entire section amended, p. 2013, § 2, effective July 1; (1) amended, p. 582, § 19, effective July 1. **L. 94:** (1) amended, p. 1084, § 3, effective May 4. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-3-102. Neglected or dependent child.

(1) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another

to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

(b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(c) The child's environment is injurious to his or her welfare;

(d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;

(e) 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;

(f) The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian;

(g) The child is born affected by alcohol or substance exposure, except when taken as prescribed or recommended and monitored by a licensed health care provider, and the newborn child's health or welfare is threatened by substance use.

(2) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has subjected another child or children to an identifiable pattern of habitual abuse; and

(b) Such parent, guardian, or legal custodian has been the respondent in another proceeding under this article in which a court has adjudicated another child to be neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such parent's, guardian's, or legal custodian's abuse or neglect has caused the death of another child; and

(c) The pattern of habitual abuse described in paragraph (a) of this subsection (2) and the type of abuse described in the allegations specified in paragraph (b) of this subsection (2) pose a current threat to the child.

Source: L. 87: Entire title R&RE, p. 760, § 1, effective October 1. **L. 97:** Entire section amended, p. 516, § 2, effective July 1; entire section amended, p. 1433, § 8, effective July 1. **L. 2005:** (1)(g) added, p. 587, § 2, effective July 1. **L. 2020:** (1)(g) amended, (SB 20-028), ch. 186, p. 854, § 5, effective June 30.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section by Senate Bill 97-218 and Senate Bill 97-71 were harmonized.

ANNOTATION

Law reviews. For article, "Review of Colorado Dependency and Neglect Law", see 11 Colo. Law. 3007 (1982).

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

Former subsection (1)(c) (formerly § 19-1-403 (20)(c)). Subsection (1)(c) is not unconstitutionally vague and overbroad. People in Interest of V.A.E.Y.H.D., 199 Colo. 148, 605 P.2d 916 (1980).

Public policy of state is to provide for neglected and dependent child in a manner that will best serve his or her welfare and the interests of society. In re People in Interest of M.M., 184 Colo. 298, 520 P.2d 128 (1974).

The juvenile court does not have jurisdiction over an unborn child in a dependency and neglect action. The Colorado Children's Code defines a "child" as a person under 18 years of age. When the general assembly amended the definition of child in 1967 and removed the reference to an unborn child, the intent was to change the law and no longer subject an unborn child to the provisions of the Children's Code. Additionally, the remedies that are available in dependency and neglect actions support the conclusion that an unborn child is not subject to the Children's Code. The provisions and remedies in the dependency and neglect statutes all relate to a child who has been born. People ex rel. H., 74 P.3d 494 (Colo. App. 2003).

People ex rel. H., cited above, does not preclude the filing of a petition as to a child born with controlled substances in his or her system. Evidence of a parent's prenatal substance abuse is sufficient to establish there will be mistreatment or abuse if the child is placed with the parent after birth. Upon the birth of the child, such evidence may also support the filing of a petition in dependency or neglect under subsection (1)(a) to (1)(c). People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

In order to declare child neglected or dependent as a preliminary to separating him or her from his or her parents or custodians, the evidence must clearly establish its necessity, and state intervention should be limited to instances of neglect and dependency as defined in the Colorado Children's Code. People in Interest of T.H., 197 Colo. 247, 593 P.2d 346 (1979).

Adjudications of neglect or dependency are not made "as to" the parents, but rather relate only to the status of the child. People in Interest of P.D.S., 669 P.2d 627

(Colo. App. 1983); People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

A parent's criminal convictions and pending charges cannot support a dependency and neglect determination, unless there is a link between the parent's convictions and pending charges and the factors set forth in this section. People in Interest of D.M.F.D., 2021 COA 95, 497 P.3d 14.

Specific findings required. Vague references to a child's best interests cannot be substituted for the specific findings required by the Colorado Children's Code. C.M. v. People in Interest of J.M., 198 Colo. 436, 601 P.2d 1364 (1979).

In order to declare a child neglected and dependent, a step ordinarily followed by a disposition proceeding separating him or her from his or her parents or custodians, the evidence must clearly establish that such separation is necessary. State intervention should be limited to the instances of neglect and dependency defined in this section. C.M. v. People in Interest of J.M., 198 Colo. 436, 601 P.2d 1364 (1979).

There is no single adamantine signification in the expressions "dependent child" and "neglected child", but the court must naturally look to the general assembly for the meaning intended to be attached to these words. Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936).

There is no distinction between findings of dependency and neglect. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

Terms "neglected" or "dependent" are used interchangeably in former subsection (20) (now subsection (1)) and by setting these out in the alternative the general assembly intended that "neglected or dependent child" or "dependent or neglected child" would stand for a single concept. People in Interest of D.L.E., 200 Colo. 244, 614 P.2d 873 (1980).

The dependency provisions make no distinction between illegitimate and legitimate dependent children. The terminology thereof, namely "child", clearly negates such a construction. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

Former § 19-1-114 (now § 19-3-103) can bar finding of neglect or dependency under subsection (1) of this section. People in Interest of D.L.E., 200 Colo. 244, 614 P.2d 873 (1980).

A "custodian" does not have the right to care, custody, or control of a child within the meaning of subsection (1)(b). A "legal custodian" does have the right to care, custody, or control of a child within the meaning of subsection (1)(b). A "legal custodian" references a different type of relationship to a child than a "custodian". A paid child care provider is considered a "custodian". Thus, subsection (1)(b) is inapplicable in determining whether a paid child care provider's actions constitute child abuse or neglect. Ansel v. State Dept. of Human Servs., 2020 COA 172M, 480 P.3d 758.

The addition of subsection (1)(g) clarified, but did not change, existing law.

Subsection (1)(g) was intended to expedite dependency and neglect proceedings, and subsection (1)(g) can be applied to a petition filed as to a child born with controlled substances in his or her system. People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

For a child to be found dependent or neglected pursuant to subsection (1)(g), a two-pronged test must be satisfied. First, it must be established by a preponderance of the evidence that the child was born affected by substance exposure, as shown by a positive test for the substance at birth. Second, it must be established that the child's health or welfare is threatened by substance use, either directly or as a result of a parent's substance use -- in this case, the mother's ongoing need for treatment for substance abuse and inability to adequately care for the child as a result of her substance abuse issues. People in Interest of B.C.B., 2025 CO 28, 569 P.3d 74.

A child whose parents have abandoned it is a dependent or neglected child. In re People in Interest of R.L., 32 Colo. App. 29, 505 P.2d 968 (1973).

As is child subjected to mistreatment. In an action to declare children dependent or neglected, the state must show that the parents subjected, or allowed another to subject, the child to mistreatment or abuse. In re People in Interest of R.K., 31 Colo. App. 459, 505 P.2d 37 (1972).

Where welfare and needs are in peril. Under these provisions of the Colorado Children's Code concerning the determination of neglect and dependency, such determination can be sought only in situations where the immediate needs and welfare of a child are in peril, and consequently they represent situations where the doctrine of parens patriae would be applicable. In re People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Child not neglected because condition would improve with change of parents. While the state has a legitimate concern in furthering the best interests of the child, a child cannot be deemed "neglected" merely because it is contended that his condition would be improved by changing his parents or custodians. People in Interest of T.H., 197 Colo. 247, 593 P.2d 346 (1979).

Abandonment is primarily a question of intent. It is more often determined by what one does rather than by what he says. Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954).

Injurious environment allegations against father based solely on mother's conduct were erroneous. Court unwilling to read into subsection (1)(c) a provision allowing for a no-fault adjudication where the dependency and neglect petition is based on allegations of an injurious environment given that the general assembly expressly provided for no-fault adjudication in subsection (1)(e) concerning homelessness and lack of proper care. People ex rel. S.G.L., 214 P.3d 580 (Colo. App. 2009).

In determining whether a child's environment is injurious to their welfare under subsection (1)(c), when a child has been removed from the parents' care, the relevant environment is the one the child would be in if returned to the parents, not

the child's environment in foster care or otherwise in the custody of the department of human services after removal. People in Interest of C.M., 2024 COA 90, 558 P.3d 995.

Abandoned child receiving care from others may be declared dependent and neglected. When a child has been abandoned by its parents, a court may find that the child is dependent and neglected, notwithstanding the fact that the child may be currently receiving adequate care from other persons. People in Interest of F.M., 44 Colo. App. 142, 609 P.2d 1123 (1980).

No religious freedom right to expose child to ill health. The right to practice religion freely does not include the right or liberty to expose the community or the child to ill health or death. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

And allowing conventional medical treatment not unconstitutional. An interpretation of this section to allow conventional medical treatment does not violate the free exercise of religion clauses of the first amendment of the United States constitution and of § 4 of art. II, Colo. Const. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

Child neglected if deprived of care necessary to prevent life-endangering condition. A child who is treated solely by spiritual means is not, for that reason alone, dependent or neglected, but if there is an additional reason, such as where the child is deprived of medical care necessary to prevent a life-endangering condition, the child may be adjudicated dependent and neglected under the statutory scheme. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

At least where a minor suffers from a life-threatening medical condition due to a failure to comply with a program of medical treatment on religious grounds, this section permits a finding of dependency and neglect. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

"For that reason alone" construed. The statutory language, "for that reason alone", allows a finding of dependency and neglect for other "reasons", such as where the child's life is in imminent danger, despite any treatment by spiritual means. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

A child may be neglected or dependent because she lacks proper care through no fault of the parents. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Summary judgment in favor of defendant pursuant to subsection (1)(f) and against mother of 9-year-old child was not appropriate. Even though child had once refused to go home, there was no evidence that child had run away from home, and child's statement that she would consider living part-time with each parent sufficiently raised a genuine issue as to whether child was beyond the control of her mother. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Summary judgment was also inappropriate under subsections (1)(b) to (1)(d) where other than child's claim of abuse, there was no evidence of abuse under

§ 19-3-505 (7)(a) which might have occurred while the child, who also spent time with noncustodial father, was in the mother's custody. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Further, even if court were to characterize the enlarged vaginal opening as evidence of abuse pursuant to § 19-3-505 (7)(a), it would establish only prima facie, not conclusive, evidence that child was neglected or dependent under this section. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Whether to grant summary judgment in a dependency and neglect adjudication involving prospective harm must be decided on a case-by-case basis. The court must determine whether the material facts are disputed. If the material facts are undisputed, the court must apply the statute to the facts and determine whether reasonable minds can draw differing inferences. Depending on the undisputed facts of the case, summary judgment may be appropriate. While a parent's past conduct and current circumstances are likely to be disputed, the possibility of summary judgment in a particular case is not foreclosed. People in Interest of S.N. v. S.N., 2014 CO 64, 329 P.3d 276.

Jury instructions concerning dependency and neglect adjudication were not misleading where instructions were stated in the past tense rather than the present tense. People ex rel. S.X.M., 271 P.3d 1124 (Colo. App. 2011).

Jury instruction was not a proper pattern introductory statement of the case instruction when it incorporated the entire case history from the dependency and neglect petition into the statement-of-the-case instruction to prospective jurors. The case history included unsubstantiated allegations and allegations based on inadmissable evidence. The error impaired the basic fairness of the trial, requiring reversal. People in Interest of M.H-K., 2018 COA 178, 433 P.3d 627.

Presumption afforded parent under Troxel v. Granville, 530 U.S. 57 (2000), that parent is acting and will act in the best interests of the child is overcome by adjudicatory order finding a child dependent or neglected. The mere judicial authorization to file a petition alleging dependency or neglect does not overcome the Troxel presumption. People ex rel. N.G., 2012 COA 131, 303 P.3d 1207.

The Troxel presumption will ordinarily survive a deferred adjudication because a deferred adjudication is not final as to the merits of the allegations set forth in the dependency and neglect petition, especially where the determination is based only on the parent's no-fault admission. People ex rel. N.G., 2012 COA 131, 303 P.3d 1207.

The statutory criteria for adjudicating a child as dependent or neglected satisfies Troxel and does not require that the court find that both parents are unavailable, unable, or unwilling to provide reasonable parental care prior to adjudication. Adjudicatory proceedings are distinct from termination proceedings, and each has different goals and requirements. By requiring the state to prove that neither parent was available, able, and willing to

provide reasonable parental care, the trial court erred in unnecessarily conflating the statutory dependency and neglect criteria with the termination criteria. People in Interest of J.G., 2016 CO 39, 370 P.3d 1151.

Subsection (1)(c) does not require proof of parental fault. Child may be adjudicated dependent or neglected when he or she is in an injurious environment, regardless of the parents' actions or failures to act. People in Interest of J.G., 2016 CO 39, 370 P.3d 1151.

19-3-103. Child not neglected - when.

(1) 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 alone, be considered to have been neglected or dependent within the purview of this article. However, the religious rights of a parent, guardian, or legal custodian shall not limit the access of a child to medical care in a life-threatening situation or when the condition will result in serious disability. In order to make a determination as to whether the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104 (3), order a medical evaluation of the child. If the court determines, on the basis of any relevant evidence before the court, including the medical evaluation ordered pursuant to this section, that the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104 (3), order that medical treatment be provided for the child. A child whose parent, guardian, or legal custodian inhibits or interferes with the provision of medical treatment in accordance with a court order shall be considered to have been neglected or dependent for the purposes of this article and injured or endangered for the purposes of section 18-6-401, C.R.S.

(2) A method of religious healing shall be presumed to be a recognized method of religious healing if:

(a) (I) Fees and expenses incurred in connection with such treatment are permitted to be deducted from taxable income as medical expenses pursuant to regulations or rules promulgated by the United States internal revenue service; and

(II) Fees and expenses incurred in connection with such treatment are generally recognized as reimbursable health-care expenses under medical policies of insurance issued by insurers licensed by this state; or

(b) Such treatment provides a rate of success in maintaining health and treating disease or injury that is equivalent to that of medical treatment.

(3) Refusing an immunization on the grounds of medical, religious, or personal belief considerations, as set forth in section 25-4-903, or opting to exclude immunization notification information from the immunization tracking system established in section 25-4-2403 (7) by itself

does not constitute child abuse or neglect by a parent or legal guardian for the purposes of this article 3.

(4) (a) A person who performs or has performed an action that is lawful pursuant to section 18-18-434, article 170 of title 12, or article 50 of title 44 does not constitute child abuse or neglect by a parent or legal guardian for purposes of this article 3, unless it threatens the health or welfare of a child.

(b) The court shall not restrict or prohibit family time, or determine that family time is not in the child's best interests, based solely on the fact that a person performs or has performed an action that is lawful pursuant to section 18-18-434, article 170 of title 12, or article 50 of title 44, unless the court finds that the child's safety or mental, emotional, or physical health is at risk as a result of the family time.

Source: L. 87: Entire title R&RE, p. 760, § 1, effective October 1. **L. 89:** Entire section amended, p. 924, § 1, effective June 7. **L. 92:** Entire section amended, p. 174, § 2, effective April 16. **L. 93:** (1) amended, p. 1637, § 23, effective July 1. **L. 2020:** (3) added, (HB 20-1297), ch. 264, p. 1266, § 1, effective September 14. **L. 2023:** (4) added, (SB 23-290), ch. 249, p. 1420, § 37, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (4) is similar to former § 12-170-109 (3) as it existed prior to 2023.

ANNOTATION

Law reviews. For article, "Colorado's Bold Move to Legalize Psychedelics", see 53 Colo. Law. 32 (July-Aug. 2024).

This section does not provide an absolute defense to charges of child abuse pursuant to § 18-6-401. Treatment by spiritual means was not a defense where parents failed to obtain medical care necessary to treat a child's life-threatening condition. People v. Lybarger, 790 P.2d 855 (Colo. App. 1989).

19-3-104. Hearings - procedure.

Any hearing conducted pursuant to this article 3 in a county designated pursuant to section 19-1-123 regarding a child who is under six years of age at the time a petition is filed in accordance

with section 19-3-501 (2) must not be delayed or continued unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay or continuance. Whenever any such delay or continuance is granted, the court shall set forth the specific reasons necessitating the delay or continuance and shall schedule the matter within thirty days after the date of granting the delay or continuance. If appropriate, in any hearing conducted pursuant to this article 3 in a county designated pursuant to section 19-1-123 regarding a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall include all other children residing in the same household whose placement is subject to determination pursuant to this article 3.

Source: L. 94: Entire section added, p. 2053, § 4, effective July 1. **L. 2019:** Entire section amended, (HB 19-1219), ch. 237, p. 2355, § 5, effective August 2.

ANNOTATION

When basis for delay is apparent from the record and parents did not object, trial court's failure to make express findings that there was good cause for delay not error. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007); People ex rel. D.M., 186 P.3d 101 (Colo. App. 2008).

The statutory time in which to conduct a termination hearing is not jurisdictional; therefore, parents' failure to raise the issue in the trial court precludes relief on appeal. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007).

The juvenile court did not abuse its discretion in holding a termination hearing remotely via Webex and denying a parent's motion for continuance because the court provided substantially similar procedures that would have been available to a parent at an in-person termination hearing. People in Interest of R.J.B., 2021 COA 4, 482 P.3d 519.

PART 2

GENERAL PROVISIONS

19-3-201. Venue.

(1) (a) Except as provided in subsection (1)(b) of this section, all proceedings brought pursuant to this article 3 must be commenced in the county in which the child resides or is present.

(b) A county department, guardian ad litem or counsel for youth, or other person filing a petition for reinstatement of the parent-child legal relationship as set forth in section 19-3-612

must file the petition for the reinstatement of the parent-child legal relationship in the county or city and county that has legal custody of the child.

(1.5) For purposes of determining proper venue, a child who is placed in the legal custody of a county department shall be deemed for the entire period of placement to reside in the county in which the child's legal parent or guardian resides or is located, even if the child is physically residing in a foster care or residential facility located in another county. In such circumstance, if a child is placed out of the home, the court shall not transfer venue pursuant to subsection (2) of this section during the period of out-of-home placement to any county other than the county in which the child's legal parent or guardian resides or is located.

(2) When proceedings are commenced pursuant to this article 3 in a county other than that of the child's residence, the court in which proceedings were initiated may, on its own motion or on the motion of any interested party, transfer the case to the court in the county where the child's legal parent or guardian resides or is located unless any of the following circumstances exist:

(a) The transfer would be detrimental to the best interests of the child;

(b) Adjudication has not taken place and the case has not been continued pursuant to section 19-3-505 (5);

(c) The legal parent or guardian has a history of frequent moves unless there is evidence of stability in the most recent move indicating an intent to remain in the new residence for six or more months, such as the legal parent or guardian has signed a lease whose term is six or more months;

(d) The case is likely to be closed within three to six months;

(e) The transfer will disrupt continuity or provisions of services; or

(f) The case is an expedited permanency planning case, unless the requirements of subsection (3) of this section have been met. Pursuant to subsection (3) of this section, the presumption that a transfer of the proceedings is not in the child's best interest has been rebutted by a preponderance of the evidence.

(2.5) The county attorney of a county that files a motion to change venue pursuant to this section shall immediately provide notice of the motion to the proposed receiving county. Upon receipt of a motion to change venue, the court shall set a hearing to rule on the motion. The requesting county attorney shall provide fourteen days written notice of the hearing to the office of the county attorney in the proposed receiving county, who shall have a right to file responsive pleadings and appear at the hearing.

(3) In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), it shall be presumed that any transfer of proceedings pursuant to subsection (2) of this section without good cause shown

that results in a delay in the judicial proceedings would be detrimental to the child's best interests. Such presumption may be rebutted by a preponderance of the evidence.

(4) (a) An order granting a change of venue and transferring jurisdiction to the court in the county in which the child resides shall be effective fifteen days after the transferring court signs the order. Within thirty days after signing the order, the transferring court shall forward the court file, including originals or certified copies of all documents and reports, to the receiving court.

(b) The order granting a change of venue and transferring jurisdiction must include:

(I) Notice to the receiving court of whether a respondent parent's counsel and the guardian ad litem or counsel for youth appointed for the child will remain on the case. If a respondent parent's counsel or the guardian ad litem or counsel for youth for the child will not remain on the case, the order must inform the receiving court that the receiving court shall make a new appointment of counsel or guardian ad litem or counsel for youth.

(II) Notice that the transferring court shall vacate any existing hearing date after the effective date of the order.

(5) When venue is transferred, as set forth in subsection (2) of this section, the receiving court shall proceed with the case as if the petition had been originally filed or adjudication had been originally made in that court. The receiving court shall hold an initial hearing in the case within thirty days after the effective date of the order granting a change of venue and transferring jurisdiction to the receiving court.

(6) A motion for change of venue shall be made in writing and shall include a certification by the moving party that the moving party has complied with all statutory requirements. The motion for change of venue shall be mailed to all parties and attorneys of record in the case and to the county attorney in the receiving county.

Source: L. 87: Entire title R&RE, p. 760, § 1, effective October 1. **L. 94:** (2) amended, p. 2053, § 5, effective July 1. **L. 2010:** Entire section amended, (HB 10-1359), ch. 223, p. 968, § 1, effective September 1. **L. 2014:** (1) amended, (SB 14-062), ch. 77, p. 315, § 2, effective August 6. **L. 2016:** (2) amended and (1.5) and (2.5) added, (HB 16-1316), ch. 127, p. 362, § 1, effective August 10. **L. 2018:** IP(2) and (2)(b) amended, (HB 18-1257), ch. 197, p. 1291, § 1, effective August 8. **L. 2022:** (1), IP(4)(b), and (4)(b)(I) amended, (HB 22-1038), ch. 92, p. 440, § 21, effective January 9, 2023.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

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

This statute requires that actions be filed in either the county of the child's residence or in the county where the child is present. In the absence of a waiver by the parties, the trial court did not have discretion to maintain the case in another county. People in Interest of T.L.D., 809 P.2d 1120 (Colo. App. 1991).

Venue proper despite technical legal residence elsewhere. When the proper officer files a petition in dependency in the county where the child is found and the conditions alleged as constituting dependency also exist therein, the venue of a dependency action is in that county despite technical legal residence elsewhere. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947).

19-3-201.5. Change of venue - county department and county attorney responsibilities - rules.

(1) Each county department shall designate a change of venue coordinator to facilitate the transfer of jurisdiction of a case between county departments.

(2) Within fifteen days after a court signs an order pursuant to section 19-3-201 granting a change of venue and transferring jurisdiction, the transferring county department shall:

(a) Provide written case information to the designated change of venue coordinator in the receiving county, which information shall include, but need not be limited to, permanency goals, target dates relating to the case, evaluations, a current family services plan, court reports, dates of placement moves, the progress of the child in placement, all Title IV-E eligibility determinations pursuant to the federal "Social Security Act", as amended, and recommendations for continuing progress in the case;

(b) Update all documentation in the case file, including the record in the state automated system;

(c) Provide information concerning, to the extent known, the physical location of the child's parents, guardians, legal custodians, and relatives; and

(d) (I) Schedule a family engagement meeting involving all parties, county department caseworkers and supervisors, and community providers; or

(II) Conduct a case staffing between county caseworkers and supervisors in the transferring and receiving county departments; or

(III) Submit a written case transfer summary.

(3) Within fifteen days after a court signs an order pursuant to section 19-3-201 granting a change of venue and transferring jurisdiction, the transferring county attorney's office shall forward a complete copy of the case file, excluding any confidential attorney-client communications, to the county attorney's office in the receiving county.

(4) The state department shall promulgate, in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., any rules necessary for the effective transfer of case responsibilities between county departments resulting from a change of venue pursuant to section 19-3-201.

Source: L. 2010: Entire section added, (HB 10-1359), ch. 223, p. 969, § 2, effective September 1.

Cross references: For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

19-3-202. Right to counsel and jury trial.

(1) At the first appearance of a respondent parent, guardian, or legal custodian, the court shall fully advise the respondent of the respondent's legal rights, including the right to a jury trial, the right to be represented by counsel at every stage of the proceedings, and the right to seek the appointment of counsel through the office of respondent parents' counsel established in section 13-92-103, if the respondent is unable to financially secure counsel on the respondent's own. The court shall appoint counsel for a respondent who is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail; held in federal custody; or involuntarily committed, unless the court determines the respondent is able to financially secure counsel on the respondent's own or the respondent chooses to proceed without counsel. The court shall fully explain to the respondent the informational notice of rights and remedies for families prepared pursuant to section 19-3-212 and shall recommend that the respondent discuss such notice with the respondent's counsel. Further, the court shall advise the respondent of the minimum and maximum time frames for the dependency and neglect process, including the minimum and maximum time frames for

adjudication, disposition, and termination of parental rights for a child who is under six years of age at the time the petition is filed in a county designated pursuant to section 19-1-123. Nothing in this section limits the power of the court to appoint counsel prior to the filing of a petition for good cause.

(2) The petitioner, any respondent, the guardian ad litem for the child, or a child who is twelve years of age or older may demand a trial by jury of six persons at the adjudicatory hearing pursuant to section 19-3-505, or the court, on its own motion, may order such a jury to try any case at the adjudicatory hearing pursuant to section 19-3-505.

Source: L. 87: Entire title R&RE, p. 761, § 1, effective October 1. **L. 2003:** (1) amended, p. 1226, § 3, effective August 6. **L. 2014:** (1) amended, (SB 14-203), ch. 281, p. 1141, § 2, effective August 6. **L. 2015:** (1) amended, (HB 15-1149), ch. 116, p. 352, § 4, effective April 24. **L. 2022:** (2) amended, (HB 22-1038), ch. 92, p. 434, § 8, effective January 9, 2023. **L. 2023:** (1) amended, (SB 23-039), ch. 191, p. 953, § 3, effective January 1, 2024.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of Colorado 2023.

ANNOTATION

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

Parent has a statutory right to counsel at a statutorily prescribed proceeding for review of out-of-home placements of children. People in Interest of J.B., 702 P.2d 753 (Colo. App. 1985).

Court erroneously denied father his statutory right to counsel by effectively dismissing counsel by entering a default judgment against father without father being present. The erroneous denial of father's statutory right to counsel during a substantial part of a parental rights termination hearing constituted reversible error per se under the circumstances presented. People ex rel. R.D., 2012 COA 35, 277 P.3d 889.

The waiver of a statutory right to counsel in a termination proceeding must

be voluntary, but it does not need to be knowing and intelligent. A person impliedly waives a statutory right to counsel through actions that clearly manifest an intent to relinquish the right. People in Interest of B.H., 2021 CO 39, 488 P.3d 1026.

A father who threatens to kill his first court-appointed attorney and fails to cooperate with his second court-appointed attorney impliedly waives his right to counsel. People in Interest of B.H., 2021 CO 39, 488 P.3d 1026.

Court must follow the prejudice test in Strickland v. Washington, 466 U.S. 668 (1984), for ineffective assistance of counsel claims in termination of parental rights proceedings. To establish prejudice from counsel's deficient performance in a dependency and neglect proceeding, a party must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. People in Interest of A.R., 2020 CO 10, 456 P.3d 1266; People in Interest of A.L.W, 2020 CO 11, 456 P.3d 1284.

Respondents in a proceeding to terminate parental rights, having made a prior demand, were entitled to a jury trial at the adjudicatory hearing on remand. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Respondent father waived his right to a jury trial by failing to appear at first proceeding and needed to positively assert a demand for a jury trial in a subsequent proceeding in the same case. People in Int. of Kay.W., 2025 CO 48, 570 P.3d 1059.

Indigent parent is not entitled to appointment of expert witness prior to dependency and neglect hearing. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987).

Parent was entitled to court-appointed counsel at the remand and appellate stages of the proceedings. Parent's right to counsel in dependency and neglect proceedings at the trial court level and on appeal are statutory in nature. Father timely requested counsel at both stages, and the court determined that father was indigent. Trial court erred in declining to appoint counsel. People ex rel. A.H., 271 P.3d 1116 (Colo. App. 2011).

An appointed lawyer for an indigent parent during dependency and neglect proceedings cannot withdraw solely because the lawyer determines the appeal to be without merit. Rather the lawyer must nonetheless file petitions on appeal in accordance with appellate rules. A.L.L. v. People, 226 P.3d 1054 (Colo. 2010).

Although father did not formally request counsel, given his incarceration, indigency, and inability to freely appear before the court and attend to the litigation, the juvenile court should have considered father's communications — his petition for appointment of a guardian ad litem — as a request for the appointment of trial counsel or, at the very least, asked if father wanted counsel. In re R.L.S., 2019 COA 112, 451 P.3d 1249.

Failure to appoint counsel at initial detention hearing of dependency and neglect proceeding for mother who declined to invoke right to counsel at such hearing was not error requiring reversal of termination of parental rights. People in Interest of L.L., 715 P.2d 334 (Colo. 1986); People in Interest of V.W., 958 P.2d 1132 (Colo. App. 1998).

A person seeking court-appointed counsel bears the burden of establishing his or her indigency. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

The trial court abused its discretion when it failed to consider any factors other than whether a respondent was automatically eligible under the guidelines and made no findings of fact regarding the point at which the respondent's indigency status and eligibility changed. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

The court is required to consider the respondent's complete financial circumstances by allowing him an opportunity to establish that he lacks the necessary funds, on a practical basis, to retain competent counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

Attorney acting as court-appointed counsel pursuant to a valid court order is not required to submit evidence of the client's indigency status with her motion for payment of attorney fees and costs as appointed counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

The trial court abused its discretion by redetermining respondent's eligibility for court appointed counsel and finding him retroactively ineligible. The court could not change respondent's status without allowing him an opportunity to produce evidence of his total financial circumstances including his practical ability to retain competent counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

In determining whether to authorize payment of a fee in excess of established maximum total fee, a judge should consider whether special circumstances required additional time be spent on the case, including but not limited to a consideration of whether the case required extensive legal research or factual investigation. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

An order for payment of fees in excess of the maximum must include a statement of reasons setting forth the specific special circumstances that justify the excess amount. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

Until the client is found to be ineligible, a court-appointed attorney will be paid by the state and that the client will be required to reimburse the state if he subsequently is found to be ineligible for court-appointed counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

In general, a court-appointed attorney is to be awarded fees and costs at state expense for services rendered from the date of appointment to the date that the court enters an order finding the defendant to be ineligible. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

However, the trial court retains discretion to determine that the state will

pay attorney fees and costs only up to the time at which the client's indigency status changed if the court makes specific findings of fact regarding circumstances that justify such a disposition such as fraud or misrepresentation on the part of appointed counsel. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

If the trial court determines that a person became ineligible at a previous date, the court shall order that the person reimburse the state in whole or in part for the expenses and costs it incurred on that person's behalf. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

Costs may be awarded against the state where there is an express legislative provision for costs against the state or where the state is in the position of a party litigant against whom costs are otherwise legislatively authorized to be awarded. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

Attorneys have standing to raise claims in the context of other proceedings, even though they are nonparties and other procedural avenues may be available to them to pursue their claims. People ex rel. J.L., 121 P.3d 315 (Colo. App. 2005).

Attorney, therefore, has standing to raise his or her claim that trial court erred by denying his or her motion to be relieved of appointment to represent mother. People ex rel. J.L., 121 P.3d 315 (Colo. App. 2005).

In general, attorney fees are not recoverable absent a specific contractual, statutory, or procedural rule providing otherwise. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

And, even when attorney fees are expressly authorized, the court has required some indication of legislative intent to allow such an award against the government. Waters v. Dist. Ct., 935 P.2d 981 (Colo. 1997).

The right of a parent to be represented by counsel "at every stage of the proceedings" does not apply to the department of human services' administrative review, which does not include a child's parents. Mother's due process rights were protected by her opportunity to challenge the department's placement recommendation in court at a motions hearing and a termination of rights hearing, to which she did not avail herself. People in Interest of C.J., 2017 COA 157, 410 P.3d 839.

The right to counsel does not apply to interview with qualified expert witness retained pursuant to the Indian Child Welfare Act (ICWA). Mother did not have a due process right to counsel during the interview in dependency and neglect proceedings. A party to a dependency and neglect proceeding is not entitled to the same due process rights as a defendant in a criminal proceeding. People in Interest of K.N.B.E., 2019 COA 157, 457 P.3d 140.

19-3-203. Right to guardian ad litem and counsel for youth.

(1) Upon the filing of a petition pursuant to section 19-3-502 that alleges abuse or neglect of a child, the court shall appoint a guardian ad litem for any child who is under twelve years of age. The guardian ad litem must be an attorney-at-law licensed to practice in Colorado and approved by the office of the child's representative created in section 13-91-104. Nothing in this section limits the power of the court to appoint a guardian ad litem prior to the filing of a petition for good cause.

(2) Upon the filing of a petition pursuant to section 19-3-502 that alleges abuse or neglect of a child, the court shall appoint counsel for youth for any child or youth who is twelve years of age or older. The counsel for youth must be an attorney-at-law licensed to practice in Colorado and approved by the office of the child's representative created in section 13-91-104. The court may appoint the same attorney, as long as the attorney does not assert there is a conflict of interest as defined under the applicable rules of professional conduct, to represent the best interests of younger siblings who are under twelve years of age as a guardian ad litem and to represent youth in the sibling group who are twelve years of age or older as a counsel for youth. Until the court's jurisdiction is terminated, appointment of counsel for youth pursuant to this section continues. A child's or youth's right to counsel may not be waived. Nothing in this section limits the power of the court to appoint counsel for youth prior to the filing of a petition for good cause.

(3) A guardian ad litem who is currently appointed to represent the best interests of a child or youth pursuant to this section shall transition to client-directed counsel for youth immediately upon a child's twelfth birthday and act in this role until either the case is dismissed or new counsel is appointed, unless the court finds it necessary to appoint a guardian ad litem because the child or youth has diminished capacity, in which case the guardian ad litem remains in that role and the court shall appoint separate counsel for youth for the child. Counsel for youth shall notify the court and parties of the change, and the court shall issue a new order of appointment within seven days.

(4) The guardian ad litem or counsel for youth must be provided with all reports relevant to a case submitted to or made by any agency or person pursuant to this article 3, including reports of examination of the child or youth or persons responsible for the neglect or dependency of the child or youth. The county department shall share with the guardian ad litem or the counsel for youth the reports of fingerprint-based criminal history record checks from the Colorado bureau of investigation and from the federal bureau of investigation if the court orders the county department to share that information with the guardian ad litem or the counsel for youth. The guardian ad litem or counsel for youth must have access to the child or youth and confidential information regarding the child or youth, including but not limited to the child's or youth's educational, medical, and mental health records; social service agency files; court records, including court files involving allegations of abuse or neglect of the child or youth; delinquency

records involving the child or youth; and any other information regarding the child relevant to the issues in the proceeding and reports that form the basis of recommendations made to the court. This section does not confer an independent right to obtain a parent's information or parent's records that are confidential or that are otherwise privileged under state or federal law. The court and social workers assigned to the case shall keep the guardian ad litem or counsel for youth apprised of significant developments in the case, particularly prior to further neglect or dependency court appearances.

(5) The guardian ad litem is charged in general with the representation of the child's best interests. To that end, the guardian ad litem shall make such further investigations as the guardian ad litem deems necessary to ascertain the facts and shall talk with or observe the child involved, examine and cross-examine witnesses in both the adjudicatory and dispositional hearings, introduce and examine the guardian ad litem's own witnesses, make recommendations to the court concerning the child's welfare, appeal matters to the court of appeals or the supreme court, and participate further in the proceedings to the degree necessary to adequately represent the child. In addition, the guardian ad litem, if in the best interest of the child, shall seek to assure that reasonable efforts are being made to prevent unnecessary placement of the child out of the home and to facilitate reunification of the child with the child's family or, if reunification is not possible, to find another safe and permanent living arrangement for the child. In determining whether said reasonable efforts are made with respect to a child, and in making such reasonable efforts, the child's health and safety are the paramount concern.

(6) A person appointed to serve as counsel for youth pursuant to this section shall comply with the Colorado rules of professional conduct, provisions set forth in a chief justice directive concerning the court appointment of counsel for youth in this title 19, and subsequent chief justice directives or practice standards established by rule or directive of the chief justice pursuant to section 13-91-105 concerning the duties and responsibilities of a guardian ad litem and counsel for youth in legal matters affecting children or youth. Counsel for youth shall participate fully in the proceedings to the degree necessary to represent the youth, including appealing matters to the court of appeals or the supreme court.

(7) A guardian ad litem may be appointed for a child or youth twelve years of age or older if necessary because the child or youth has diminished capacity. The court shall not consider age or developmental maturity as the sole basis for an appointment of a guardian ad litem pursuant to this section.

Source: L. 87: Entire title R&RE, p. 761, § 1, effective October 1. **L. 92:** (1) amended, p. 224, § 9, effective July 1. **L. 93:** (3) amended, p. 2013, § 3, effective July 1. **L. 98:** (3) amended, p. 1417, § 3, effective July 1. **L. 2001:** (3) amended, p. 846, § 7, effective June 1. **L. 2015:** (1) and (2) amended, (SB 15-087), ch. 263, p. 1012, § 8, effective June 2. **L. 2021:** (4) and (5) added, (HB 21-1094), ch. 340, p. 2215, § 4, effective June 25. **L. 2022:** (4) amended, (HB 22-1245), ch.

88, p. 418, § 3, effective August 10; entire section amended, (HB 22-1038), ch. 92, p. 434, § 9, effective January 9, 2023. **L. 2026:** (6) amended, (HB 26-1227), ch. 269, p. 1528, § 2, effective August 12.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-105 and 19-10-113 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (4) was amended in HB 22-1245. Those amendments were superseded by the amendment of this section in HB 22-1038, effective January 9, 2023.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (3), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For Supreme Court directive, see "Colorado Supreme Court Issues a Directive on GALs in Cases Under CRS Title 19", 25 Colo. Law. 17 (Mar. 1996). For article, "The Role of Guardian ad Litem: Changes in the Wind", see 27 Colo. Law. 73 (Nov. 1998). For article, "Ethical Issues for Guardians ad Litem Representing Children in Dependency and Neglect Cases", see 31 Colo. Law. 43 (Oct. 2002). For article, "Report-Writing Tips for Guardians ad Litem in Dependency and Neglect Cases", see 31 Colo. Law. 87 (Oct. 2002). For casenote, "A Colorado Child's Best Interests: Examining the Gabriesheski Decision and Future Policy Implications", see 85 U. Colo. L. Rev. 537 (2014). For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023). For article, "Disclosure and Discovery in Dependency and Neglect Cases", see 54 Colo. Law. 44 (Jan.-Feb. 2025). For article, "Safeguarding Children's Voices in Child Protective Proceedings", see 102 Denv. L. Rev. 41 (2024).

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

The state is the exclusive party to file a petition in dependency and neglect and a

guardian ad litem has no authority to assume the role of the state. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986), overruled in part in People in Interest of R.M.P., 2025 CO 34, 569 P.3d 1202.

The state, in its role as parens patriae, is the sole party that may prosecute dependency and neglect proceedings. Nothing in this code gives a guardian ad litem or a counsel for youth authority to prosecute a dependency and neglect petition. People in Interest of R.M.P., 2025 CO 34, 569 P.3d 1202.

However, the trial court is not required to dismiss a dependency and neglect petition merely because the state chooses, for any reason, not to pursue the proceedings. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986), overruled in People in Interest of R.M.P., 2025 CO 34, 569 P.3d 1202, to the extent the R.E. opinion allowed a non-state party to prosecute a dependency and neglect petition when the state has determined that doing so would not be a valid exercise of its parens patriae authority.

Dependency and neglect petition may not be dismissed over the objection of the guardian ad litem. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986), overruled in People in Interest of R.M.P., 2025 CO 34, 569 P.3d 1202, to the extent the R.E. opinion allowed a non-state party to prosecute a dependency and neglect petition when the state has determined that doing so would not be a valid exercise of its parens patriae authority.

If there is such an objection, the trial court must conduct a hearing and specifically determine whether the petition is supported by a preponderance of the evidence and the child is in fact dependent and neglected. That determination may be appealed by the guardian ad litem. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986), overruled in People in Interest of R.M.P., 2025 CO 34, 569 P.3d 1202, to the extent the R.E. opinion allowed a non-state party to prosecute a dependency and neglect petition when the state has determined that doing so would not be a valid exercise of its parens patriae authority.

This section makes it clear that the performance of the guardian ad litem's duties is intended primarily to benefit the child. People ex rel. D.L.C., 70 P.3d 584 (Colo. App. 2003).

Violation of the guardian ad litem's duties does not interfere with a parent's rights. People ex rel. D.L.C., 70 P.3d 584 (Colo. App. 2003).

Quasi-judicial immunity. A court appointed guardian ad litem in service of the public interest in the welfare of children is entitled to absolute quasi-judicial immunity. Short by Ossterhous v. Short, 730 F. Supp. 1307 (D. Colo. 1990).

Guardian ad litem is not required to make a recommendation in a hearing regarding the termination of parental rights. People in Interest of M.W., 796 P.2d 66 (Colo. App. 1990).

Determination of whether a guardian ad litem may be examined and cross-examined depends on the manner in

which the guardian chooses to proceed in fulfilling the statutory requirements of the position. If a guardian presents a recommendation based on an independent investigation, the facts of which have not otherwise been introduced into evidence, the guardian functions as a witness in the proceedings and, thus, should be subject to examination and cross-examination as to the bases for the opinion and recommendation. If the guardian's recommendations are based upon the evidence received by the court from other sources, then they are analogous to arguments made by counsel and examination and cross-examination should not be permitted. Therefore, the trial court did not err in limiting a mother's examination of her children's guardian ad litem during the hearing on terminating the parent-child legal relationship where the record demonstrated that the guardian had chosen to examine the witnesses called by others and to present his recommendations in the form of legal argument based upon the facts and opinions testified to by others. People in Interest of J.E.B., 854 P.2d 1372 (Colo. App. 1993).

Grandparent who was allowed to intervene in dependency and neglect case was not entitled to be treated as the child's representative. When the state, the guardian ad litem, and the father agreed to dismiss the petition over grandmother's objection, the court was not required to hold an evidentiary hearing before granting the dismissal. People in Interest of G.S., 820 P.2d 1178 (Colo. App. 1991).

Evaluation of mother's relationship with her children not privileged under attorney-client privilege since mother requested court to appoint the psychologist. Subsection (2) requires the psychologist's reports be disclosed to the children and the children's guardian and prevented the privilege from attaching. People in Interest of O.J.S., 844 P.2d 1230 (Colo. App. 1992).

19-3-204. Temporary protective custody. (Repealed)

Source: L. 87: Entire title R&RE, p. 761, § 1, effective October 1. **L. 90:** Entire section repealed, p. 1037, § 6, effective April 3.

19-3-205. Continuing jurisdiction.

(1) Except as otherwise provided in this article 3, the jurisdiction of the court over any child or youth adjudicated as neglected or dependent shall continue until the child or youth becomes eighteen and one-half years of age unless earlier terminated by court order; except that:

(a) If a determination is pending or the youth has been determined to be an incapacitated person pursuant to section 15-14-102, then jurisdiction continues until either the youth has made a complete transition into adult disability services and it is in the youth's best interests for the

juvenile court to terminate jurisdiction or the youth reaches twenty-one years of age or such greater age of foster care eligibility as required by federal law, whichever comes first;

(b) If a youth is making the transition to adult services pursuant to section 25.5-6-409.5, then the court may extend jurisdiction until such transition is complete; or

(c) Jurisdiction pursuant to this section is not required to be terminated due to age before October 1, 2021.

(2) Repealed.

(3) An eligible youth has the right to choose whether to participate in the foster youth in transition program created in section 19-7-303.

(4) (a) If a youth who is sixteen years of age or older but less than eighteen years of age and who is in the custody of a county department runs away, and the youth's whereabouts have been unknown for more than ninety days, then the county department may file a motion to terminate jurisdiction.

(b) The court shall set a hearing no later than thirty-five days after the county department files the motion to determine whether the county department has made reasonable efforts to locate the youth prior to terminating jurisdiction. The hearing may be waived upon stipulation by all parties.

(c) The motion must be withdrawn and the hearing may be vacated or converted to a review hearing if the youth returns.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1. **L. 2011:** Entire section amended, (HB 11-1079), ch. 83, p. 226, § 8, effective August 10. **L. 2017:** (2)(a)(II) amended, (SB 17-294), ch. 264, p. 1394, § 41, effective May 25. **L. 2021:** (1) amended and (3) and (4) added, (HB 21-1094), ch. 340, p. 2216, § 5, effective June 25. **L. 2022:** IP(1) amended, (SB 22-212), ch. 421, p. 2973, § 41, effective August 10; (2) repealed, (HB 22-1245), ch. 88, p. 418, § 4, effective August 10.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-118 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The provisions of subsection (2) in House Bill 11-1079 have been relettered and renumbered on revision for ease of location.

ANNOTATION

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

Age is a jurisdictional prerequisite both at the filing of a petition and at the time of adjudication. In a case where the child was just shy of 18 at the time the dependency and neglect petition was filed but turned 18 before the hearing, the juvenile court lost subject matter jurisdiction by the time of the original hearing. Continuing jurisdiction under this section cannot be conferred if the court never had the proper subject matter jurisdiction for the original adjudication under § 19-3-501. People in Interest of M.C.S., 2014 COA 46, 327 P.3d 360.

Jurisdiction not affected by removing case from docket. A trial court order removing a parental rights termination case from the docket of cases maintained by the court did not affect the court's continuing statutory jurisdiction over the child involved. People in Interest of T.A.F. v. B.F., 624 P.2d 349 (Colo. App. 1980).

Whether good cause exists to retain jurisdiction is within the juvenile court's discretion and this determination is necessarily made on a case-by-case basis, after careful consideration of all the circumstances of the case. People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

Losing continuing jurisdiction requires another state to attempt to acquire jurisdiction from this state's court. Because the court in another state did not seek to exercise jurisdiction under the Uniform Child-custody Jurisdiction and Enforcement Act and termination of parental rights is not a new child-custody proceeding, the court here maintained its exclusive, continuing jurisdiction under subsection (1). People in Interest of E.W., 2022 COA 12, 508 P.3d 256, aff'd, 2022 CO 51, 523 P.3d 422.

Juvenile court properly transferred jurisdiction to the Oglala Sioux Tribe since, even for an Indian child who lives off reservation, the tribal court is still the preferred jurisdiction under the federal Indian Child Welfare Act absent a showing of good cause to the contrary. People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

Transfer of jurisdiction to tribal court was not improper where the juvenile court did not abuse its discretion in finding that the motion to transfer jurisdiction was timely and that no undue hardship would result if the Tribe obtained jurisdiction, and without consideration of the elements of the best interests of child set forth in § 14-10-124. People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

No error in juvenile court's failure to hold a hearing before determining whether good cause existed to retain jurisdiction where all parties participated in preliminary arguments and briefing on this issue and none of the parties objected to trial court's oral and written orders indicating its reservation of the right to rule on the issue without further hearings. People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

An order denying termination of the parent-child legal relationship does not "completely determine the rights of the parties involved" and is interlocutory in nature; therefore, such an order is not final and appealable. People in Interest of D.B., 855 P.2d 27 (Colo. App. 1993).

When a child has been adjudicated dependent or neglected, all matters related to that child's status must be addressed through the open dependency and neglect case. The dependency and neglect court maintains continuing, exclusive jurisdiction over any such child. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875; People in Interest of D.C.C., 2018 COA 98, 486 P.3d 1183.

A county department of human services seeking to terminate through article 5, relinquishment and adoption, an incarcerated father's parental rights to children who had been adjudicated as dependent and neglected was required to proceed instead through the laws and courts created for this article 3, dependency and neglect. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875.

When a court declares a child dependent or neglected in a case filed under this article 3, a court presiding over a separate parentage proceeding under article 4 loses jurisdiction to determine that child's parentage. All matters pertaining to the child's status must be addressed in the open dependency and neglect case. People in Interest of D.C.C., 2018 COA 98, 486 P.3d 1183.

19-3-206. Representation of petitioner.

In all proceedings brought under this article, the petitioner shall be represented by a county attorney, special county attorney, or city attorney of a city and county.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

Failure of attorney representing county department of social services to sign verified dependency petition held to be harmless. People in Interest of A.M., 786 P.2d 476 (Colo. App. 1989).

Sections 19-3-206 and 19-3-207 must be read in pari materia because they are part of the same code and apply to the same subject. H.B. v. Lake County Distr. Court, 819 P.2d 499 (Colo. 1991).

Under this section, a district attorney is not authorized to prosecute proceedings under this article. H.B. v. Lake County Distr. Court, 819 P.2d 499 (Colo. 1991).

Criminal prosecutions for violations of § 19-3-304 do not constitute "proceedings brought under this article" within the meaning of this section. Therefore, this section does not divest district attorneys of their authority to prosecute violations of § 19-3-304. Berges v. County Court of Douglas County, 2016 COA 146, 409 P.3d 592.

Allowing a district attorney to be appointed as a special county attorney would lead to the absurd result under § 19-3-207 of the district attorney arguing in favor of, and objecting to, the same motion. The court will not interpret statutes so as to lead to an absurd result. H.B. v. Lake County Distr. Court, 819 P.2d 499 (Colo. 1991).

19-3-207. Inadmissibility of certain evidence.

(1) Upon the request of the county attorney, special county attorney, or the city attorney of a city and county, the court shall set a hearing to determine the admissibility in a subsequent criminal proceeding arising from the same episode of information derived directly from testimony obtained pursuant to compulsory process in a proceeding under this article. The district attorney of the judicial district in which the matter is being heard shall be given five days' written notice of the hearing by the clerk of the court. Such hearing shall be held in camera, and the district attorney shall have the right to appear at the hearing and to object to the entry of the order holding such information inadmissible. The court shall not enter such an order if the district attorney presents prima facie evidence that the inadmissibility of such information would substantially impair his or her ability to prosecute the criminal case. The provisions of this subsection (1) shall not be construed to prevent any law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in any criminal prosecution.

(2) No professional shall be examined in any criminal case without the consent of the respondent as to statements made pursuant to compliance with court treatment orders, including protective orders, entered under this article; except that such privilege shall not apply to any discussion of any future misconduct or of any other past misconduct unrelated to the allegations

involved in the treatment plan. The admissibility of testimony as set forth in this subsection (2) shall not be subject to the hearing and notice provisions of subsection (1) of this section.

(2.5) Notwithstanding any other provision of law to the contrary, a juvenile's statements to a professional made in the course of treatment ordered by the court pursuant to this article shall not, without the juvenile's consent, be admitted into evidence in any criminal or juvenile delinquency case brought against the juvenile; except that the privilege shall not apply to statements regarding future misconduct.

(3) No admission made by a respondent in open court or by written pleading filed with the court to a petition in dependency or neglect may be used against him or her in any criminal prosecution, except for purposes of impeachment or rebuttal.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1. **L. 90:** (2) amended, p. 1037, § 4, effective April 3. **L. 97:** Entire section amended, p. 518, § 5, effective July 1. **L. 2004:** (2.5) added, p. 274, § 1, effective April 5.

ANNOTATION

Sections 19-3-206 and 19-3-207 must be read in pari materia because they are part of the same code and apply to the same subject. H.B. v. Lake County Distr. Court, 819 P.2d 499 (Colo. 1991).

Subsection (2) provides a privilege for statements made by a parent to a treating professional and therefore cannot be used for any purpose in a related criminal case. Therefore, any statements made by defendant father in course of sex abuse and domestic violence evaluation are privileged; thus his participation in the evaluation does not implicate his fifth amendment privilege against self-incrimination. People ex rel. I.L., 176 P.3d 878 (Colo. App. 2007).

Trial court erred in precluding social worker's testimony as to mother's statements in case involving stepfather. Because trial court apparently understood this section to bar the examination of the social worker in stepfather's criminal case as long as social worker qualified as a professional involved in the dependency and neglect proceeding, it failed to make sufficient findings to satisfy the additional statutory requirement that the statements at issue be ones made in compliance with court treatment orders or demonstrate the applicability of § 13-90-107, which is limited by its own terms to communications made by a client in the course of professional employment or psychotherapy. People v. Gabriesheski, 262 P.3d 653 (Colo. 2011).

19-3-208. Services - county required to provide - out-of-home placement options - rules - definitions.

(1) Each county or city and county shall provide a set of services, as defined in subsection (2) of this section, to children who are in out-of-home placement or meet the social services out-of-home placement criteria and to their families in the state of Colorado eligible for such services as determined necessary by an assessment and a case plan. A county or city and county may enter into an agreement with any other county, city and county, or group of counties to share in the provision of these services. Each county, city and county, or group of counties may enter into contracts with private entities for the provision of these services. Each county or city and county shall have a process in place whereby services can readily be accessed by children and families determined to be in need of such services described in subsection (2) of this section. For the purposes of this subsection (1), the requirements of providing services or a process shall be made available based upon the state's capacity to increase federal funding or any other moneys appropriated for these services.

(1.5) As used in this section, unless the context otherwise requires:

(a) "School of origin" has the same meaning as provided in section 22-32-138.

(b) "Student in out-of-home placement" has the same meaning as provided in section 22-32-138.

(2) (a) "Services" shall be designed to accomplish the following goals:

(I) Promote the immediate health, safety, and well-being of children eligible for these services based upon the case assessment and individual case plan;

(II) Reduce the risk of future maltreatment of children who have previously been abused or neglected and protect the siblings of such children and other children who are members of the same household who may be subjected to maltreatment;

(III) Avoid the unnecessary placement of children into foster care resulting from child abuse and neglect, voluntary decisions by families, or the commission of status offenses;

(IV) Facilitate, if appropriate, the speedy reunification of parents with any of their children who have been placed in out-of-home placement;

(V) Ensure that the placement of a child is neither delayed nor denied due to consideration of the race, color, or national origin of the child or any other person unless such consideration is permitted pursuant to federal law; and

(VI) Promote the best interests of the child.

(b) The following services must be available and provided, as determined necessary and appropriate by individual case plans:

(I) Screening; assessments, including those required by the federal "Family First Prevention Services Act" of 2018, Titles IV-B and IV-E of the federal "Social Security Act", as amended; and individual case plans;

(II) Home-based family and crisis counseling;

(III) Information and referral services to available public and private assistance resources;

(IV) Family time services for parents with children or youth in out-of-home placement;

(V) Placement services including foster care and emergency shelter; and

(VI) Services including but not limited to transportation and case planning, as necessary for a student in out-of-home placement to remain in his or her school of origin, unless the county department determines that remaining in the school of origin is not in the student's best interest.

(c) (Deleted by amendment, L. 94, p. 1054, § 4, effective May 4, 1994.)

(d) The following services must be made available and provided based upon the state's capacity to increase federal funding or any other money appropriated for these services and as determined necessary and appropriate by individual case plans:

(I) Transportation to these services when other appropriate transportation is not available;

(II) Child care as needed according to a case plan, when other child care is not available;

(III) In-home supportive homemaker services;

(IV) Diagnostic, mental health, and health-care services;

(V) Drug and alcohol treatment services;

(VI) After care services to prevent a return to out-of-home placement;

(VII) Family support services while a child is in out-of-home placement including home-based services, family counseling, and placement alternative services;

(VIII) Financial services in order to prevent placement;

(IX) Family preservation services, which are brief, comprehensive, and intensive services provided to prevent the out-of-home placement of children or to promote the safe return of children to the home; and

(X) Foster care prevention services.

(d.5) On or before January 1, 2022, the department of human services, in cooperation with county departments of human or social services, shall analyze necessary data to assess and determine the number of placements necessary for each level of care for children or youth who are in out-of-home placements.

(d.7) On or before July 1, 2022, the department of human services, in consultation with the department of health care policy and financing, shall develop and implement a plan to build capacity and develop appropriate and available out-of-home placement options for each necessary level of care in the state in order to serve the number of children and youth who require a given level of care.

(e) The department of human services may promulgate such rules and regulations as are necessary to implement the provision of services pursuant to this article.

(f) It is the intent of the general assembly to use existing general fund moneys which have serviced the programs described in this subsection (2) to access federal funds.

(g) Services provided pursuant to this section are required to meet the provisions of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations.

(h) Services provided pursuant to this section must meet the provisions of Title VI of the federal "Civil Rights Act of 1964", and its related amendments and implementing regulations, regardless of whether the services are provided by a county department, city and county, or private-entity contractor. A county department, city and county, or private-entity contractor shall take reasonable steps to ensure meaningful language access to a person with limited English proficiency. The language access must be provided in a timely manner and without unreasonable delay. A county department or a city and county shall provide services under the supervision of and with the support of the state department of human services pursuant to section 26-1-111.

(3) (a) The state board of human services shall promulgate rules creating a standard and deliberate process for determining, in coordination with the education provider, parents, if appropriate, guardian ad litem or counsel for youth, and the child, whether it is in the best interest of a child in out-of-home placement to remain in the child's school of origin when the child is placed in out-of-home placement or experiences a change in placement.

(b) Each county department of human or social services shall coordinate with school districts and the state charter school institute to establish systems-level plans for how necessary transportation to a school of origin will be provided, arranged, and funded for the duration of a child or youth's time as a student in out-of-home placement, including the equitable allocation of costs.

(c) The department of human services shall provide technical assistance and compliance monitoring for the county departments of human or social services to ensure that county departments of human or social services are properly implementing this subsection (3), including administering funds to allow students in out-of-home placement to remain in their schools of origin, with transportation provided.

(d) Any state funds expended pursuant to this section for children eligible under Title IV-E of the federal "Social Security Act", as amended, shall be counted to satisfy matching requirements for federal funds received pursuant to that act.

(e) The department shall convene a working group within six months after April 25, 2023, including the department of education, county departments of human or social services, representatives from the special education directors, and other appropriate school district representatives, to identify issues related to foster youth education, transportation, and stability, as described in this subsection (3), and together, prior to the 2025 regular legislative session, develop written recommendations to the general assembly regarding any regulatory or statutory changes that may be required.

Source: L. 93: Entire section added, p. 2014, § 4, effective July 1. **L. 94:** (1), (2)(c), and IP(2)(d) amended, p. 1054, § 4, effective May 4; (2)(a) amended, p. 672, § 1, effective July 1; (2)(e) amended, p. 2682, § 197, effective July 1. **L. 2008:** (2)(a)(I) amended, p. 812, § 1, effective May 14. **L. 2010:** (2)(a)(V) amended, (HB 10-1106), ch. 278, p. 1274, § 5, effective May 26. **L. 2018:** (2)(g) added, (HB 18-1104), ch. 164, p. 1134, § 6, effective April 25; IP(2)(b) and (2)(b)(I) amended, (SB 18-254), ch. 216, p. 1373, § 1, effective May 18; (1.5), (2)(b)(VI), and (3) added and IP(2)(b), (2)(b)(IV), and (2)(b)(V) amended, (HB 18-1306), ch. 364, p. 2181, § 4, effective August 8. **L. 2019:** IP(2)(d), (2)(d)(VIII), and (2)(d)(IX) amended and (2)(d)(X) added, (HB 19-1308), ch. 256, p. 2460, § 5, effective August 2. **L. 2021:** (2)(d.5) and (2)(d.7) added, (SB 21-278), ch. 344, p. 2241, § 2, effective June 25. **L. 2022:** (3)(a) amended, (HB 22-1038), ch. 92, p. 441, § 22, effective January 9, 2023. **L. 2023:** (3)(e) added, (HB 23-1089), ch. 112, p. 402, § 3, effective April 25; (2)(b)(IV) amended, (HB 23-1027), ch. 284, pp. 1677, 1682, §§ 3, 13, effective June 1. **L. 2024:** (2)(h) added, (HB 24-1031), ch. 327, p. 2213, § 2, effective August 7; (3)(e) amended, (HB 24-1222), ch. 155, p. 688, § 6, effective August 7. **L. 2025:** (2)(h) amended, (SB 25-300), ch. 428, p. 2446, § 19, effective August 6.

Editor's note: Amendments to subsection IP(2)(b) by SB 18-254 and HB 18-1306 were harmonized.

Cross references: (1) For the legislative declaration in HB 18-1306, see section 1 of chapter 364, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

(2) For Title IV-B of the "Social Security Act", see 42 U.S.C. § 621 et seq. For Title IV-E of the "Social Security Act", see 42 U.S.C. § 670 et seq.

ANNOTATION

Law reviews. For comment, "People ex rel. K.C. V. K.C.: ICWA Is for All Native Children", see 100 Denv. L. Rev. 465 (2023).

Absent safety concerns, a parent is entitled to face-to-face visitation, and correspondence between parents and children does not constitute visitation. People ex rel. D.G., 140 P.3d 299 (Colo. App. 2006).

When a juvenile court restricts family time to a therapeutic setting, a county department of human or social services can still meet its requirement to make available and provide family time services for parents with children in out-of-home placements. People in Interest of E.D., 2025 COA 11, 566 P.3d 1011.

In this case, a county department of human or social services made available and provided appropriate therapeutic family time services to a mother and child even though the services did not result in face-to-face contact. An in-person meeting with the mother would have caused additional risks to the child's health and safety. People in Interest of E.D., 2025 COA 11, 566 P.3d 1011.

A department may not adopt blanket policy barring parental visitation without consideration of child's health and safety. Father's outstanding warrants did not pose threat to children's health and safety; therefore, denying father visitation rights until he cleared warrants was improper. People in Interest of E.S., 2021 COA 79, 494 P.3d 1142.

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 (Colo. App. 2006).

Applied in People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006); People in Interest of S.K., 2019 COA 36, 440 P.3d 1240.

19-3-208.5. Pilot program - legislative declaration - child welfare - mental health services - rules - repeal. (Repealed)

Source: L. 2008: Entire section added, p. 812, § 2, effective May 14. **L. 2009:** (4), (5), (8), and (9) amended, (SB 09-207), ch. 8, p. 60, § 1, effective March 2. **L. 2018:** (8) amended, (SB 18-164), ch. 37, p. 394, § 2, effective August 8.

Editor's note: Subsection (9) provided for the repeal of this section, effective July 1, 2019. (See L. 2009, p. 60.)

Cross references: For the legislative declaration in SB 18-164, see section 1 of chapter 37, Session Laws of Colorado 2018.

19-3-209. Individual case plan - required.

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 which 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.

Source: L. 93: Entire section added, p. 2014, § 4, effective July 1.

19-3-210. Foster parents' bill of rights study - task force created - principles to be examined - report. (Repealed)

Source: L. 93: Entire section added, p. 1246, § 1, effective June 6. **L. 94:** (1) and (4) amended, p. 2682, § 198, effective July 1. **L. 96:** Entire section repealed, p. 1249, § 124, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of Colorado 1996.

19-3-210.5. Foster parents' bill of rights.

(1) A foster parent has the right to:

(a) Be treated with dignity, respect, and consideration as a team member who is making important contributions to the objectives of the child welfare system, including the reunification of the foster child or youth with the foster child's or youth's parents or family members, whenever safely possible;

(b) Promote the reasonable and prudent parent standard for the child or youth and the continuance of positive family patterns and routines to the extent possible without interfering with court-ordered family time or services required pursuant to section 19-3-208;

(c) Receive training and support from the state department or county department of human or social services to improve the foster parent's skills in providing daily care and meeting the special needs or disability-related needs of a child or youth in the foster parent's care;

(d) Be informed by the child placement agency and county department of human or social services about how to reach after-hours contacts;

(e) Receive timely financial reimbursement for the foster parent's care of a child or youth;

(f) Take leave from foster parenting by planning ahead with the foster parent's child placement agency or county department of human or social services to ensure that the needs of the child or youth in the foster parent's home are met during the foster parent's leave if the foster parent's leave will be longer than that allowed through respite;

(g) Assurances with respect to the foster parent's family's health or safety;

(h) Be provided a clear and understandable description of a child placement agency's plan concerning the placement of a child or youth in the foster parent's home;

(i) (I) Request only the information that is necessary to meet the foster child's or youth's physical, mental, emotional, behavioral, or other identified trauma-related needs pursuant to section 19-1-303 (11), including:

(A) Relevant portions of the foster child's or youth's mental health and medical records, subject to any privilege or confidentiality standard recognized or governed by state or federal law;

(B) Relevant portions of the foster child's or youth's educational records, subject to any privilege or confidentiality standard recognized or governed by state or federal law;

(C) Relevant information in the family services plan to ensure the safety, permanency, and well-being of the foster child or youth, including any safety issues that impact the foster parent's ability to parent the foster child or youth;

(D) Relevant information about the circumstances related to the removal of the foster child or youth from the foster child's or youth's home, subject to any privilege or confidentiality standard recognized or governed by state or federal law; and

(E) Relevant information concerning child or youth placement history, including safety concerns and reasons for unplanned placement moves, subject to any privilege or confidentiality standard recognized or governed by state or federal law.

(II) The foster parent shall maintain the confidentiality of any information obtained pursuant to section 19-1-303 (11).

(j) Reasonable notice of any change in a child's or youth's case plan or of plans to terminate the placement of the child or youth with the foster parent and the reasons for the change or

termination of placement. The right to reasonable notice does not confer a right to object to the child's or youth's case plan or plans to terminate the placement.

(k) Upon request, be advised by the county department of human or social services as to the date and time of any court proceeding, the name of the judge or magistrate assigned to the case, and the court's docket number for the foster child or youth in the foster parent's placement that the case pertains to;

(l) Be notified when a foster child or youth who a foster parent previously cared for reenters the foster care system; except that the consideration is not a legal presumption in favor of the foster parent fostering the child or youth again and must be consistent with the best interest of the child or youth; and

(m) Have access to the existing grievance process with the appropriate licensing authority and, as part of such process, file a grievance if any of the foster parent's rights have been violated or denied.

(2) Respondent parents are entitled to receive any information or records provided to a foster parent pursuant to this section unless a court orders the information or records restricted due to the health or welfare of the child or youth.

(3) The rights enumerated in subsection (1) of this section do not apply to a foster parent who jeopardizes the safety of a child or youth or a foster parent against whom criminal charges have been filed for child abuse, as specified in section 18-6-401, an unlawful sexual offense, as defined in section 18-3-411, or any felony.

Source: L. 2022: Entire section added, (HB 22-1231), ch. 151, p. 966, § 1, effective August 10. **L. 2023:** (1)(b) amended, (HB 23-1027), ch. 284, p. 1682, § 14, effective June 1.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

19-3-211. Conflict resolution process - rules - definitions.

(1) (a) The state department, in conjunction with the attorney general, shall adopt rules concerning the statewide implementation of a conflict resolution process in each county and city and county pursuant to the provisions of this section. The purpose of such conflict resolution process is to provide a forum for grievances concerning the conduct of county department personnel in performing their duties pursuant to this article.

(b) Repealed.

(c) The conflict resolution process must provide for the resolution of grievances as follows:

(I) Transmittal of all grievances to the county child welfare director for internal resolution by the county department within ten working days after receipt of the grievance;

(II) Closure of the grievance and issuance of a written final decision within thirty-five days of receipt of the grievance if the county department has resolved the grievance to the complainant's satisfaction;

(III) Referral of the grievance to the office of the child protection ombudsman upon the request of the complainant if the county department has not resolved the grievance to the complainant's satisfaction;

(IV) Review by the office of the child protection ombudsman in accordance with section 19-3.3-103;

(V) to (VII) Repealed.

(d) to (h) Repealed.

(2) and (3) Repealed.

(4) Each county department shall post information about the grievance process on the county department's public-facing website or otherwise provide information concerning the grievance process to individuals involved in the county child welfare system. The state department shall promulgate rules governing the procedures for processing grievances, for determining if a grievance is within the scope of the conflict resolution process, and for receiving additional information from the complainant and the subject of the grievance.

(5) (a) Nothing in this section prevents a complainant from making a complaint directly to the office of the child protection ombudsman.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (5), a county department shall not be precluded from presenting any relevant evidence in a pending civil or criminal investigation or proceeding that the county department has obtained in the course of fulfilling its duties in the conflict resolution process pursuant to the provisions of this section.

(c) A county department is not precluded from presenting any relevant evidence in a pending civil or criminal investigation or proceeding that the county department has obtained in the course of fulfilling its duties in the conflict resolution process pursuant to this section.

Source: L. 94: Entire section added, p. 2081, § 1, effective June 3. **L. 96:** (6) repealed, p. 85, § 11, effective March 20; (2)(h) repealed, p. 1247, § 118, effective August 7. **L. 97:** Entire section R&RE, p. 1434, § 9, effective July 1. **L. 2004:** (1)(a) and IP(4) amended, p. 194, § 8, effective August 4. **L. 2023:** (1)(b), (1)(c)(V), (1)(c)(VI), (1)(c)(VII), (1)(d), (1)(e), (1)(f), (1)(g), (1)(h),

(2), and (3) repealed, IP(1)(c), (1)(c)(I), (1)(c)(II), (1)(c)(III), (1)(c)(IV), (4), and (5)(a) amended, and (5)(c) added, (SB 23-210), ch. 251, p. 1427, § 2, effective May 24.

19-3-212. Notice of rights and remedies for families.

(1) The state department shall prepare, with the assistance of the attorney general, on a standardized written form, a detailed informational notice of rights and remedies for families subject to the provisions of this article.

(2) The notice prepared pursuant to subsection (1) of this section shall be supplied to all social service and law enforcement agencies in the state and shall be delivered to all parents and families from whom children are removed under court order or by law enforcement personnel, along with a copy of the court order directing removal of the child or children from the home. In addition to the notification on the court order, the informational notice shall contain a statement as to the cause of the removal of the child or children. The notice shall also contain disclosure of the availability of the conflict resolution process to persons who are the subject of any child abuse or neglect report and to the parents, Indian custodians, guardian, or legal custodian of a child who is the subject of any child abuse or neglect report. The standardized written notice form prepared pursuant to subsection (1) of this section shall also include a notification of rights of the parents, Indian custodians, guardians, or legal custodians of Indian children under the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq.

(3) The notice prepared pursuant to subsection (1) of this section shall be available for public inspection at a review and comment hearing prior to its adoption.

Source: L. 94: Entire section added, p. 2081, § 1, effective June 3. **L. 97:** (2) amended, p. 1437, § 10, effective July 1. **L. 2002:** (1) and (2) amended, p. 786, § 5, effective May 30.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 217, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (Nov. 2002).

19-3-213. Placement criteria.

(1) In a case in which the county department recommends placement out of the home for a child or in which a child is in out-of-home placement, the court, the guardian ad litem, the county department, a CASA volunteer, and other parties shall consider the best interests of the child and shall comply with the following placement criteria:

(a) Prior to the change of placement of a child, the county department shall, to the extent possible, notify the guardian ad litem or counsel for youth, a CASA volunteer, and other parties. If a party disagrees with the change of placement, the party may seek an emergency hearing concerning the appropriate placement for the child. In an emergency, the county department may proceed to make the change of placement prior to a requested hearing and is exempt from creating an individualized placement transition plan, as described in section 19-3-213.5 (2)(a). Absent an emergency placement change, prior to the change of placement of a child, the county department shall create an individualized placement transition plan, as described in section 19-3-213.5 (2)(a).

(b) Except in exceptional circumstances, no child shall remain in an emergency, short-term, or shelter facility for more than sixty days, nor shall a child be moved from one such facility to another, unless all reasonable efforts to return the child to the child's home or to place the child in a more permanent setting have been exhausted.

(c) (I) If the child is part of a sibling group, as defined in section 19-1-103, and the sibling group is being placed in foster care, the county department shall make thorough efforts to locate a joint placement for all of the children in the sibling group. If the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. The presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(II) Consideration of the placement of children together as a sibling group in foster care shall not be construed as requiring the removal of a child from his or her home and placement into foster care if that is not in the best interests of the child.

(III) In any proceeding under this article involving a sibling group, the judge shall review the family services plan document regarding placement of siblings.

(d) Prior to the change of placement of a child, all parties shall attempt to promote educational stability for the child by taking into account the child's existing educational situation and, to the extent possible and in accordance with the child's best interests, selecting a change of placement that enables the child to remain in the existing educational situation or to transfer to a new educational situation that is comparable to the existing situation.

(2) If a child runs away from an out-of-home placement facility, the person in charge of the placement facility, foster parent, relative, or other placement provider shall notify the county department as soon as possible after discovering that the child has run away. The county department shall notify the court and other parties within ten days after the county department has received notice and take appropriate steps to locate the child.

Source: L. 97: Entire section added, p. 1438, § 11, effective July 1. **L. 2000:** (1) amended, p. 475, § 3, effective July 1. **L. 2003:** (1)(c)(I) amended, p. 2622, § 1, effective June 5. **L. 2008:** (1)(d) added, p. 471, § 3, effective April 17. **L. 2021:** (1)(c)(I) amended, (SB 21-059), ch. 136, p. 730, § 73, effective October 1. **L. 2022:** (1)(a) amended, (HB 22-1038), ch. 92, p. 441, § 23, effective January 9, 2023. **L. 2025:** IP(1) and (1)(a) amended, (HB 25-1097), ch. 261, p. 1338, § 2, effective May 28.

Cross references: For the legislative declaration contained in the 2008 act enacting subsection (1)(d), see section 1 of chapter 147, Session Laws of Colorado 2008. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

For purposes of procedural due process, mother was not entitled under subsection (1)(a) to notice of the department's administrative review or a hearing during that review because the department did not propose a change in the child's placement. People in Interest of C.J., 2017 COA 157, 410 P.3d 839.

19-3-213.5. Placement transition plans - out-of-home placements in family-based settings - training - rules - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Individualized placement transition plan" means a plan developed pursuant to subsection (2)(a) of this section to prevent children in placements in foster care homes, kinship foster care homes, or non-certified kinship care homes from experiencing unnecessary or abrupt placement changes after a decision has been made by the county department, by the court, or by agreement between parties for a change of placement.

(b) "Placement" means placement in a foster care home or a kinship foster care home, as both are defined in section 26-6-903, or a non-certified kinship care home.

(c) "Provider" means a foster care parent or a relative or kin who provides kinship foster care and who is certified to operate a kinship foster care home pursuant to section 26-6-910. "Provider" also includes a relative or kin who provides non-certified kinship care, as defined in section 26-6-903, to a child.

(2) (a) (I) Beginning July 1, 2026, absent an emergency placement change, a county department child welfare caseworker shall create an individualized placement transition plan for a child any time the child is moved from one placement in a foster care home, kinship foster care home, or non-certified kinship care home to another or is moved from any placement back to the child's home. An individualized placement transition plan must prioritize the mental, emotional, and physical needs of the child while considering the needs of the parents, current providers, and future providers, as the needs of the parents, current providers, and future providers relate to the care of the child. The county department child welfare caseworker shall document the individualized placement transition plan in the state automated case management system.

(II) When a county department child welfare caseworker develops the individualized placement transition plan, the county department child welfare caseworker must solicit the input of the parties to the case, current and future providers, and the child, if it is appropriate to the child's age or developmental level. Input from the parties or providers may be solicited and considered during a meeting, but a meeting is not required. A party or provider may choose not to provide input on the individualized placement transition plan.

(III) If a sibling group is moved from a placement together, the county department child welfare caseworker may develop one individualized placement transition plan for the sibling group as long as the plan takes into account the individualized needs of each child.

(IV) The individualized placement transition plan must not be used to slow down the return of a child to the child's home. The court may order a specific date for completion of the individualized placement transition plan to ensure that an agreed-upon or court-ordered change in placement is not delayed due to the requirement to complete an individualized placement transition plan.

(b) A county department's individualized placement transition plan created pursuant to subsection (2)(a)(I) of this section does not override a court order for the placement of a child. The court may order an individualized placement transition plan for a child who is moved to a new placement as a result of the court's order.

(c) Absent an emergency placement change, the county department child welfare caseworker shall notify the child, current provider, and future provider at least forty-eight hours before the child is moved to a new placement.

(3) An individualized placement transition plan must include, but not be limited to:

(a) Pre-transition logistics to adequately prepare for the child's new placement, which include:

(I) Identifying individuals responsible for each element of the individualized placement transition plan;

(II) Determining the time frames for the impending placement change;

(III) Identifying opportunities the child may have to maintain contact with the current provider with primary consideration to the mental, emotional, and physical needs of the child and taking into consideration the preferences of the child and the future provider;

(IV) Determining, when applicable, how a child will maintain connections with siblings when siblings are not placed together, as set forth in section 19-7-204;

(V) Ensuring the child has their belongings and current medications, that the child's belongings are carefully packed in appropriate luggage to avoid damage, and that there is transportation of the child's belongings to the placement, as described in section 19-7-101;

(VI) Providing the child's records and information, as described in section 19-3-210.5 (1)(i), to the future provider, subject to any privilege or confidentiality standard recognized or governed by state or federal law;

(VII) Sharing information between the current provider and the future provider upon the consent of both providers and the child;

(VIII) Identifying whether the child's current health care and mental health services will continue or transition to new providers;

(IX) Communicating the individualized placement transition plan with the child in an age-appropriate manner; and

(X) Supporting a child who is found to be an Indian child to maintain or develop connections with the child's tribe pursuant to the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901, et seq.

(b) A plan for pre-transition and post-transition communications between individuals who have relevant information for the transition. The pre-transition and post-transition communications must be child-centered, trauma-informed, and in compliance with the rights of children and youth in foster care, as described in section 19-7-101.

(c) A timeline to transition the child to a new placement, which must include:

(I) Identifying opportunities for the child to visit or contact the future provider prior to the transition; and

(II) Identifying opportunities prior to the transition for the child to spend time with connections that may be lost;

(d) A plan to physically move the child to the new placement, which must include:

(I) Moving the child to the new placement by someone known to the child, to the extent practicable; and

(II) Notifying the previous provider that the child arrived safely to the new placement;

(e) A framework for a county department child welfare caseworker's post-transition communications, which must include:

(I) Providing a status update on the child to the previous provider, unless there is a safety concern in providing a status update to the previous provider, a party objects to sharing confidential information, or a court order prohibits the release of information to the previous provider; and

(II) Communicating with the current provider and previous provider, if requested by the previous provider prior to the transition, to determine how the transition went and if the current provider or previous provider needs any support.

(4) (a) The department, within existing resources, shall create a training on the importance of placement transition plans that is recorded and made available on a training system that can be accessed statewide. The training must focus on placement transition plans and on individuals who have lived experience with placement transitions, including an emphasis on individuals who experienced placement transitions.

(b) (I) New county department child welfare caseworkers must complete the training described in subsection (4)(a) of this section within the first year of employment as a county department child welfare caseworker.

(II) All county department child welfare caseworkers may complete the training described in subsection (4)(a) of this section every three years.

(c) A provider may complete the training on placement transition plans described in subsection (4)(a) of this section and may receive support from the department or the county department pursuant to section 19-3-210.5 (1)(c) to improve the provider's skills in transitioning a child in the provider's care from one placement to another.

(5) This section does not alter state law criteria that determines placement changes for a child or that returns a child to a parent's custody.

(6) The department may adopt rules for purposes of this section.

Source: L. 2025: Entire section added, (HB 25-1097), ch. 261, p. 1334, § 1, effective May 28.

19-3-214. Placement reporting.

(1) Each county department shall maintain and update on a monthly basis a report of the number of children who have been removed from their homes and placed in the temporary custody of the county department for the preceding month. The report shall indicate whether a child who has been placed out of the home has been placed with relatives.

(2) Notwithstanding section 24-1-136 (11)(a)(I), the state department shall submit an annual report to the joint budget committee of the general assembly no later than December 1 of each year that compiles the monthly reports of the number of children who have been placed out of the home in each county or city and county for the preceding year as required pursuant to subsection (1) of this section.

Source: L. 97: Entire section added, p. 1438, § 11, effective July 1. **L. 2017:** (2) amended, (SB 17-234), ch. 154, p. 521, § 4, effective August 9.

19-3-215. Foster care - capacity may be exceeded for sibling groups.

The state board of human services shall promulgate rules that allow foster care homes to exceed capacity for the number of children and for square footage requirements in order to accommodate the joint placement of sibling groups in a single foster care home.

Source: L. 2000: Entire section added, p. 478, § 9, effective July 1.

19-3-216. Rules.

The state board of human services shall promulgate rules to determine whether there is child abuse or neglect as defined in section 19-1-103 (1)(a)(VII) or if a child is neglected or dependent as described in section 19-3-102 (1)(g).

Source: L. 2020: Entire section added, (SB 20-028), ch. 186, p. 854, § 6, effective June 30.

19-3-217. Family time upon removal - rules.

(1) At any hearing held pursuant to section 19-3-403 (2) or (3.5), the court shall enter temporary orders for reasonable family time with the child's or youth's parent that is consistent with the age and developmental needs of a child or youth if the court finds that visitation is in a child's or youth's best interests. The court shall order contact between the parent and child or youth, which contact may include, but is not limited to, telephone, virtual, or in-person visits, commencing within seventy-two hours after any hearing pursuant to section 19-3-403 (2) or (3.5), excluding Saturdays, Sundays, and any court holiday. The court may authorize an extension of time for contact to commence if the delay is agreed upon by the parent, county department, and guardian ad litem or if the court finds that a delay in contact is in the child's or youth's best interests.

(1.5) When a child or youth is placed out of the home, the following considerations apply when making decisions regarding family time:

(a) The county department shall encourage the maximum parent, child, and sibling contact possible, including regular family time and participation by the parents in the care of the child or youth, when it is in the best interest of the child or youth. The county department shall encourage parental attendance and participation in the child's or youth's life, such as school, extracurricular activities, and medical appointments, when it is in the best interest of the child or youth.

(b) The court and the county department may rely on informal resources such as community members, relatives, or kin to provide transportation and supervision for family time if those resources are available, appropriate, and do not compromise the child's or youth's mental, emotional, or physical health or safety.

(c) (I) There is a presumption that supervised family time must:

(A) Be supervised by informal supports identified by the family who volunteer to supervise family time, including relatives or other persons identified by the family; and

(B) Occur in the community, a homelike environment, or other agreed-upon location.

(II) The presumption described in subsection (1.5)(c)(I) of this section may be rebutted if the court finds that the child's or youth's safety or mental, emotional, or physical health requires professional supervision or that relatives or other family supports are unavailable or unwilling to provide supervision after the county department has exercised due diligence to contact and engage the relatives, kin, or other family supports. Nothing in this section precludes supplemental professionally coached or supervised family time to improve parenting skills.

(d) The court may only restrict or deny family time if it is necessary to protect the child's or youth's safety or mental, emotional, or physical health. The court shall order family time in the least restrictive setting and supervision at the least restrictive level to satisfy the child's or youth's safety or mental, emotional, or physical health.

(e) (I) At the first hearing that occurs after the emergency hearing required pursuant to section 19-3-403, or no later than thirty days after the removal date, the county department shall provide the court with a proposed family time plan on the record, including:

(A) Frequency and length;

(B) Persons who may be present;

(C) Whether the family time must be supervised; and

(D) The child's or youth's opportunity to communicate with a parent, sibling, or other relative.

(II) For good cause, or by agreement by the parties, the court may waive the requirement to provide or extend the time for providing the family time plan described in subsection (1.5)(e)(I) of this section. A lack of staff or financial resources is not good cause. Any subsequent written family services plan submitted to the court pursuant to section 19-3-507 or 19-3-702 must include an update on participation in and provision of family time and barriers to expanding family time.

(f) The court or the county department shall not limit family time as a sanction for a parent's failure to comply with court orders or services if the child's or youth's safety or mental, emotional, or physical health is not at risk as a result of the family time.

(g) The court, the county department, the parent, or other support shall not limit family time or contact between a child or youth and the child's or youth's parent or sibling as a sanction for the child's or youth's behavior or as an incentive to change the child's or youth's behavior.

(h) The county department and the court shall consider a parent's preferences when determining supervision, location, and timing of family time.

(i) The county department and the court shall consider a child's or youth's preferences when determining supervision, location, and timing of family time.

(2) Nothing in this section restricts the court from granting discretionary authority to the department and guardian ad litem to increase opportunities for additional parent-child contacts or sibling contacts without further court order.

(3) Absent the issuance of an emergency order, a parent granted family time is entitled to a hearing prior to an ongoing reduction in, suspension of, or increase in the level of supervision, including a change from in-person family time to virtual family time. If the court issues an emergency order suspending, reducing, or restricting family time, a parent is entitled to a hearing within seventy-two hours after the order is issued, excluding Saturdays, Sundays, and court holidays. The court need not hold a hearing if there is agreement by the petitioner, guardian ad litem or counsel for youth, and parent to the reduction, suspension, or increase in level of supervision of family time. Any such agreement must be reduced to writing and filed with the

court. Nothing in this section prevents the county department from canceling scheduled family time if the child's or youth's safety or mental, emotional, or physical health would be endangered or if the parent consents to the cancellation of the family time.

(4) Nothing in this section requires or permits a county department to arrange family time if the family time would violate an existing protection order in any case pending in this state or any other state. The county department is not required to produce a child or youth for court-ordered family time if the family time is made impossible due to the policies of a facility where the parent is incarcerated or in treatment.

(5) A person's inclusion in family time does not confer rights not otherwise granted by law, including the right to appeal denial of participation in family time.

(6) The state board of human services shall promulgate rules in accordance with this section.

Source: L. 2021: Entire section added, (HB 21-1101), ch. 481, p. 3426, § 1, effective September 1. **L. 2022:** (3) amended, (HB 22-1038), ch. 92, p. 441, § 24, effective January 9, 2023. **L. 2023:** (1), (3), and (4) amended and (1.5), (5), and (6) added, (HB 23-1027), ch. 284, p. 1677, § 4, effective January 1, 2024. **L. 2024:** (1.5)(c)(II) and (1.5)(e)(II) amended, (HB 24-1450), ch. 490, p. 3411, § 26, effective August 7.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Disclosure and Discovery in Dependency and Neglect Cases", see 54 Colo. Law. 44 (Jan.-Feb. 2025).

This section does not broaden a juvenile court's personal jurisdiction to include nondependent siblings of a youth in foster care or require the siblings to attend therapeutic visitation with the youth. In re People in Interest of S.A., 2022 CO 27, 511 P.3d 597.

When a juvenile court restricts family time to a therapeutic setting, a county department of human or social services can still meet its requirement to make available and provide family time services for parents with children in out-of-home placements. People in Interest of E.D., 2025 COA 11, 566 P.3d 1011.

In this case, a county department of human or social services made available and provided appropriate therapeutic family time services to a mother and child even though

the services did not result in face-to-face contact. An in-person meeting with the mother would have caused additional risks to the child's health and safety. People in Interest of E.D., 2025 COA 11, 566 P.3d 1011.

19-3-218. Transferring temporary legal custody of a child or youth - advisement.

Prior to transferring temporary legal custody of a child or youth to a relative or kin, the court shall make findings that the relative or kin was advised regarding the differences between kinship foster care and non-certified kinship care, including, but not limited to, financial assistance, custody requirements, and long-term financial support options.

Source: L. 2024: Entire section added, (SB 24-008), ch. 289, p. 1931, § 1, effective September 1.

19-3-219. Language access.

(1) Pursuant to this article 3, the court shall provide language access to a child or a parent, guardian, other custodian, or other party if the person requests language access or the court finds that a person has limited English proficiency.

(2) A person who receives language access pursuant to this section must receive translation and interpretation services in circumstances when a similarly situated person would receive the communication in English. Translation must be provided in a timely manner and without unreasonable delay if requested by the party, and interpretation must be provided at every proceeding.

Source: L. 2024: Entire section added, (HB 24-1031), ch. 327, p. 2214, § 3, effective August 7.

Editor's note: This section was numbered as § 19-3-218 in HB 24-1031 but was renumbered on revision for ease of location.

PART 3

CHILD ABUSE OR NEGLECT

19-3-301. Short title.

This part 3 shall be known and may be cited as the "Child Protection Act of 1987".

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-302. Legislative declaration.

(1) The general assembly declares that the complete reporting of child abuse is a matter of public concern and that, in enacting this part 3, it is the intent of the general assembly to protect the best interests of children of this state and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is also the intent of the general assembly that if a county or group of counties decides to establish a child protection team, that the child protection teams publicly discuss public agencies' responses to child abuse and neglect reports so that the public and the general assembly are better informed concerning the operation and administration of this part 3.

(2) (a) The general assembly further declares that requiring people to report known or suspected child abuse or neglect pursuant to this part 3 impacts the people reporting as well as children and families. As a result of implicit bias, under-resourced communities, communities of color, and persons with disabilities are disproportionately impacted by the mandatory reporting system. To create a more equitable mandatory reporting system, people required to report child abuse or neglect must have access to necessary resources to report child abuse or neglect, including but not limited to:

(I) Specialized training to address and decrease the disproportionate impact on under-resourced communities, communities of color, and persons with disabilities;

(II) Standardized training and materials; and

(III) Information regarding obligations and protections pursuant to the law.

(b) Additionally, through the creation of a mandatory reporter task force in this part 3, diverse representatives from statewide organizations serving families and youth shall analyze best practices and may recommend changes to training materials and reporting procedures.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1. **L. 2017:** Entire section amended, (SB 17-016), ch. 107, p. 389, § 1, effective August 9. **L. 2022:** Entire section amended, (HB 22-1240), ch. 313, p. 2235, § 1, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-303. Definitions. (Repealed)

Source: L. 87: Entire title R&RE, p. 763, § 1, effective October 1. **L. 91:** (2.5) and (10) amended and (4.5), (4.7), and (9.5) added, p. 222, § 3, effective May 24. **L. 92:** (9.5) amended, p. 2175, § 29, effective June 2. **L. 93:** (2) amended, p. 1250, § 2, effective June 6. **L. 94:** (1)(a)(IV) added, p. 1055, § 5, effective May 4; (9) amended, p. 2683, § 199, effective July 1. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-3-304. Persons required to report child abuse or neglect.

(1) (a) Except as otherwise provided by section 19-3-307, section 25-1-122 (4)(d), and subsections (1)(b) and (1)(c) of this section, a person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately upon receiving the information report or cause a report to be made of the fact as soon as reasonably possible, but no later than twenty-four hours after receiving the information, to the county department, the local law enforcement agency, or through the child abuse reporting hotline system as set forth in section 26-5-111.

(b) The reporting requirement described in paragraph (a) of this subsection (1) shall not apply if the person who is otherwise required to report does not:

(I) Learn of the suspected abuse or neglect until after the alleged victim of the suspected abuse or neglect is eighteen years of age or older; and

(II) Have reasonable cause to know or suspect that the perpetrator of the suspected abuse or neglect:

(A) Has subjected any other child currently under eighteen years of age to abuse or neglect or to circumstances or conditions that would likely result in abuse or neglect; or

(B) Is currently in a position of trust, as defined in section 18-3-401 (3.5), C.R.S., with regard to any child currently under eighteen years of age.

(c) The reporting requirement described in subsection (1)(a) of this section does not apply if the person:

(I) Learns of the suspected abuse or neglect outside of the person's professional capacity that would require the person to make a report pursuant to this section; or

(II) Is employed by, an agent of, or a contractor for any attorney who is providing legal services.

(2) Persons required to report the abuse or neglect or circumstances or conditions include a:

(a) Physician or surgeon, including a physician in training;

(b) Child health associate;

(c) Medical examiner or coroner;

(d) Dentist;

(e) Osteopath;

(f) Optometrist;

(g) Chiropractor;

(h) Podiatrist;

(i) Registered nurse or licensed practical nurse;

(j) Hospital personnel engaged in the admission, care, or treatment of patients;

(k) Christian science practitioner;

(l) Public or private school official or employee;

(m) Social worker or worker in any facility or agency that is licensed or certified pursuant to part 9 of article 6 of title 26 or part 3 of article 5 of title 26.5;

(n) Mental health professional;

(o) Dental therapist or dental hygienist;

(p) Psychologist;

(q) Physical therapist;

(r) Veterinarian;

(s) Peace officer as described in section 16-2.5-101, C.R.S.;

(t) Pharmacist;

(u) Commercial film and photographic print processor as provided in subsection (2.5) of this section;

(v) Firefighter as defined in section 18-3-201 (1.5), C.R.S.;

(w) Repealed.

(x) Licensed professional counselors;

(y) Licensed marriage and family therapists;

(z) Unlicensed psychotherapists;

(aa) (I) Clergy member.

(II) The provisions of this paragraph (aa) 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 section 13-90-107 (1)(c), C.R.S., unless the person also acquires such reasonable cause from a source other than such a communication.

(III) For purposes of this paragraph (aa), 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.

(bb) Registered dietitian who holds a certificate through the commission on dietetic registration and who is otherwise prohibited by 7 CFR 246.26 from making a report absent a state law requiring the release of this information;

(cc) Worker in the state department of human services;

(dd) Juvenile parole and probation officers;

(ee) Child and family investigators, as described in section 14-10-116.5, C.R.S.;

(ff) Officers and agents of the state bureau of animal protection, and animal control officers;

(gg) The child protection ombudsman as created in article 3.3 of this title;

(hh) Educator providing services through a federal special supplemental nutrition program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786;

(ii) Director, coach, assistant coach, or athletic program personnel employed by a private sports organization or program. For purposes of this paragraph (ii), "employed" means that an individual is compensated beyond reimbursement for his or her expenses related to the private sports organization or program.

(jj) Person who is registered as a psychologist candidate pursuant to section 12-245-304 (3), marriage and family therapist candidate pursuant to section 12-245-504 (4), or licensed professional counselor candidate pursuant to section 12-245-604 (4), or who is described in section 12-245-217;

(kk) Emergency medical service providers, as defined in sections 25-3.5-103 (8) and 25-3.5-103 (12) and certified or licensed pursuant to part 2 of article 3.5 of title 25;

(ll) Officials or employees of a county department of health or a county department of human or social services;

(mm) Naturopathic doctor registered under article 250 of title 12; and

(nn) Employees of the department of early childhood.

(2.5) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative, or slide depicting a child engaged in an act of sexual conduct shall report such fact to a local law enforcement agency immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative, or slide attached within thirty-six hours of receiving the information concerning the incident.

(3) In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the local law enforcement agency, the county department, or through the child abuse reporting hotline system as set forth in section 26-5-111, C.R.S.

(3.2) A person specified in subsection (2) or (3) of this section shall not make a report due to a family's or child's race, ethnicity, socioeconomic status, or disability status. In addition, the reporting requirement described in subsection (1)(a) of this section does not apply if the basis for the report arises from concerns solely due to any of the following criteria:

(a) Socioeconomic status, which includes factors such as inadequate housing, furnishings, income, or clothing; or

(b) Disability.

(3.3) (a) A person specified in subsection (2) of this section shall not delegate the duty to make the report required by subsection (1)(a) of this section to another person who does not have firsthand knowledge of the suspected child abuse or neglect.

(b) An entity that employs a person specified in subsection (2) or (2.5) of this section may develop protocols regarding the process for making the report required by subsection (1)(a) of this section. The protocols must comply with state law and regulations. Representatives of the entity shall not deter or impede a person from filing a report required by subsection (1)(a) of this section.

(3.5) No person, including a person specified in subsection (1) of this section, shall knowingly make a false report of abuse or neglect to a county department, a local law enforcement agency, or through the child abuse reporting hotline system as set forth in section 26-5-111, C.R.S.

(4) Any person who willfully violates the provisions of subsection (1) of this section or who violates the provisions of subsection (3.5) of this section:

(a) Commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501; and

(b) Shall be liable for damages proximately caused thereby.

(5) No person shall be prosecuted, tried, or punished for an offense that pertains to a report of unlawful sexual behavior as defined in section 16-22-102 (9) and under circumstances when a mandatory reporter has reasonable cause to know or suspect that a child has been subjected to unlawful sexual behavior as defined in section 16-22-102 (9) or observed the child being subjected to circumstances or conditions that would reasonably result in unlawful sexual behavior as defined in section 16-22-102 (9) unless the indictment, information, complaint, or action for the same is found or instituted within three years after the commission of the offense. The limitation for commencing criminal proceedings concerning acts of failure to report child abuse other than those involving acts described in this subsection (5) are governed by section 16-5-401.

Source: L. 87: Entire title R&RE, p. 764, § 1, effective October 1. **L. 90:** (2)(m) amended, P. 1394, § 2, effective May 24; (3.5) added and IP(4) amended, p. 1023, § 1, effective July 1. **L. 93:** (1) amended, p. 1609, § 1, effective June 6; (2) amended, p. 1735, § 29, effective July 1. **L. 95:** (2)(w) added, p. 949, § 5, effective July 1. **L. 96:** (2.5) amended, p. 83, § 8, effective March 20; (2)(m) amended, p. 265, § 16, effective July 1. **L. 97:** (2)(v) amended, p. 1013, § 19, effective August 6. **L. 2001:** (2)(x), (2)(y), and (2)(z) added, p. 160, § 1, effective July 1. **L. 2002:** (1) amended, p. 568, § 2, effective May 24; (2)(aa) added, p. 1145, § 1, effective June 3; (1)

amended, p. 1592, § 30, effective July 1; (4)(a) amended, p. 1527, § 231, effective October 1. **L. 2003:** (2)(m) amended and (2)(cc) added, p. 660, § 1, effective March 20; (2)(bb) added, p. 666, § 1, effective March 20; (2)(s) amended, p. 1616, § 18, effective August 6. **L. 2005:** (2)(dd), (2)(ee), and (2)(ff) added, p. 357, § 1, effective April 22; (2)(ee) amended, p. 963, § 9, effective July 1. **L. 2010:** (2)(gg) added, (SB 10-171), ch. 225, p. 982, § 4, effective May 14; (1) amended, (SB 10-066), ch. 418, p. 2060, § 1, effective June 10; (2)(h) amended, (HB 10-1224), ch. 420, p. 2161, § 25, effective July 1. **L. 2011:** IP(2) and (2)(z) amended, (SB 11-187), ch. 285, p. 1328, § 71, effective July 1; (2)(hh) added, (SB 11-034), ch. 125, p. 390, § 1, effective January 1, 2012. **L. 2013:** (2)(hh) amended and (2)(ii) added, (SB 13-012), ch. 51, p. 173, § 2, effective March 22; (1)(a), (3), and (3.5) amended, (HB 13-1271), ch. 219, p. 1021, § 2, effective May 14; (2)(jj) added, (HB 13-1104), ch. 77, p. 249, § 6, effective August 7; (2)(kk) added, (SB 13-220), ch. 220, p. 1023, § 1, effective July 1, 2014. **L. 2014:** (2)(v) amended, (HB 14-1214), ch. 336, p. 1499, § 11, effective August 6. **L. 2016:** (1)(a) amended, (SB 16-146), ch. 230, p. 918, § 13, effective July 1. **L. 2017:** (2)(jj) and (2)(kk) amended and (2)(mm) added, (SB 17-106), ch. 302, p. 1650, § 8, effective August 9; (2)(jj) and (2)(kk) amended and (2)(ll) added, (HB 17-1185), ch. 194, p. 710, § 2, effective December 31. **L. 2019:** (5) added, (SB 19-049), ch. 56, p. 195, § 1, effective March 28; (2)(kk) amended, (SB 19-242), ch. 396, p. 3528, § 13, effective May 31; (2)(jj) and (2)(mm) amended, (HB 19-1172), ch. 136, p. 1682, § 112, effective October 1. **L. 2020:** (2)(z) amended, (HB 20-1206), ch. 304, p. 1551, § 65, effective July 14. **L. 2021:** (4)(a) amended, (SB 21-271), ch. 462, p. 3220, § 389, effective March 1, 2022. **L. 2022:** (2)(m), (2)(ll), and (2)(mm) amended and (2)(nn) added, (HB 22-1295), ch. 123, p. 834, § 37, effective July 1; (2)(o) amended, (SB 22-219), ch. 381, p. 2726, § 35, effective January 1, 2023. **L. 2024:** (2)(ll) amended, (HB 24-1222), ch. 155, p. 688, § 7, effective August 7. **L. 2025:** (2)(w) repealed, (HB 25-1188), ch. 337, p. 1776, § 2, effective May 31; (1)(a) and IP(2) amended and (1)(c), (3.2), and (3.3) added, (HB 25-1188), ch. 337, p. 1776, § 2, effective September 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (2)(cc) was originally numbered as (2)(bb) in House Bill 03-1037 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4)(a), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2005 act amending subsection (2)(ee), see section 1 of chapter 244, Session Laws of Colorado 2005. For the legislative declaration in the 2013 act amending subsection (2)(hh) and adding subsection (2)(ii), see section 1 of chapter 51, Session Laws of Colorado 2013. For the legislative declaration in SB 22-219, see section 1 of chapter

381, Session Laws of Colorado 2022. For the legislative declaration in HB 25-1188, see section 1 of chapter 337, Session Laws of Colorado 2025.

ANNOTATION

Law reviews. For article, "Towards a More Practical Central Registry", see 51 Den. L.J. 509 (1974). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For comment, "Warning Bell: The Inherent Difficulties of Responding to Student-on-Student Sexual Harassment in Colorado Middle Schools", see 76 U. Colo. L. Rev. 813 (2005).

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

A violation of state law duty, by itself, is insufficient to give rise to a claim under 42 U.S.C. § 1983. Plaintiffs could not maintain a substantive due process claim based on defendants' alleged violations of their duties under the Child Protection Act to report and investigate allegations of child abuse. Pierce v. Delta County Dept. of Soc. Servs., 119 F. Supp. 2d 1139 (D. Colo. 2000).

Defendants' alleged failure to report and investigate child abuse allegations does not deprive plaintiffs of a protected liberty interest without due process of law. While plaintiffs may have had an expectation that some form of protective services would be taken if defendants complied with the statutory requirements, the expectation of action is not enough to create a protected liberty interest under the due process clause of the U.S. Constitution. Pierce v. Delta County Dept. of Soc. Servs., 119 F. Supp. 2d 1139 (D. Colo. 2000).

A mandatory reporter's failure to report pursuant to this section is not a continuing offense, and the statute of limitations starts to run when a mandatory reporter has reason to know or suspect child abuse or neglect but fails to make an immediate report. Macintosh v. County Court of Arapahoe, 2020 COA 105, 477 P.3d 765; Gonzales v. County Court of Arapahoe, 2020 COA 104, 477 P.3d 752.

The mandatory reporting duty on public school teachers is not limited to the reporting of any known or suspected child abuse or neglect learned of during the course of their professional capacity. Rather, the reporting duty applies irrespective of the circumstances in which the teacher learned of the child abuse or neglect. Heotis v. Colo. State Bd. of Educ., 2019 COA 35, 457 P.3d 691.

Public school teacher who knew her daughter was being abused at home by father and failed to report the abuse thus violated her statutory duty to report. Heotis v. Colo. State Bd. of Educ., 2019 COA 35, 457 P.3d 691.

Protective orders prohibiting district attorney and law enforcement officials from questioning parents regarding alleged

sexual abuse of children and prohibiting use in any criminal or civil proceeding of any statement made by parents to therapist during the course of court-ordered treatment plans could be implemented without violating reporting requirement of this section where in each case suspected sexual abusive conduct had been reported and the children adjudicated dependent or neglected. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

This section was irreconcilable with § 12-63.5-115 (now repealed and replaced by § 12-43-218) which made it a criminal act for a social worker to reveal a privileged communication from a client, and, since § 12-63.5-115 was enacted later in time, it prevailed. Human Servs., Inc. v. Woodard, 765 P.2d 1052 (Colo. App. 1988).

"Any person" as used in subsection (4) is defined to mean people in specific occupations or employed by specific entities, but does not include public entities. The Colorado Governmental Immunity Act (CGIA) therefore controls on issues of public entity immunity. L.J. v. Carricato, 2018 COA 3, 413 P.3d 1280.

Civil liability under this section is rooted in traditional tort principles, therefore claim against public entity is barred by the CGIA. L.J. v. Carricato, 2018 COA 3, 413 P.3d 1280.

Under the CGIA, a public employee who is a mandatory reporter is immune from liability under subsection (4) for reporting or failing to report child abuse unless the employee's conduct is willful and wanton. L.J. v. Carricato, 2018 COA 3, 413 P.3d 1280.

Statements are not rendered testimonial solely because they are made to persons who are subject to mandatory reporting requirements. People v. Phillips, 2012 COA 176, 315 P.3d 136.

Similarly, child's statements to public school employees and to caseworker are not testimonial simply because of their statutory duty to report. The employees and caseworker were not law enforcement officials; law enforcement officials had not asked them to question child about his injuries; and they did not otherwise work with law enforcement officials to obtain child's injury-related statements for later use in prosecuting defendant. People v. Phillips, 2012 COA 176, 315 P.3d 136.

Criminal prosecutions for violations of this section do not constitute "proceedings brought under this article" within the meaning of § 19-3-206. Therefore, § 19-3-206 does not divest district attorneys of their authority to prosecute violations of this section. Berges v. County Court of Douglas County, 2016 COA 146, 409 P.3d 592.

Trial court's admission of child abuse reports by psychologist based upon privileged communications between psychologist and defendant did not constitute error because allowing privilege to prevent use of child abuse reports would defeat one of purposes of reports to aid in the investigation and prosecution of child abusers. People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

In order to harmonize potential statutory conflict between this section and § 13-90-107 concerning privileged communications prior to 1989 amendment to § 19-3-311, this section required psychologists to report suspected child abuse to the appropriate authorities while § 13-90-107 (1)(g) prohibited psychologists from testifying against their clients without consent. People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

Information about defendant's background and demeanor during visit to mental health facility fell within scope of child abuse reporting statute. The information reported verbally by counselor in phone call to police and in subsequent written form was relevant to counselor's ability to determine whether defendant's "visions" had any basis in reality and as such constituted a legitimate report of suspected child abuse and was therefore exempt from confidentiality requirements under federal statute for substance abuse treatment records. People v. Jimenez, 217 P.3d 841 (Colo. App. 2008).

19-3-304.2. Mandatory reporter task force - creation - reporting - definitions - repeal. (Repealed)

Source: L. 2022: Entire section added and (3)(a)(VI)(Y) amended, (HB 22-1240), ch. 313, pp. 2236, 2241, §§ 2, 3, effective August 10.

Editor's note: Subsection (11) provided for the repeal of this section, effective July 1, 2025. (See L. 2022, pp. 2236, 2241.)

19-3-304.3. Best practices and training for recognition of domestic abuse as child abuse or neglect - policies and procedures - rules.

(1) Repealed.

(2) On or before July 1, 2023, the state department shall promulgate rules based on recommendations from the domestic violence program and child welfare workgroup regarding the best practices and training for recognition of child abuse or neglect related to domestic abuse, including, but not limited to:

(a) Creating, implementing, and updating assessment policies and procedures for child welfare caseworkers to recognize, respond, and assess child abuse or neglect related to domestic abuse while appropriately considering the role of the non-abusive caregiver and cultural considerations;

(b) Creating, implementing, and updating training materials for mandatory reporters to recognize and report child abuse or neglect related to domestic abuse;

(c) Establishing training standards to implement updated assessment policies and procedures for child welfare caseworkers to recognize and respond to child abuse or neglect related to domestic abuse while appropriately considering the role of the non-abusive caregiver and cultural considerations; and

(d) Establishing training standards to implement updated assessment policies and procedures for child welfare caseworkers to recognize and respond to child abuse or neglect related to domestic abuse while appropriately considering the role of the abusive parent and cultural considerations.

Source: L. 2021: Entire section added, (HB 21-1099), ch. 179, p. 972, § 2, effective September 7. **L. 2026:** (1) repealed, (HB 26-1295), ch. 121, p. 516, § 4, effective August 12.

Cross references: For the legislative declaration in HB 21-1099, see section 1 of chapter 179, Session Laws of Colorado 2021.

19-3-304.4. Pre-adolescent services task force - duties - report - repeal. (Repealed)

Source: L. 2022: Entire section added, (HB 22-1131), ch. 380, p. 2700, § 2, effective June 7. **L. 2023:** (1)(d)(I)(J) amended, (HB 23-1236), ch. 206, p. 1051, § 4, effective May 16.

Editor's note: (1) Subsection (2) provided for the repeal of this section, effective July 1, 2023. (See L. 2022, p. 2700.)

(2) For the amendment to subsection (1)(d)(I)(J) in SB 23-1236 in effect from May 16, 2023, until July 1, 2023, see chapter 206, Session Laws of Colorado 2023. (See L. 2023, p. 1051.)

Cross references: For the legislative declaration in HB 22-1131, see section 1 of chapter 380, Session Laws of Colorado 2022.

19-3-304.5. Emergency possession of certain relinquished children - rules - legislative declaration - definitions.

(1) If a parent voluntarily delivers a child to a firefighter, as defined in section 18-3-201 (1.5), or a staff member who engages in the admission, care, or treatment of patients at a hospital or community clinic emergency center, as defined in subsection (9) of this section, when the firefighter is at a fire station or the staff member is at a hospital or community clinic emergency center, as defined in subsection (9) of this section, the firefighter or staff member of the hospital or community clinic emergency center shall, without a court order, take temporary physical custody of the child if:

(a) The child is thirty days old or younger; and

(b) The parent did not express an intent to return for the child.

(2) If a firefighter or staff member of a hospital or community clinic emergency center takes temporary physical custody of a child pursuant to subsection (1) of this section, the firefighter or staff member shall:

(a) 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; and

(b) Notify a law enforcement officer and the county department of the abandonment within twenty-four hours after the abandonment.

(3) A firefighter or staff member of a hospital or community clinic emergency center shall incur no civil or criminal liability for any good faith acts or omissions performed pursuant to this section.

(4) Upon receipt of notice pursuant to subsection (2) of this section, a law enforcement officer shall take the abandoned child into temporary custody pursuant to section 19-3-401.

(4.5) Any document prepared by a firefighter, a hospital or community clinic emergency center staff member, or a law enforcement officer pursuant to this section is a dependency and neglect record and is subject to the confidentiality provisions of section 19-1-307.

(5) Each county department of human or social services shall maintain and update on a monthly basis a report of the number of children who have been abandoned pursuant to this section. Each county department of human or social services shall submit such information to the state department of human services.

(5.5) The state department shall adopt rules establishing a process for either parent of a child who was surrendered pursuant to this section to reunify with the child.

(6) Notwithstanding section 24-1-136 (11)(a)(I), the state department of human services shall submit an annual report to the general assembly not later than March 1 that compiles the monthly reports, required pursuant to subsection (5) of this section, of the number of children abandoned pursuant to this section.

(7) The general assembly hereby finds, determines, and declares that a county department of human or social services shall place an abandoned child with a potential adoptive parent as soon as possible. The general assembly further declares that, as soon as lawfully possible, a county department of human or social services shall proceed with a motion to terminate the parental rights of a parent who abandons a child.

(8) 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.

(9) "Community clinic emergency center" means a community clinic licensed by the department of public health and environment pursuant to section 25-3-101 (2)(a)(I)(B) that:

(a) Delivers emergency services; and

(b) Provides emergency care twenty-four hours per day and seven days a week throughout the year, except if located in a rural or frontier area that does not have the demand to support twenty-four-hour service or only operates each year during a specified time period due to seasonal population influx.

Source: L. 2000: Entire section added, p. 2004, § 2, effective June 3. **L. 2002:** (4.5) added, p. 168, § 1, effective April 1. **L. 2003:** (2)(b) amended and (8) added, p. 769, § 1, effective March 25. **L. 2006:** (8) amended, p. 1493, § 24, effective June 1. **L. 2014:** IP(1) amended, (HB 14-1214), ch. 336, p. 1499, § 12, effective August 6. **L. 2017:** (6) amended, (SB 17-234), ch. 154, p. 521, § 5, effective August 9. **L. 2018:** IP(1), IP(2), (3), and (4.5) amended and (9) added, (SB 18-050), ch. 20, p. 270, § 3, effective March 7; (5) and (7) amended, (SB 18-092), ch. 38, p. 417, § 52, effective August 8. **L. 2024:** (6) amended, (SB 24-135), ch. 34, p. 107, § 5, effective March 22. **L. 2026:** (1)(a) amended and (5.5) added, (HB 26-1024), ch. 74, p. 291, § 1, effective August 12.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-3-305. Required report of postmortem investigation.

(1) Any person who is required by section 19-3-304 to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to a local law enforcement agency and to the appropriate medical examiner. The local law enforcement agency and the medical examiner shall accept such report for investigation and shall report their findings to the local law enforcement agency, the district attorney, and the county department.

(2) The county department shall forward a copy of such report to the state department of human services.

Source: L. 87: Entire title R&RE, p. 765, § 1, effective October 1. **L. 2003:** (2) amended, p. 1405, § 9, effective January 1, 2004.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (2), see section 1 of chapter 196, Session Laws of Colorado 2003.

19-3-306. Evidence of abuse - color photographs and X rays.

(1) Any child health associate, person licensed to practice medicine in this state, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care, or treatment of patients, medical examiner, coroner, social worker, psychologist, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X rays of the child.

(2) Copies or duplicate originals of any color photographs which show evidence of child abuse shall be immediately forwarded to the county department or to the local law enforcement agency. Original photographs shall be made available upon the request of such department or agency. X rays which show evidence of child abuse or copies of the X-ray report, or both, shall be made available upon request to the county department or the local law enforcement agency. Any person who forwards original photographs or X rays pursuant to this section shall maintain copies or duplicate originals thereof.

Source: L. 87: Entire title R&RE, p. 766, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-307. Reporting procedures - definitions.

(1) (a) Reports of known or suspected child abuse or neglect made pursuant to this article 3 must be made as soon as practicable, but no later than twenty-four hours after receiving the information, to the county department, the local law enforcement agency, or through the child abuse reporting hotline system as set forth in section 26-5-111. The county department shall submit a report of confirmed child abuse or neglect within sixty days after receipt of the report to the state department in a manner prescribed by the state department.

(b) If a person required to submit a report pursuant to this part 3 contacts the child abuse reporting hotline system created pursuant to section 26-5-111 or a county department about an incident or situation for which the child abuse reporting hotline system or county department has already received a report, the child abuse reporting hotline system or county department may, after confirming that the report does not require a new referral, provide the person with the referral identification number from the earlier child abuse reporting hotline system or county report. A person required to submit a report pursuant to this part 3 who receives a referral identification number from the child abuse reporting hotline system or a county department is not required to make a report pursuant to subsection (1)(a) of this section and is deemed to have fulfilled their reporting responsibility. Nothing in this section precludes the child abuse reporting hotline system or a county department from generating a new report if there is additional or different information that might not have been reported or if the referral is not currently under review.

(2) Reports of known or suspected child abuse or neglect made pursuant to this article 3 must include the following information whenever possible:

(a) The name, address, age, sex, and race of the child;

(b) The name and address of the person responsible for the suspected abuse or neglect;

(c) The nature and extent of the child's injuries, including any evidence of previous cases of known or suspected abuse or neglect of the child or the child's siblings;

(c.5) Any evidence of known domestic violence or intimate partner violence in the child's home, including any evidence of previous cases of known domestic violence or intimate partner violence in the child's home;

(d) The names and addresses of the persons responsible for the suspected abuse or neglect, if known;

(e) The family composition;

(f) The source of the report and the name, address, and occupation of the person making the report;

(g) Any action taken by the reporting source;

(h) Any other information that the person making the report believes may be helpful in furthering the purposes of this part 3;

(i) The military affiliation of the individual who has custody or control of the child who is the subject of the investigation of child abuse or neglect, if such individual is a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces. This information shall be shared with the appropriate military installation authorities pursuant to the requirements set forth in sections 19-1-303 (2.6) and 19-1-307 (2)(w).

(2.5) Notwithstanding the requirements set forth in subsection (2) of this section, any officer or employee of a county, district, or municipal public health agency or state department of public health and environment who makes a report pursuant to section 25-1-122 (4)(d) or 25-4-405, C.R.S., shall include only the information described in said section.

(3) (a) 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.

(b) 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 in accordance with subsection (1) of this section to the district attorney's office and to the local law enforcement agency.

(4) A written report, including a report voluntarily made, from persons or officials required by this part 3 to report known or suspected child abuse or neglect is admissible as evidence in a proceeding relating to child abuse, subject to the limitations of section 19-1-307.

(5) As used in this section, unless the context otherwise requires:

(a) "Coercion" means compelling a person by force, threat of force, or intimidation to engage in conduct from which the person has the right or privilege to abstain, or to abstain from conduct in which the person has the right or privilege to engage.

(b) "Domestic violence", commonly known as "intimate partner violence" means a pattern of violent behavior or an act, attempted act, or perceived threat of violence, stalking, harassment, or coercion that is committed by a person against another person with whom the actor is involved or has been involved in an intimate relationship. A sexual relationship may be an indicator of an intimate relationship but is never a necessary condition for finding an intimate relationship.

Source: L. 87: Entire title R&RE, p. 766, § 1, effective October 1. **L. 90:** (4) amended, p. 1012, § 6, effective July 1. **L. 93:** (2.5) added, p. 1609, § 2, effective June 6. **L. 94:** (2.5) amended, p. 2737, § 364, effective July 1. **L. 98:** (4) amended, p. 822, § 27, effective August 5. **L. 2001:** (3) amended, p. 758, § 9, effective June 1. **L. 2003:** (1) amended, p. 1406, § 10, effective January 1, 2004. **L. 2010:** (2.5) amended, (HB 10-1422), ch. 419, p. 2075, § 36, effective August 11. **L. 2013:** (1) amended, (HB 13-1271), ch. 219, p. 1022, § 3, effective May 14. **L. 2016:** (2.5) amended, (SB 16-146), ch. 230, p. 919, § 14, effective July 1. **L. 2017:** IP(2) amended and (2)(i) added, (SB 17-028), ch. 332, p. 1784, § 4, effective August 9. **L. 2024:** (2)(c.5) and (5) added, (HB 24-1046), ch. 262, p. 1731, § 2, effective May 28. **L. 2025:** (1) and (4) amended, (HB 25-1188), ch. 337, p. 1777, § 3, effective September 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 196, Session Laws of Colorado 2003. For the legislative declaration in HB 24-1046, see section 1 of chapter 262, Session Laws of Colorado 2024. For the legislative declaration in HB 25-1188, see section 1 of chapter 337, Session Laws of Colorado 2025.

ANNOTATION

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

Information about defendant's background and demeanor during visit to mental health facility fell within scope of child abuse reporting statute. The

information reported verbally by counselor in phone call to police and in subsequent written form was relevant to counselor's ability to determine whether defendant's "visions" had any basis in reality and as such constituted a legitimate report of suspected child abuse and was therefore exempt from confidentiality requirements under federal statute for substance abuse treatment records. People v. Jimenez, 217 P.3d 841 (Colo. App. 2008).

Statements are not rendered testimonial solely because they are made to persons who are subject to mandatory reporting requirements. People v. Phillips, 2012 COA 176, 315 P.3d 136.

Similarly, child's statements to public school employees and to caseworker are not testimonial simply because of their statutory duty to report. The employees and caseworker were not law enforcement officials; law enforcement officials had not asked them to question child about his injuries; and they did not otherwise work with law enforcement officials to obtain child's injury-related statements for later use in prosecuting defendant. People v. Phillips, 2012 COA 176, 315 P.3d 136.

Applied in People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976).

19-3-308. Action upon report of intrafamilial, institutional, or third-party abuse - investigations - child protection team - rules - report.

(1) (a) 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 must be in accordance with rules adopted by the state board of human services to determine the risk of harm to such child and the appropriate response to such risks. Appropriate responses 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. The immediate concern of any assessment or investigation is the protection of the child, and, where possible, the preservation of the family unit.

(b) Repealed.

(c) It shall be an appropriate response to a report of a known or suspected incident of intrafamilial abuse or neglect for a county department to require a parent or a child placement agency assisting a parent to verify that a petition for relinquishment has been filed or is imminent and to deem that a report does not require additional investigation pending finalization of the relinquishment in the following circumstance:

(I) When the report of a known or suspected incident of intrafamilial abuse or neglect involves a case in which the child tests positive at birth for either a schedule I or a schedule II controlled substance; and

(II) The parents of the child have filed or a child placement agency assisting the parents has filed a petition for relinquishment or anticipates filing a petition for relinquishment pursuant to the expedited relinquishment process described in section 19-5-103.5.

(1.5) (a) Upon referral to the county department, the county department shall assess the possibility of abuse or neglect.

(b) If, during the investigation and assessment process, the county department determines that the family's issues may be attributable to the child's mental health status, rather than dependency or neglect issues, and that mental health treatment services pursuant to section 27-67-104 may be more appropriate, the county department shall contact the mental health agency, as that term is defined in section 27-67-103 (10). Within ten days after the commencement of the investigation, the county department shall meet with a representative from the mental health agency and the family. The county department, in conjunction with the mental health agency, shall jointly determine whether mental health services should be provided pursuant to section 27-67-104 or whether the provision of services through the county department is more appropriate.

(c) On and after April 15, 2010, if a county department of human or social services that is participating in the differential response program pursuant to section 19-3-308.3 determines from an assessment performed pursuant to paragraph (a) of this subsection (1.5) that the known or suspected incident of intrafamilial abuse or neglect that was the basis for the assessment is of low or moderate risk, the county department, in lieu of performing an investigation pursuant to this section, may proceed in accordance with the provisions of section 19-3-308.3.

(2) The investigation, to the extent that it is reasonably possible, shall include:

(a) The credibility of the source or the report;

(b) The nature, extent, and cause of the abuse or neglect;

(c) The identity of the person responsible for such abuse or neglect;

(d) The names and conditions of any other children living in the same place;

(e) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;

(f) All other data deemed pertinent.

(3) (a) The investigation shall include an interview with or observance of the child who is the subject of a report of abuse or neglect. The investigation may include a visit to the child's place of residence or place of custody or wherever the child may be located, as indicated by the report. In addition, in connection with any investigation, the alleged perpetrator shall be advised as to the allegation of abuse and neglect and the circumstances surrounding such allegation and shall be afforded an opportunity to respond.

(b) If admission to the child's place of residence cannot be obtained, the juvenile court or the district court with juvenile jurisdiction, upon good cause shown, shall order the responsible person or persons to allow the interview, examination, and investigation. Should the responsible person or persons refuse to allow the interview, examination, and investigation, the juvenile court or the district court with juvenile jurisdiction shall hold an immediate proceeding to show cause why the responsible person or persons shall not be held in contempt of court and committed to jail until such time as the child is produced for the interview, examination, and investigation or until information is produced that establishes that said person or persons cannot aid in providing information about the child. Such person or persons may be held without bond. During the course of any such hearing, the responsible person or persons, or any necessary witness, may be granted use immunity by the district attorney against the use of any statements made during such hearing in a subsequent or pending criminal action.

(4) (a) The county department, except as provided in subsections (5) and (5.3) of this section, shall be the agency responsible for the coordination of all investigations of all reports of known or suspected incidents of intrafamilial abuse or neglect. The county department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The county department shall conduct the investigation in conjunction with the local law enforcement agency, to the extent a joint investigation is possible and deemed appropriate, and any other appropriate agency. The county department may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The county department shall provide for persons to be continuously available to respond to such reports. Contiguous counties may cooperate to fulfill the requirements of this subsection (4). The county department or other agency authorized to conduct the investigation pursuant to this subsection (4), for the purpose of such investigation, 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.

(b) Upon the receipt of a report, if the county department reasonably believes that an incident of intrafamilial 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 sections 19-3-401 (1)(a) and 19-3-405.

(c) Upon the receipt of a report, if the county department assessment concludes that a child has been a victim of intrafamilial, institutional, or third-party abuse or neglect in which he or she has been subjected to human trafficking of a minor for sexual servitude, as described in section 18-3-504, or commercial sexual exploitation of a child, it shall, when necessary and appropriate,

immediately offer social services to the child who is the subject of the report and to his or her family, and it may file a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of such child. If, at any time after the commencement of an investigation, the county department has reasonable cause to suspect that the child or any other child under the same care is a victim of human trafficking, the county department shall notify the local law enforcement agency as soon as it is reasonably practicable to do so. 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 sections 19-3-401 (1)(a) and 19-3-405. In instances of third-party abuse or neglect as it relates to human trafficking, a county department of human or social services may, but is not required to, interview the person alleged to be responsible for the abuse or neglect or prepare an investigative report pursuant to subsection (5.3)(a) of this section. If a county department elects to interview the third-party individual, it shall first confer with its local law enforcement agency.

(4.5) (a) The state department shall adopt rules setting forth procedures for the investigation of reports of institutional abuse. Such rules may provide for investigations to be conducted by an agency that contracts with the state and has staff trained to conduct investigations, the county departments, or any other entity the state department deems appropriate. The procedures may include the use of a review team responsible to make recommendations to the state department concerning the procedures for investigating institutional abuse.

(a.5) (I) The state department shall adopt rules that specify that, prior to notice of an investigation being sent to the parents or legal guardians of children cared for at a child care center, as that term is defined in section 26-6-903 or 26.5-5-303, or a family child care home, as that term is defined in section 26.5-5-303, which children were not involved in the incident being investigated, the state department or the county department shall ensure 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 of the state board, or involves sexual abuse;

(B) The state department or county department has made a determination as to whether 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 at the facility; and

(C) The state department or county department has stated in writing the basis for the determination and a state department or county department supervisor has provided written approval of the determination, which basis and approval may be in electronic form.

(II) The rules adopted pursuant to subparagraph (I) of this paragraph (a.5) shall require the notice of investigation to be sent to the parents or legal guardians within seventy-two hours after the determination described in sub-subparagraph (B) of subparagraph (I) of this paragraph (a.5) is made.

(b) If, as a result of an investigation conducted pursuant to rules adopted in accordance with this subsection (4.5), institutional abuse is found to have occurred, the entity that conducted such investigation may:

(I) If the institutional abuse is the result of a single act or occurrence at the facility, request that the owner, operator, or administrator of the facility formulate a plan of remedial action. Such request shall be made within a period established by the state department. Within thirty days of the agency's request, the owner, operator, or administrator of the facility shall notify the agency, in writing, of a plan for remedial action. Within ninety days of the request, the owner, operator, or administrator shall complete the plan for remedial action.

(II) If the institutional abuse is one of several similar incidents that have occurred at the facility, request that the owner, operator, or administrator of the facility make administrative, personnel, or structural changes at the facility. Such request shall be made within a period established by the state department. Within thirty days of such request, the owner, operator, or administrator of the facility shall notify the agency of the progress in complying with the request. The agency and the owner, operator, or administrator shall establish the period in which the requested changes shall be completed.

(III) If an owner, operator, or administrator of a facility does not formulate or implement a plan for remedial action in accordance with subparagraph (I) of this paragraph (b) or make requested changes in accordance with subparagraph (II) of this paragraph (b), recommend to the entity that licenses, oversees, certifies, or authorizes the operation of the facility that appropriate sanctions or actions be imposed against the facility.

(c) A teacher, employee, volunteer, or staff person of an institution who is alleged to have committed an act of child abuse shall be temporarily suspended from his position at the institution with pay, or reassigned to other duties which would remove the risk of harm to the child victim or other children under such person's custody or control, if there is reasonable cause to believe that the life or health of the victim or other children at the institution is in imminent danger due to continued contact between the alleged perpetrator and a child at the institution. A public employee suspended pursuant to this paragraph (c) shall be accorded and may exercise due process rights, including notice of the proposed suspension and an opportunity to be heard, and any other due process rights provided under the laws of this state governing public employment and under any applicable individual or group contractual agreement. A private employee suspended pursuant to this subsection (4.5) shall be accorded and may exercise due process rights provided for under the laws of this state governing private employment and under any applicable individual or group employee contractual agreement.

(d) Nothing in this subsection (4.5) shall be construed to abrogate or limit any other enforcement action provided by law.

(5) If a local law enforcement agency receives a report of a known or suspected incident of intrafamilial 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 pursuant to this subsection (5), 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.

(5.3) (a) Local law enforcement agencies have the responsibility for the coordination and investigation of all reports of third-party abuse or neglect by persons ten years of age or older. Upon receipt of a report, if the local law enforcement agency reasonably believes that the protection and safety of a child is at risk due to an act or omission on the part of persons responsible for the child's care, such agency shall notify the county department of human or social services for an assessment regarding neglect or dependency. In addition, the local law enforcement agency shall refer to the county department of human or social services any report of third-party abuse or neglect in which the person allegedly responsible for such abuse or neglect is under age ten. Upon the completion of an investigation, the local law enforcement agency shall forward a copy of its investigative report to the county department of human or social services. The county department shall review the law enforcement investigative report and shall determine whether the report contains information that constitutes a case of confirmed child abuse and requires it to be submitted to the state department, which report, upon such determination, shall be submitted to the state department in the manner prescribed by the state department within sixty days after the receipt of the report by the county department.

(b) If, before an investigation is completed, the local law enforcement agency determines that social services are necessary for the child and, if applicable, the child's family or that assistance from the county department of human or social services is otherwise required, the agency may request said services or assistance from the county department. The county department shall immediately respond to a law enforcement agency's request for services or assistance in a manner deemed appropriate by the county department.

(c) When the investigation involves a suspected perpetrator who was acting in his official capacity as an employee of a school district, the local law enforcement agency shall coordinate such investigation with any concurrent abuse investigation being conducted by the department of education or the school district to the extent such coordination is possible and deemed appropriate.

(5.5) Upon the receipt of a report, if the county department reasonably believes that an incident of abuse or neglect has occurred, it shall immediately notify the local law enforcement agency responsible for investigation of violations of criminal child abuse laws. The local law enforcement agency may conduct an investigation to determine if a violation of any criminal child abuse law has occurred. It is the general assembly's intent that, in each county of the state, law enforcement agencies and the respective county departments of human or social services develop and implement cooperative agreements to coordinate duties of both agencies in connection with the investigation of all child abuse or neglect cases and that the focus of such agreements is to ensure the best protection for the child. The agreements must provide for special requests by one agency for assistance from the other agency and for joint investigations by both agencies.

(5.7) Upon initial investigation of a report alleging abuse or neglect in which the suspected perpetrator was acting in his official capacity as an employee of a school district, if the county department or the local law enforcement agency reasonably believes that an incident of abuse or neglect has occurred, it shall immediately notify the superintendent of the school district who shall consider such report to be confidential information; except that the superintendent shall notify the department of education of such investigation.

(6) (a) It is the intent of the general assembly to encourage the creation of one or more child protection teams in each county or contiguous group of counties. The creation of a child protection team in any given county is left to the discretion of the county director or the directors of a contiguous group of counties. If a county director or the directors of a contiguous group of counties decides to form a child protection team, the child protection team may be consolidated with other local advisory boards pursuant to section 24-1.7-103. If a child protection team is formed pursuant to this section in a county or contiguous group of counties, the director or directors of the county department or departments of human or social services may, at their discretion, implement the provisions of this section.

(b) If a child protection team is established pursuant to subsection (6)(a) of this section, it may review an assessment or the investigatory reports of a case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.

(c) At each meeting, each member of a child protection team established pursuant to subsection (6)(a) of this section may be provided with the investigatory reports on each assessment or case being considered.

(d) and (e) (Deleted by amendment, L. 91, p. 223, § 4, effective May 24, 1991.)

(f) Immediately after any executive session at which a child abuse or neglect case is discussed, a child protection team established pursuant to subsection (6)(a) of this section shall publicly review the responses of public and private agencies to each reported incident of child

abuse or neglect, publicly state whether the responses were timely, adequate, and in compliance with the provisions of this part 3, and publicly report nonidentifying information relating to any inadequate responses, specifically indicating the public and private agencies involved.

(g) After this mandatory public discussion of agency responses, a child protection team established pursuant to subsection (6)(a) of this section shall go into executive session upon the vote of a majority of the child protection team members to consider identifying details of the case being discussed; discuss confidential reports, including but not limited to the reports of physicians, including psychiatrists; or, when the members of the child protection team desire, act as an advisory body concerning the details of treatment or evaluation programs. The child protection team shall state publicly, before going into executive session, its reasons for doing so. Any recommendation based on information presented in the executive session shall be discussed and formulated at the immediately succeeding public session of the child protection team, without publicly revealing identifying details of the case.

(h) At the next regularly scheduled meeting of a child protection team established pursuant to subsection (6)(a) of this section, or at the earliest possible time, the child protection team shall publicly report whether there were any lapses and inadequacies in the child protection system and if they have been corrected.

(i) A child protection team established pursuant to subsection (6)(a) of this section may make a report of its recommendations to the county department with suggestions for further action or stating that the child protection team has no recommendations or suggestions. Contiguous counties may cooperate in meeting the requirements of this subsection (6).

(7) If a county or group of contiguous counties decides to establish a child protection team pursuant to subsection (6)(a) of this section, each member of the child protection team is appointed by the agency he or she represents, and each child protection team member serves at the pleasure of his or her appointing agency; except that the county director may appoint the representatives of the lay community, including the representatives of any ethnic, racial, or linguistic minority, as well as persons with disabilities, and may actively recruit all interested individuals and consider their applications for appointment as lay-community representatives on the team.

(8) The county director or his or her designee is the local coordinator of the child protection team, if one is established pursuant to subsection (6)(a) of this section.

(9) Repealed.

(10) In the event that the local department initiates a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of the child who is the subject of a report, the department shall notify, in writing, the guardian ad litem or counsel for youth appointed by the court pursuant to section 19-3-312 to represent the child's interest. Such notice must include:

(a) The reason for initiating the petition;

(b) Suggestions as to the optimum disposition of this particular case; and

(c) Suggested therapeutic treatment and social services available within the community for the subject child and the responsible person.

(11) Upon a finding that a report contains information that constitutes a case of confirmed child abuse or neglect that requires it to be submitted to the state department, the person who is found to be responsible for the abuse or neglect of a child in the confirmed report shall be given timely notice of this finding and of the right to appeal pursuant to rules established by the state board pursuant to section 19-3-313.5 (3).

(12) The state department shall include a summary and description of work of child protection teams that were implemented pursuant to this section in its annual presentation to the legislative committees during the committees' hearings held prior to the 2017 regular session under the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act", part 2 of article 7 of title 2.

(13) Upon the receipt of a report of intrafamilial abuse or neglect or human trafficking, or a report that a family may be eligible for foster care prevention services, as defined in section 26-5.4-102 (1), the county department may provide foster care prevention services for a child and the parents or kin caregivers of the child when the needs of the child are directly related to the safety, permanent placement, or well-being of the child or to prevent the child from entering the foster care system.

Source: L. 87: Entire title R&RE, p. 767, § 1, effective October 1. **L. 88:** (5.5) added, p. 744, § 13, effective July 1. **L. 90:** (4)(a) amended and (5.7) added, p. 1023, § 2, effective July 1. **L. 91:** (1), (3)(a), (4), (5), (5.5), (6), (9), and (10) amended and (4.5) and (5.3) added, p. 223, § 4, effective May 24; (4)(b) amended, p. 1912, § 22, effective June 1. **L. 93:** (1)(b) amended, p. 1169, § 1, effective June 3; (1)(a) amended, p. 1169, § 1, effective January 1, 1994. **L. 96:** (4)(a) amended, p. 84, § 9, effective March 20. **L. 97:** (2) amended, p. 1438, § 12, effective July 1; (6)(a) amended, p. 1191, § 15, effective July 1. **L. 99:** (1.5) added, p. 1076, § 2, effective May 29. **L. 2001:** (5.3)(a) amended, p. 854, § 2, effective July 1. **L. 2003:** (4)(a), (5), and (5.3)(a) amended and (11) added, p. 1406, § 11, effective January 1, 2004. **L. 2004:** (4.5)(a.5) added, p. 1758, § 1, effective June 4; (1)(b) repealed, p. 194, § 9, effective August 4. **L. 2005:** (1)(c) added, p. 588, § 3, effective July 1. **L. 2010:** (1.5)(c) added, (HB 10-1226), ch. 129, p. 425, § 2, effective April 15; (1.5)(b) amended, (SB 10-175), ch. 188, p. 791, § 42, effective April 29. **L. 2015:** (1.5)(c) amended, (HB 15-1358), ch. 193, p. 641, § 2, effective May 14. **L. 2016:** IP(4.5)(a.5)(I) amended, (SB 16-189), ch. 210, p. 760, § 31, effective June 6; (4)(c) added, (HB 16-1224), ch. 101, p. 290, § 2, effective January 1, 2017. **L. 2017:** (6), (7), and (8) amended, (9) repealed, and (12) added, (SB 17-016), ch. 107, p. 389, § 2, effective August 9. **L. 2018:** (1.5)(b)

amended, (HB 18-1094), ch. 343, p. 2044, § 9, effective June 30; (4)(c), (5.3)(a), (5.3)(b), and (5.5) amended, (SB 18-092), ch. 38, p. 418, § 53, effective August 8. **L. 2019:** (13) added, (HB 19-1308), ch. 256, p. 2460, § 6, effective August 2. **L. 2022:** IP(4.5)(a.5)(I) amended, (HB 22-1295), ch. 123, p. 835, § 38, effective July 1; IP(10) amended, (HB 22-1038), ch. 92, p. 442, § 25, effective January 9, 2023. **L. 2024:** (1)(a) amended, (HB 24-1222), ch. 155, p. 688, § 8, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (4) in House Bill 91-1002 and Senate Bill 91-243 were harmonized.

Cross references: For the legislative declaration contained in the 2003 act amending subsections (4)(a), (5), and (5.3)(a) and enacting subsection (11) see section 1 of chapter 196, Session Laws of Colorado 2003. For the legislative declaration in the 2010 act adding subsection (1.5)(c), see section 1 of chapter 129, Session Laws of Colorado 2010. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

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

A violation of state law duty, by itself, is insufficient to give rise to a claim under 42 U.S.C. § 1983. Plaintiffs could not maintain a substantive due process claim based on defendants' alleged violations of their duties under the Child Protection Act to report and investigate allegations of child abuse. Pierce v. Delta County Dept. of Soc. Servs., 119 F. Supp. 2d 1139 (D. Colo. 2000).

Defendants' alleged failure to report and investigate child abuse allegations does not deprive plaintiffs of a protected liberty interest without due process of law. While plaintiffs may have had an expectation that some form of protective services would be taken if defendants complied with the statutory requirements, the expectation of action is not enough to create a protected liberty interest under the due process clause of the U.S. Constitution. Pierce v. Delta County Dept. of Soc. Servs., 119 F. Supp. 2d 1139 (D. Colo. 2000).

Department of human services caseworkers are government officials subject to the fourth amendment. Caseworkers violated defendant's fourth amendment right against illegal search and seizure when they entered defendant's home without a search warrant. People v. Dyer, 2019 COA 161, 457 P.3d 783.

The child protection team is subject to the provisions of the public meetings law, former § 29-9-101, since it is a committee of a political subdivision of the state. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Coverage of article's confidentiality provision. The confidentiality provision of this article covers the entire contents of a child abuse report and the records related thereto. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

Matters to be handled in open meetings. Discussion of matters not contained in reports, and which do not pertain to identifying information, are not appropriate subjects for executive session. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

The child protection team's consideration of questions other than those on specific cases, such as agency availability and responsiveness to reports of child abuse, must be handled in meetings open to the public. Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

An order to investigate under subsection (3)(b) does not authorize governmental officials to conduct a warrantless search of a defendant's home without defendant's consent. If a defendant refuses to comply with the order, the caseworkers' remedy is initiating contempt proceedings, not entering the defendant's home without consent. People v. Dyer, 2019 COA 161, 457 P.3d 783.

Applied in People v. Beruman, 638 P.2d 789 (Colo. 1982).

19-3-308.3. Differential response program for child abuse or neglect cases of low or moderate risk - rules - evaluation.

(1) (a) There is created the differential response program, referred to in this section as the "program". The program will allow county departments of human or social services that choose to participate to address known or suspected incidents of intrafamilial abuse or neglect that have been assessed as low or moderate risk, pursuant to rule of the state board. The executive director of the state department shall approve any county department of human or social services that chooses to participate in the program, referred to in this section as a "participating county department".

(b) The state department is authorized to solicit, accept, and expend gifts, grants, and donations for the implementation and administration of the program.

(2) Participation in the program by families who are referred to the program is voluntary.

(3) For each family referred to the program, neither the state department nor a county department of human or social services is required to make a finding concerning the alleged intrafamilial abuse or neglect in the family.

(4) The state department and the participating county departments shall administer the program in accordance with rules promulgated by the state board pursuant to subsection (6) of this section.

(5) To the extent permitted by law and by any rules promulgated by the state board pursuant to subsection (6) of this section, the participating county departments, in administering the program, shall cooperate with local community service organizations in addressing known or suspected incidents of intrafamilial abuse or neglect.

(6) The state board shall promulgate rules to define and implement differential response and for the administration of the program.

(7) to (9) (Deleted by amendment, L. 2015.)

Source: L. 2010: Entire section added, (HB 10-1226), ch. 129, p. 425, § 3, effective April 15. **L. 2012:** (1)(a), (6), and (7) amended, (SB 12-011), ch. 55, p. 202, § 1, effective March 24. **L. 2015:** Entire section amended, (HB 15-1358), ch. 193, p. 640, § 1, effective May 14.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 129, Session Laws of Colorado 2010.

19-3-308.5. Recorded interviews of child.

(1) Any interview of a child conducted pursuant to section 19-3-308, concerning a report of child abuse, may be audiotaped or videotaped. However, interviews concerning reports of sexual child abuse are strongly encouraged to be videotaped. A competent interviewer at a child advocacy center, as that term is defined in section 19-1-103, that has a memorandum of understanding with the agency responsible for the investigation or a competent interviewer for the agency responsible for the investigation in accordance with such section shall conduct an audiotaped or videotaped interview; except that an interview must not be videotaped when doing so is impracticable under the circumstances or will result in trauma to the child, as determined by the investigating agency. No more than one videotaped interview is required unless the interviewer or the investigating agency determines that additional interviews are necessary to complete an investigation. The same interviewer shall conduct additional interviews, to the extent possible. The recordings must be preserved as evidence in the manner and for a period

provided by law for maintaining such evidence. In addition, access to the recordings is subject to the rules of discovery under the Colorado rules of criminal and civil procedure.

(2) The provisions of this section shall not apply to a videotaped deposition taken in accordance with and governed by section 18-3-413, C.R.S., or section 13-25-132, C.R.S., and rule 15 (d) of the Colorado rules of criminal procedure. In addition, this section shall not apply to interviews of the child conducted after a dependency and neglect action or a criminal action has been filed with the court.

(3) Any agency subject to the provisions of this section shall provide equipment necessary to videotape or audiotape the interviews or shall enter into a memorandum of understanding with a child advocacy center authorizing the use of such equipment. The investigating agency shall train persons responsible for conducting videotaped interviews in accordance with this section; except that the agency shall not be responsible for training interviewers employed by a child advocacy center. The agency shall adopt standards for persons conducting such interviews.

(4) An agency that enters into a memorandum of understanding with a child advocacy center that employs interviewers shall assure that such interviewers meet the training standards for persons conducting interviews adopted by the agency pursuant to subsection (3) of this section. In addition, an agency that enters into a memorandum of understanding with a child advocacy center that provides technical assistance for forensic interviews, forensic medical examinations, or evidence collection or preservation may require that the child advocacy center meets the national performance standards for children's advocacy centers as established by the national accrediting body. These standards include, but are not limited to, standards for forensic interviews to be conducted in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing.

Source: L. 91: Entire section added, p. 229, § 5, effective May 24. **L. 93:** Entire section amended, p. 1169, § 2, effective January 1, 1994. **L. 2004:** (1)(a) and (1)(e) amended and (1)(f) added, p. 806, § 1, effective May 21; (1)(e)(II) repealed, p. 194, § 10, effective August 4. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 760, § 32, effective June 6. **L. 2021:** (1) amended, (SB 21-059), ch. 136, p. 731, § 74, effective October 1.

Editor's note: Amendments to subsection (1)(e) by House Bill 04-1061 and Senate Bill 04-067 were harmonized.

19-3-309. Immunity from liability - persons reporting.

Any person, other than the perpetrator, complicitor, coconspirator, or accessory, participating in good faith in the making of a report, in the facilitation of the investigation of such a report, or in a judicial proceeding held pursuant to this title, the taking of photographs or X rays, or the placing in temporary protective custody of a child pursuant to section 19-3-405 or otherwise performing his duties or acting pursuant to this part 3 shall be immune from any liability, civil or criminal, 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.

Source: L. 87: Entire title R&RE, p. 770, § 1, effective October 1. **L. 89:** Entire section amended, p. 916, § 7, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

Claims of negligence not alleging bad faith are not sustainable against this person immunized by this section if good faith is alleged by such person. Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

Though a parent is not among the individuals required to report suspected child abuse, with certain exceptions, any person reporting suspected child abuse is immune from civil liability if the report is made in good faith. Lawson v. Stow, 2014 COA 26, 327 P.3d 340.

Section does not provide immunity for actions not arising out of statutory duty to report suspected child abuse, including negligence and negligent infliction of emotional distress. Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

Statutory presumption of good faith insufficient to support summary judgment when the plaintiffs in their pleading and affidavits assert facts which, if true, would rebut the presumption. Martin v. County of Weld, 43 Colo. App. 49, 598 P.2d

532 (1979); Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

Rebutting the "good-faith"exception. To rebut a statutory presumption of good faith, both a subjective and objective component must be satisfied. The subjective component requires evidence of evil motive, and the objective component requires evidence that the person acting in good faith did not have any factual basis to believe that activities had been performed that would require him or her to make a report pursuant to § 19-3-304 (1). Credit Serv. Co. v. Dauwe, 134 P.3d 444 (Colo. App. 2005).

Although this section immunizes a person "participating in good faith in the making of a report ... or otherwise performing his duties or acting pursuant to this article", the mere declaration of good faith by an affiant is not sufficient to resolve that issue in the face of a pleaded denial precluding summary judgment. Martin v. County of Weld, 43 Colo. App. 49, 598 P.2d 532 (1979).

Immunity extends to employer of employee making report if immunity is properly granted for employee's actions. Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

The grant of immunity provided by this section does not extend to new acts of exploitation admitted to by the defendant. People v. Atencio, 780 P.2d 46 (Colo. App. 1989).

Applied in People v. Beruman, 638 P.2d 789 (Colo. 1982); Griffin v. Pate, 644 P.2d 51 (Colo. App. 1981).

19-3-309.5. Preconfirmation safety plan agreement - first-time minor incidents of child abuse or neglect - rules.

(1) The county department and any person who is believed to be responsible for the abuse or neglect of a child as a result of an investigation of a report of child abuse or neglect pursuant to section 19-3-308 may agree to defer the filing of a confirmed report of child abuse or neglect with the state department as required by section 19-3-307 and enter into a safety plan agreement when the following circumstances exist:

(a) The person who is believed to be responsible for the child abuse or neglect has had no previous allegation of child abuse or neglect investigated;

(b) The child abuse or neglect that the person is believed to be responsible for is at the level of a minor incident of abuse or neglect, as defined by rule of the state board;

(c) The person who is believed to be responsible for the minor incident of child abuse or neglect and the county department decide on a mutually agreeable method for resolving the issues related to the report; and

(d) The requirements set forth in the safety plan agreement for resolving the issues related to the report can be completed within sixty days after the report of child abuse or neglect is made to the county department or the local law enforcement agency.

(2) (a) If a person who is believed to be responsible for the child abuse or neglect completes the mutually agreed upon safety plan agreement entered into pursuant to subsection (1) of this section, then the county department shall release him or her from the terms of the agreement and shall not file a confirmed report of child abuse or neglect related to the incident with the state department.

(b) If a person who is believed to be responsible for the child abuse or neglect does not complete the mutually agreed upon safety plan agreement entered into pursuant to subsection (1) of this section, as determined by the county department, then the county department shall file a confirmed report of child abuse or neglect with the state department.

(c) Nothing in this section shall be construed to eliminate a county department's obligation to report to the state department that there was an investigation of a report of abuse or neglect of a child and to further report the county department's assessment of risk, the county department's decision regarding a referral of the matter to child welfare services, and any county department decision to defer the filing of a confirmed report of child abuse or neglect pursuant to this section.

(3) Participation in a safety plan agreement by any county department and by any person who is believed to be responsible for child abuse or neglect shall be at the discretion of the person believed to be responsible for the child abuse or neglect. Nothing in this section shall be construed to confer a right upon a person who is believed to be responsible for the abuse or neglect of a child to enter into a safety plan agreement or to require a county department to enter into a safety plan agreement with a person who is believed to be responsible for the abuse or neglect of a child.

(4) Nothing in this section shall be construed to obligate a county department to expend moneys to provide services to persons for the purpose of entering into a safety plan agreement pursuant to this section.

(5) For purposes of this section, "safety plan agreement" means an agreement between the county department and the person who is believed to be responsible for the abuse or neglect of a child, developed pursuant to this section after a safety assessment is completed by the county department that identifies conditions that will endanger the child, in order to fully address all obvious safety concerns identified in the safety assessment.

(6) The state board shall promulgate rules to implement this section.

(7) An agreement to enter into a safety plan agreement pursuant to this section shall not negate a person's right to appeal a later finding of child abuse or neglect.

Source: L. 2004: Entire section added, p. 580, § 1, effective July 1.

19-3-310. Child abuse and child neglect diversion program.

(1) The district attorney, upon recommendation of the county department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a nonjudicial source of treatment or assistance, upon conditions set forth by the county department and the district attorney. If a person is so diverted from the criminal justice system, the district attorney shall not file charges in connection with the case if the person participates to the satisfaction of the county department and the district attorney in the diversion program offered.

(2) The initial diversion shall be for a period not to exceed two years. This diversion period may be extended for one additional one-year period by the district attorney if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the district attorney and the county department.

(3) If the person diverted successfully completes the diversion program to the satisfaction of the county department and the district attorney, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

(4) Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-310.5. Mediation - pilot program. (Repealed)

Source: L. 94: Entire section added, p. 1742, § 1, effective July 1. **L. 95:** (5) amended, p. 516, § 10, effective July 1. **L. 98:** (10) repealed, p. 732, § 23, effective May 18.

Editor's note: Subsection (11) provided for the repeal of this section, effective July 1, 1999. (See L. 94, p. 1742.)

19-3-311. Evidence not privileged.

(1) The incident of privileged communication between patient and physician, between patient and registered professional nurse, or between any person licensed pursuant to article 245 of title 12, or certified or licensed school psychologist and client, which is the basis for a report pursuant to section 19-3-304, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this part 3. In addition, privileged communication shall not apply to any discussion of any future misconduct or of any other past misconduct that could be the basis for any other report under section 19-3-304.

(2) The privileged communication between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this part 3.

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1. **L. 89:** Entire section amended, p. 699, § 6, effective June 7. **L. 90:** Entire section amended, p. 1024, § 3, effective July 1. **L. 2008:** (1) amended, p. 1893, § 65, effective August 5. **L. 2019:** (1) amended, (HB 19-1172), ch. 136, p. 1682, § 113, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-10-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

Marital privilege inapplicable. The marital privilege cannot be invoked to exclude a spouse's testimony in a case involving child abuse. People v. Corbett, 656 P.2d 687 (Colo. 1983).

Prior to 1989 amendment, plain language of this section did not abolish psychologist-patient privilege for communications between social worker and client concerning child abuse or neglect. People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

Psychologist-patient privilege was not abrogated under this section where the provisions of this section do not concern communications relating to ongoing treatment of the victim and where the

privilege is abrogated only with respect to information that is the basis for a report of suspected child abuse under § 19-3-304. People v. Dill, 904 P.2d 1367 (Colo. App. 1995), aff'd, 927 P.2d 1315 (Colo. 1996).

Testimony of psychologist concerning report of alleged child abuse filed with law enforcement was not a waiver of the psychologist-patient privilege because this section abrogates that privilege. Dill v. People, 927 P.2d 1315 (Colo. 1996).

19-3-312. Court proceedings.

(1) The county department or local law enforcement agency receiving a report under section 19-3-304 or 19-3-305, in addition to taking such immediate steps pursuant to sections 19-3-401 and 19-3-308 (4) as may be required to protect a child, shall inform, within seventy-two hours, the appropriate juvenile court or district court with juvenile jurisdiction that the child appears to be within the court's jurisdiction. Upon receipt of such information, the court shall make an immediate investigation to determine whether protection of the child from further abuse is required and, upon such determination, may authorize the filing of a petition, as provided for in section 19-3-501 (2).

(2) In any proceeding initiated pursuant to this section, the court shall name as respondents all persons alleged by the petition to have caused or permitted the abuse or neglect alleged in the petition. In every such case, the responsible person shall be named as respondent. Summonses shall be issued for all named respondents in accordance with section 19-3-503.

(3) Repealed.

(4) If a report under section 19-3-304 or 19-3-305 is based solely on an allegation of emotional abuse as defined in section 19-1-103 (1)(a), if requested by any party to the proceeding or upon its own motion, the court shall order a report to be prepared by an independent mental health-care provider. The independent mental health-care provider shall interview the child and the alleged perpetrator of the abuse. The costs of the report shall be split equally between the county and the party requesting the report, unless the court finds that paying such costs would cause a hardship to the party.

(5) If a petition is filed alleging that a child is neglected or dependent based upon section 19-3-102 (2), the county department shall engage in concurrent planning to expedite the permanency planning process for the child who is the subject of such petition.

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1. **L. 97:** (4) and (5) added, p. 1439, § 13, effective July 1. **L. 2014:** (3) repealed, (SB 14-203), ch. 281, p. 1142, § 3, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986).

The state must show that the condition resulting from the alleged abuse is not justifiably explained in an action to declare children dependent or neglected. In re People in Interest of R.K., 31 Colo. App. 459, 505 P.2d 37 (1972) (decided under former § 19-10-108 as it existed prior to the 1975 repeal and reenactment of this article).

19-3-313. Central registry. (Repealed)

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1. **L. 91:** (3) to (7) amended and (14) added, p. 230, § 6, effective May 24. **L. 96:** (14) amended, p. 1586, § 12, effective July 1; (4), (5), and (7) amended and (5.5) added, p. 1287, § 2, effective January 1, 1997; (6)(b), (7)(b)(III), and (14) amended, p. 1173, § 9, effective January 1, 1997. **L. 99:** (5.5)(a) and (5.5)(b)(I) amended and (5.5)(b)(III) added, p. 1026, § 11, effective May 29; (5.5)(a) and (5.5)(b)(I) amended and (5.5)(b)(III) added, p. 1207, § 11, effective June 2. **L. 2000:** (1), (2)(e), (5), (5.5)(c), (7)(c)(I)(A), (7)(c)(I)(B), and (7)(c)(II) amended and (2)(f) and (7)(d) added, pp. 1720, 1721, §§ 1, 2, 3, effective June 1. **L. 2001:** (7)(b)(I), (7)(c), and (7)(d) amended and (7)(e) added, p. 854, § 3, effective July 1. **L. 2002:** (10) amended, p. 1527, § 232, effective October 1. **L. 2003:** (8) amended, p. 1622, § 37, effective August 6; entire section repealed, p. 1398, § 2, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 196, Session Laws of Colorado 2003.

19-3-313.5. State department duties - reports of child abuse or neglect - training of county departments - rules - notice and appeal process - confidentiality.

(1) **Legislative declaration.** As a result of the report of the state auditor evaluating the performance of the state central registry of child protection released in November of 2001 and

the subsequent repeal of the state central registry of child protection, the general assembly hereby finds and declares that it is in the best interests of the children and the citizens of the state of Colorado for the state department to modify the processing of records and reports of child abuse or neglect. These modifications are intended to ensure that the state department is able to provide reliable, accurate, and timely information concerning records and reports of child abuse or neglect. In addition, these modifications are intended to ensure compliance with federal law regarding the prompt expungement of any records or reports that are used for purposes of employment checks or other background checks in cases determined to be unsubstantiated or false, while allowing the state department to maintain such records and reports in case files for the purpose of assisting in determinations of future risk and safety assessments. Finally, these modifications are intended to ensure that the state department's procedural systems related to records and reports of child abuse or neglect provide adequate protection to the children and the citizens of the state of Colorado.

(2) **Training of county departments.** On or before January 1, 2004, the state department shall modify the training provided to county departments to achieve consistency and standardization in the performance of the following duties:

(a) Investigating reports of child abuse or neglect;

(b) Reporting confirmed incidents of child abuse or neglect to the state department;

(c) Preparing documents related to records and reports of child abuse or neglect;

(d) Entering data into computer systems maintaining information related to records and reports of child abuse or neglect; and

(e) Maintaining confidentiality in accordance with federal and state law.

(3) **Notice and appeals process - rules.** On or before January 1, 2004, the state board, in consideration of input and recommendations from the county departments, 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 pursuant to section 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 pursuant to this subsection (3) must address the following matters, consistent with federal law:

(a) The provision of adequate and timely written notice by the county departments of human or social services or, for an investigation pursuant to section 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;

(b) The timeline and method for appealing the finding of a confirmed report of child abuse or neglect;

(c) Designation of the entity, which entity must be one other than a county department of human or 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;

(d) 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;

(e) The confidentiality requirements of the appeals process; and

(f) Provisions requiring, and procedures in place that facilitate, the prompt expungement 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; except that the state department and the county departments of human or social services may maintain information concerning unsubstantiated reports in casework files to assist in future risk and safety assessments.

(4) **Confidentiality - rules.** On or before January 1, 2004, the state board shall promulgate rules to establish guidelines for the release of information contained in records and reports of child abuse or neglect for screening purposes to assure compliance with sections 19-1-303 and 19-1-307 and any other state or federal law relating to confidentiality of records and reports of child abuse or neglect. Rules promulgated by the state board shall address the following:

(a) How a request for information is to be processed;

(b) Who may be granted access to information;

(c) What information in the records and reports is to be made available to the person or entity granted access;

(d) The purposes for which information contained in the records and reports may be made available to the person or entity granted access; and

(e) The consequences of improper release of information related to records and reports of child abuse or neglect.

Source: L. 2003: Entire section added, p. 1398, § 3, effective January 1, 2004. **L. 2018:** IP(3), (3)(a), (3)(c), and (3)(f) amended, (SB 18-092), ch. 38, p. 419, § 54, effective August 8.

Cross references: For the legislative declaration contained in the 2003 act enacting this section, see section 1 of chapter 196, Session Laws of Colorado 2003. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-3-314. Confidentiality of records. (Repealed)

Source: L. 87: Entire title R&RE, p. 773, § 1, effective October 1. **L. 90:** (2)(j) and (2)(k)(I) amended, p. 1392, § 8, effective May 4; entire section repealed, p. 1012, § 8, effective July 1.

Editor's note: Subsections (2)(j) and (2)(k)(I) were amended in House Bill 90-1075. Those amendments were superseded by the repeal of the entire section in Senate Bill 90-61. Identical provisions were located in section 19-1-120 (2)(j) and (2)(k) until it was repealed in 1994. These provisions are now located in section 19-1-307 (2)(j) and (2)(k).

19-3-315. Federal funds.

The department of human services is authorized to accept federal funds such as child abuse and neglect state grants which are available for the implementation of programs which would further the purposes of this part 3.

Source: L. 87: Entire title R&RE, p. 775, § 1, effective October 1. **L. 94:** Entire section amended, p. 2683, § 200, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-117 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-316. Protection orders and emergency protection orders. (Repealed)

Source: L. 88: Entire section added, p. 744, § 14, effective July 1. **L. 94:** (1)(a), (2)(b), (2)(f), and (3) amended and (5) added, p. 2015, § 10, effective January 1, 1995. **L. 2002:** (1)(d) amended, p. 1144, § 2, effective July 1. **L. 2003:** (1)(a) and (5) amended, p. 1015, § 25, effective July 1. **L. 2004:** Entire section repealed, p. 554, § 5, effective July 1.

19-3-317. Screening tool - human trafficking.

On and after January 1, 2017, pursuant to the federal "Preventing Sex Trafficking and Strengthening Families Act", Pub.L. 113-183, the department and each county department, as defined in section 19-1-103, shall implement a uniform screening tool that includes questions that are intended to identify children who are victims of human trafficking of a minor for sexual servitude, as described in section 18-3-504, or commercial sexual exploitation of a child, or who are at risk of being such victims.

Source: L. 2016: Entire section added, (HB 16-1224), ch. 101, p. 291, § 3, effective January 1, 2017. **L. 2021:** Entire section amended, (SB 21-059), ch. 136, p. 731, § 75, effective October 1.

19-3-318. Study of child welfare caseworker resiliency programs - creation - membership - report - repeal. (Repealed)

Source: L. 2017: Entire section added, (HB 17-1283), ch. 227, p. 881, § 2, effective May 22.

Editor's note: Subsection (6) provided for repeal of this section, effective September 1, 2018. (See L. 2017, p. 881.)

19-3-319. Child advocacy centers - information sharing - civil immunity - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Child advocacy center multidisciplinary team" means a group of professionals who work collaboratively with a child advocacy center on behalf of children served by a child advocacy center to share information to inform the investigation and prosecution of child maltreatment and to coordinate services in response to reports of child maltreatment. A child advocacy center multidisciplinary team must include, at a minimum, the following professionals:

(I) A member of a law enforcement agency;

(II) A district attorney or assistant district attorney;

(III) A member of the department's child protective services unit;

(IV) A local mental health provider;

(V) A local health-care provider;

(VI) A victim advocate; and

(VII) Child advocacy center staff.

(b) "Child maltreatment" means conduct that involves sexual or physical abuse of a child, neglect of a child, human trafficking of a child, or exploitation of a child.

(2) (a) The county department may share information that is relevant to the protection of a child who is the subject of a child maltreatment case with the child advocacy center multidisciplinary team working on behalf of the child.

(b) Members of a child advocacy center multidisciplinary team may share information that is relevant to the protection of a child who is the subject of a child maltreatment case among the child advocacy center multidisciplinary team and the county department.

(c) Any information shared among county departments and child advocacy center multidisciplinary team members pursuant to subsections (2)(a) and (2)(b) of this section must:

(I) Remain confidential, except when disclosure is required by law, including the Colorado rules of juvenile procedure;

(II) Be withheld from public inspection; and

(III) Only be used to the extent necessary for the county department or child advocacy center multidisciplinary team to perform its duties.

(3) (a) A child advocacy center multidisciplinary team member who participates in good faith in team discussions by providing information about a child whose case is being reviewed by a child advocacy center multidisciplinary team is immune from any civil or criminal liability for disclosure of information within the context of the child advocacy center multidisciplinary team, unless the disclosure of information was due to gross negligence, wanton conduct, or intentional wrongdoing.

(b) A board member, staff member, or volunteer of a child advocacy center is immune from civil liability arising from the investigation of child maltreatment or disclosure of information within the context of the child advocacy center multidisciplinary team for the benefit of the child advocacy center if the person's acts were reasonable and performed in good faith. Immunity extended pursuant to this subsection (3)(b) does not extend to acts of gross negligence, wanton misconduct, or intentional wrongdoing arising out of the investigation of child maltreatment or disclosure of information within the context of the child advocacy center multidisciplinary team for the benefit of the child advocacy center. Immunity extended pursuant to this subsection (3)(b) does not extend to actions that constitute medical negligence, as governed by the "Health Care Availability Act" in part 1 of article 64 of title 13, or actions governed by the "Premises Liability Act" in part 1 of article 21 of part 13.

Source: L. 2026: Entire section added, (HB 26-1142), ch. 44, p. 203, § 4, effective August 12.

Cross references: For the short title ("Colorado Child Advocacy Center Act") and the legislative declaration in HB 26-1142, see sections 1 and 2 of chapter 44, Session Laws of Colorado 2026.

PART 4

TEMPORARY CUSTODY AND SHELTER

19-3-401. Taking children into custody.

(1) A child may be taken into temporary custody by a law enforcement officer without order of the court:

(a) When the child is abandoned, lost, or seriously endangered in such child's surroundings or seriously endangers others and immediate removal appears to be necessary for such child's protection or the protection of others;

(b) When there are reasonable grounds to believe that such child has run away or escaped from such child's parents, guardian, or legal custodian and the child's parents, guardian, or legal custodian has not made a report to a law enforcement agency that the child has run away from home; or

(c) When an arrest warrant has been issued for such child's parent or guardian on the basis of an alleged violation of section 18-3-304, C.R.S. No child taken into temporary custody pursuant to this paragraph (c) shall be placed in detention or jail.

(1.3) A child shall be taken into temporary custody by a law enforcement officer without order of the court when there are reasonable grounds to believe the child has run away from the child's parents, guardian, or legal custodian and the child's parents, guardian, or legal custodian has made a report to a law enforcement agency that the child has run away from home.

(1.5) An emergency exists and a child is seriously endangered as described in paragraph (a) of subsection (1) of this section whenever the safety or well-being of a child is immediately at issue and there is no other reasonable way to protect the child without removing the child from the child's home. If such an emergency exists, a child shall be removed from such child's home and placed in protective custody regardless of whether reasonable efforts to preserve the family have been made.

(2) The taking of a child into temporary custody under this section shall not be deemed an arrest, nor shall it constitute a police record.

(3) (a) Notwithstanding subsections (1) and (1.5) of this section and except as otherwise provided in subsections (3)(b) and (3)(c) of this section, a newborn child, as defined in section 19-1-103, who is not in a hospital setting must not be taken into temporary protective custody for a period of longer than twenty-four hours without an order of the court made pursuant to section 19-3-405 (1). The order must include findings that an emergency situation exists and that the newborn child is seriously endangered as described in subsection (1)(a) of this section.

(b) A newborn child, as defined in section 19-1-103, who is in a hospital setting must not be taken into temporary protective custody without an order of the court made pursuant to section 19-3-405 (1). The order must include findings that an emergency situation exists and that the newborn child is seriously endangered as described in subsection (1)(a) of this section. A newborn child may be detained in a hospital by a law enforcement officer upon the recommendation of a county department or by a physician, registered nurse, licensed practical nurse, or physician assistant while an order of the court pursuant to section 19-3-405 (1) is being pursued, but the newborn child must be released if a court order pursuant to section 19-3-405 (1) is denied.

(c) The court orders required by subsections (3)(a) and (3)(b) of this section are not required in the following circumstances:

(I) When a newborn child is identified by a physician, registered nurse, licensed practical nurse, or physician 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;

(II) When the newborn child's only identifiable birth parent has been determined by a physician, registered nurse, or qualified mental health professional to meet the criteria specified in section 27-65-106 for custody, treatment, and evaluation of a mental health disorder or grave disability;

(III) When both of the newborn child's birth parents have been determined by a physician, registered nurse, or qualified mental health professional to meet the criteria specified in section 27-65-106 for custody, treatment, and evaluation of a mental health disorder or grave disability; or

(IV) When the newborn child is subject to an environment exposing the newborn child to a laboratory for manufacturing controlled substances as defined in section 18-18-102 (5), C.R.S.

(d) At the time a law enforcement officer takes a newborn child into temporary protective custody, the law enforcement officer shall provide the notices required by sections 19-3-402 and 19-3-212 directly to the newborn child's identifiable birth parent or parents in both verbal and written form. Such notices may be provided to the child's identifiable birth parent or parents in a language that the birth parent or parents understand, and the law enforcement officer may

designate another person to assist him or her in providing such written and verbal notices to fulfill this requirement, if necessary.

(e) If a newborn child is taken into temporary protective custody pursuant to this subsection (3), the county department may contact the child's identifiable birth parent or parents to obtain the names of any relatives or other persons in the parent's or parents' community who may be appropriate, capable, and willing to care for the newborn child prior to the hearing required by section 19-3-403. In addition, if the identifiable parent or parents are not citizens of the United States, the county department may request the parent's or parents' consent to notify the parent's or parents' government of origin of the situation and, if consent is given, may contact the parent's or parents' government of origin.

Source: L. 87: Entire title R&RE, p. 775, § 1, effective October 1. **L. 93:** Entire section amended, p. 1016, § 5, effective July 1. **L. 2004:** (3) added, p. 429, § 2, effective July 1. **L. 2006:** (1)(b) amended and (1.3) added, p. 337, § 1, effective April 5. **L. 2010:** (3)(c)(II) and (3)(c)(III) amended, (SB 10-175), ch. 188, p. 791, § 43, effective April 29. **L. 2016:** (3)(b) and (3)(c)(I) amended, (SB 16-158), ch. 204, p. 727, § 16, effective August 10. **L. 2017:** IP(3)(c), (3)(c)(II), and (3)(c)(III) amended, (SB 17-242), ch. 263, p. 1314, § 161, effective May 25. **L. 2018:** (3)(b) amended, (SB 18-092), ch. 38, p. 420, § 55, effective August 8. **L. 2021:** (3)(a) and (3)(b) amended, (SB 21-059), ch. 136, p. 731, § 76, effective October 1. **L. 2022:** (3)(c)(II) and (3)(c)(III) amended, (HB 22-1256), ch. 451, p. 3232, § 35, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2004 act enacting subsection (3), see section 1 of chapter 140, Session Laws of Colorado 2004. For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

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

Officer justified in making warrantless entry to secure safety of infant when mother had stopped officer on patrol asking him to help "get my baby back" after it had been seized by father "who had been drinking" and where father refused to allow officer into apartment to check on crying infant. People v. Malczewski, 744 P.2d 62 (Colo. 1987).

19-3-402. Duty of officer - notification - release or detention.

(1) When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him that, if the child is placed out of the child's home, all parties have a right to a prompt hearing to determine whether the child is to remain out of the child's home for a further period of time. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation officer, detention center counselor, shelter care provider, or common jailor in whose physical custody the child is placed.

(2) (a) The child shall then be released to the care of his or her parents or other responsible adult, unless it is in the child's best interests and necessary for the child's welfare to be placed out of the child's home. In the event the child is placed out of the child's home, if in the best interests of the child, preference may be given to placing the child with the child's grandparent who is appropriate, capable, willing, and available to care for the child. The court may make reasonable orders as conditions of said release and may provide that any violation of such orders shall subject the child or the child's parent, guardian, or legal custodian to contempt sanctions of the court. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2) to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) (a) Except as provided in paragraph (b) of this subsection (3), a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or legal custodian.

(b) If he is not released as provided in subsection (2) of this section, he shall be taken directly to the court or to the place of detention, or a temporary holding facility, or a shelter designated by the court without unnecessary delay.

(4) The officer or other person who takes a child to a detention or shelter facility or a temporary holding facility shall notify the court and any agency or persons so designated by the court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the court and any agency or person so designated by the court stating the facts which led to the child being taken into custody and the reason why the child was not released.

Source: L. 87: Entire title R&RE, p. 776, § 1, effective October 1. **L. 89:** (1), (3)(b), and (4) amended, p. 928, § 4, effective April 23. **L. 90:** (1) and (2) amended, p. 1034, § 1, effective April 3. **L. 91:** (2) amended, p. 264, § 7, effective May 31. **L. 2003:** (2) amended, p. 2622, § 2, effective June 5.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

This section does not broaden a juvenile court's personal jurisdiction to include nondependent siblings of a youth in foster care or require the siblings to attend therapeutic visitation with the youth. In re People in Interest of S.A., 2022 CO 27, 511 P.3d 597.

19-3-403. Temporary custody - hearing - time limits - restriction - rules.

(1) A child who must be taken from his or her home but who does not require physical restriction may be given temporary care with his or her grandparent, upon the grandparent's request, if in the best interests of the child, in a shelter facility designated by the court or with the county department of human or social services and must not be placed in detention. If an appropriate shelter facility does not exist, the child may be placed in a staff-secure temporary holding facility authorized by the court.

(2) When a child is placed in a shelter facility or a temporary holding facility not operated by the department of human services designated by the court, the law enforcement official taking the child into custody shall promptly so notify the court. He shall also notify a parent or legal

guardian or, if a parent or legal guardian cannot be located within the county, the person with whom the child has been residing and inform him of the right to a prompt hearing to determine whether the child is to be detained further. The court shall hold such hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays. A child requiring physical restraint may be placed in a juvenile detention facility operated by or under contract with the department of human services for a period of not more than twenty-four hours, including Saturdays, Sundays, and legal holidays.

(3) Repealed.

(3.5) When temporary custody is placed with the county department of human or social services pursuant to this section or section 19-3-405 or when an emergency protection order is entered pursuant to section 19-3-405, the court shall hold a hearing within seventy-two hours after placement, excluding Saturdays, Sundays, and court holidays, to determine further custody of the child or whether the emergency protection order should continue. Such a hearing need not be held if a hearing has previously been held pursuant to subsection (2) of this section.

(3.6) (a) (I) The office of the state court administrator shall prepare a form affidavit and advisement. The form affidavit and advisement shall be available at each judicial district to each parent attending a temporary custody hearing. The form affidavit and advisement shall:

(A) Advise the parent that he or she is required to provide the requested information fully and completely under penalties of perjury and contempt of court;

(B) Require the parent to list the names, addresses, and telephone numbers of, and any comments concerning the appropriateness of the child's potential placement with, every grandparent, aunt, uncle, brother, sister, half-sibling, and first cousin of the child;

(C) Provide a section in which the parent may list the names, addresses, telephone numbers of, and any comments concerning the appropriateness of the child's potential placement with, other relatives and kin who have a significant relationship with the child;

(D) Advise the parent that failure to identify these relatives in a timely manner may result in the child being placed permanently outside of the home of the child's relatives, if the child cannot be safely returned to the home of the child's parents;

(E) Advise the parent that the child may risk life-long damage to his or her emotional well-being if the child becomes attached to one caregiver and is later removed from the caregiver's home;

(F) Require the parent to acknowledge that he or she understands the advisements contained in the form; and

(G) Require the parent to sign and date the form.

(II) At the hearing, information may be supplied to the court in the form of written or oral reports, affidavits, testimony, or other relevant information that the court may wish to receive. Any information having probative value may be received by the court, regardless of its admissibility under the Colorado rules of evidence.

(III) The court shall advise the parents that the child or youth may be placed with a relative or kin. The court shall order the parents to complete the form affidavit and advisement described in subsection (3.6)(a)(I) of this section no later than seven days after the hearing date or prior to the next hearing on the matter, whichever occurs first. The original completed relative affidavit must be filed with the court and served on all parties no later than seven days after the hearing date. The court shall ask the parent if there are any changes to the information on the relative or kin affidavit at hearings held pursuant to sections 19-3-507 and 19-3-702, and if the parent has not completed the relative or kin affidavit, the court shall ask the parent, on the record, for names and contact information for relatives and kin whom the parent would like considered for engagement in the case. Each parent, the guardian ad litem or counsel for youth, and counsel for each parent, if any, must also receive copies of the completed form affidavit. The court may advise each parent of the penalties associated with perjury and contempt of court, if necessary. Each parent may suggest an adult relative or relatives, or kin, whom the parent believes to be the most appropriate caretaker or caretakers for the child or youth. If appropriate, the child or youth must be consulted regarding suggested relative or kin caretakers. The court shall order each parent to notify every relative or kin who may be an appropriate relative or kin caretaker for the child or youth that failure to come forward in a timely manner may result in the child or youth being placed permanently outside of the home of the relatives or kin of the child or youth if the child or youth is not able to return to the child's or youth's home. In addition, the court shall advise each parent that failure to identify these relatives or kin in a timely manner may result in the child or youth being placed permanently outside of the home of the relatives or kin of the child or youth.

(IV) The court shall order a county department to exercise due diligence and document its diligent efforts to contact all grandparents and other adult relatives and identified kin within thirty days after the removal of the child or youth and to inform them about placement possibilities for the child or youth, unless the court determines there is good cause not to contact or good cause to delay contacting the child's or youth's relatives and kin, including, but not limited to, family or domestic violence.

(A) A county department of human or social services shall provide notice to the relatives and identified kin that the child or youth has been removed from the child's or youth's home, an explanation of the various options to participate in the child's or youth's care or placement and options that may be available to support the child's or youth's family, and options that may be lost by failing to respond.

(B) The notice must include information about providing care for the child or youth while the family receives reunification services, with the goal of returning the child or youth to the parent or legal guardian; the relative's right to intervene in the proceedings with or without an attorney following adjudication; and additional services and supports that are available in out-of-home placements. The notice must also include information regarding the state's entitlement plans, including, but not limited to, child care assistance, supplemental nutritional assistance programs, the relative guardianship assistance program, child-only eligibility for temporary assistance for needy families (TANF), and adoption assistance, as well as other options for contact. Information about family foster care certification, including how to obtain a provisional certification, and supports that are available for relatives and kin and children or youth and what background checks are required, as well as how relatives or kin may request the court review decisions to deny placement based on background checks and why certification as a kinship foster home may be denied, must also be provided in the notice.

(C) The state department of human services, in consultation with counties, the office of the child's representative, and the office of respondent parents' counsel, along with other interested stakeholders, shall develop the written notice and promulgate rules for the implementation of this section.

(D) The county department of human or social services shall request each such relative and identified kin who is interested in becoming a placement option for the child or youth to come forward at the earliest possible time to seek placement of the child or youth in the relative's or kin's home and to cooperate with the county department of human or social services to expedite procedures pertaining to the placement of the child or youth in the relative's or kin's home if the child or youth cannot be safely returned to the child's or youth's parents' home.

(V) (A) The court shall give preference to giving temporary placement to a child's or youth's relative or kin who is capable, willing, and available for care. Placement of the child or youth with the relative or kin is presumed to be in the best interests of the child or youth. The presumption may be rebutted by a preponderance of the evidence, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall also find that there is no suitable birth or adoptive parent available, with due diligence having been exercised in attempting to locate the birth or adoptive parent. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification. The court may place or continue custody with the county department of human or social services if the court is satisfied from the information presented at the hearing that the custody is appropriate and in the child's or youth's best interests, or the court may enter other orders as appropriate.

(B) The court may authorize the county department of human or social services with custody of a child or youth to place the child or youth with a relative or kin without the necessity for a hearing if a county department of human or social services locates a capable and willing relative

or kin who is available to care for the child or youth and the guardian ad litem of the child or youth concurs that the placement is in the best interests of the child or youth. If the county department of human or social services places a child or youth with a relative or kin without a hearing pursuant to this subsection (3.6)(a)(V)(B), the county department of human or social services shall fully inform the court of the details concerning the child's or youth's placement on the record at the next hearing. If the court enters an order removing a child or youth from the home or continuing a child or youth in a placement out of the home, the court shall make the findings required pursuant to section 19-1-115 (6) if the findings are warranted by the evidence.

(VI) The responsible county department of human or social services or other social services agency shall exercise due diligence to contact and engage relatives and kin who respond to the notice required pursuant to subsection (3.6)(a)(IV) of this section. Upon a request by a relative or kin or party to the proceedings, the court may conduct a review of the applicable agency's due diligence to contact and engage relatives and kin pursuant to subsection (3.6)(a)(IV) of this section. If the court finds that the applicable agency did not exercise due diligence to contact and engage relatives and kin who responded to the notice, the court may order the applicable agency to exercise due diligence by engaging the relatives and kin in the following activities related to the care and planning for a child or youth, determined in consultation with the other parties:

(A) Participating in case planning for the child or youth and the child's or youth's parent, including identifying services and resources that meet the individualized needs of the child or youth and the child's or youth's parent. A relative's or kin's participation in case planning may be in person, via phone, or by electronic means.

(B) Identifying the strengths and needs of the child or youth and the child's or youth's parent;

(C) Asking the responsible county department of human or social services, or other social services agency, to consider the relative or kin for placement with the child or youth pursuant to subsection (3.6)(a)(IV)(D) of this section;

(D) Acting as a support person for the child or youth, the child's or youth's parent, and the child's or youth's current caregiver, including collaborating with foster parents to support a healthy transition for a child or youth to family time or placement with a relative, when appropriate;

(E) Supervising family time when authorized pursuant to section 19-3-217;

(F) Providing respite care for the child or youth and having family vacation time with the child or youth;

(G) Providing transportation;

(H) Suggesting other relatives or kin who may be able to participate in the case plan or whom the county department of human or social services, or other social services agency, may consider for the placement of the child or youth. The county department of human or social

services, or other social services agency, shall send a notice to each relative or kin identified by other relatives or kin, unless a relative or kin received the notice earlier in the case or was ruled out as a resource or placement by the court.

(I) Helping maintain the child's or youth's familiar and regular activities, as well as contact with the child's or youth's friends, relatives, and kin, including providing supervision of the child or youth at family gatherings and events; and

(J) Participating in the child's or youth's family and permanency team if the child or youth is placed in a qualified residential treatment program.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3.6) to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(c) A relative or kin caregiver has the right to:

(I) Be treated with dignity and respect and to be considered as a team member who is making important contributions to the objectives of the child welfare system, including the reunification of the child or youth with the child's or youth's parents whenever safely possible;

(II) Receive training and support from the state department of human services or a county department of human or social services to improve the caregiver's skills in providing daily care and meeting the special needs or disability-related needs of a child or youth in the caregiver's care;

(III) Be informed by the applicable child placement agency or county department of human or social services about how to reach after-hours contacts; and

(IV) Be informed about available financial assistance and the financial consequences of not pursuing certification as a foster home, including ineligibility for the state's relative guardianship assistance program.

(3.7) A child who is alleged to be a runaway from a state other than Colorado may be held in a shelter care or other appropriate facility for up to seven days, during which time arrangements shall be made for returning the child to the state of his residence.

(4) (a) If it appears that any child being held in a shelter facility may have an intellectual and developmental disability, as provided in article 10.5 of title 27, the court shall refer the child to the nearest case management agency, as defined in section 25.5-6-1702, for an eligibility determination. If it appears that any child being held in a shelter facility pursuant to this article 3

may have a mental health disorder, as provided in section 27-65-106, the intake personnel or other appropriate personnel shall contact a mental health professional to do a mental health disorder prescreening on the child. The court must be notified of the contact and may take appropriate action. If a mental health disorder prescreening is requested, it must be conducted in an appropriate place accessible to the child and the mental health professional. A request for a mental health disorder prescreening must not extend the time within which a hearing is to be held pursuant to this section. If a hearing has been set but has not yet occurred, the mental health disorder prescreening must be conducted prior to the hearing; except that the prescreening must not extend the time within which a hearing is to be held pursuant to this section.

(b) If a child has been ordered detained pending an adjudication, disposition, or other court hearing and the child subsequently appears to have a mental health disorder, as provided in section 27-65-106, the intake personnel or other appropriate personnel shall contact the court with a recommendation for a mental health disorder prescreening. A mental health disorder prescreening must be conducted at any appropriate place accessible to the child and the mental health professional within twenty-four hours after the request, excluding Saturdays, Sundays, and legal holidays.

(c) If the mental health professional finds, as a result of the prescreening, that the child may have a mental health disorder, the mental health professional shall recommend to the court that the child be evaluated pursuant to section 27-65-106, and the court shall proceed as provided in section 19-3-506.

(d) Nothing in this subsection (4) precludes the use of procedures for an emergency mental health hold pursuant to section 27-65-106.

(5) The court may, at any time, order the release of any child being held pursuant to section 19-3-401 from shelter care or a temporary holding facility not operated by the department of human services without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the court at a time set or to be set by the court.

(6) (a) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, the court may authorize or consent to medical, surgical, or dental treatment or care for a child placed in shelter care or a temporary holding facility not operated by the department of human services.

(b) When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in shelter care or a temporary holding facility not operated by the department of human services, it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available.

(7) The court may also issue temporary orders for legal custody as provided in section 19-1-115. The court shall enter family time orders consistent with section 19-3-217.

(8) Any law enforcement officer, employee of the division in the department of human services responsible for youth services, or other person acting under the direction of the court who in good faith transports any child, releases any child from custody pursuant to a written policy of a court, releases any child from custody pursuant to any written criteria established pursuant to this title, or detains any child pursuant to court order or written policy or criteria established pursuant to this title shall be immune from civil or criminal liability that might otherwise result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed.

(9) If the sole issue preventing an emergency placement of a child with a relative or kin is a lack of resources, the county department shall use reasonable efforts to assist the relative or kin with obtaining the necessary items within existing available resources.

Source: L. 87: Entire title R&RE, p. 776, § 1, effective October 1. **L. 89:** (1), (2), (3)(a), (5), and (6) amended, p. 928, § 5, effective April 23. **L. 90:** (2), (4)(a), (5), and (6) amended, (3) repealed, and (3.5) to (3.7) added, pp. 1035, 1037, §§ 2, 6, effective April 3; (8) added, p. 1019, § 6, effective April 20; (3.5) amended, p. 1033, § 24, effective July 1. **L. 91:** (1) and (3.6) amended, p. 264, § 8, effective May 31. **L. 93:** (3.6) amended, p. 2016, § 6, effective July 1. **L. 94:** (2), (5), (6), and (8) amended, p. 2683, § 201, effective July 1. **L. 97:** (3.5) amended, p. 518, § 6, effective July 1. **L. 2000:** (3.6) amended, p. 1123, § 1, effective August 2. **L. 2001:** (3.6) amended, p. 846, § 8, effective June 1. **L. 2003:** (3.6) amended, p. 2623, § 3, effective June 5. **L. 2005:** (3.6) amended, p. 676, § 2, effective July 1. **L. 2006:** (4) amended, p. 1401, § 57, effective August 7. **L. 2009:** (3.6)(a)(III) and (3.6)(a)(IV) amended, (SB 09-245), ch. 436, p. 2423, § 1, effective June 4. **L. 2010:** (4) amended, (SB 10-175), ch. 188, p. 791, § 44, effective April 29. **L. 2017:** (4) amended, (SB 17-242), ch. 263, p. 1314, § 162, effective May 25. **L. 2018:** (1), (3.5), and (3.6)(a)(V) amended, (SB 18-092), ch. 38, p. 420, § 56, effective August 8. **L. 2021:** (7) amended, (HB 21-1101), ch. 481, p. 3427, § 2, effective September 1; (4)(a) amended, (HB 21-1187), ch. 83, p. 327, § 10, effective July 1, 2024. **L. 2022:** (4)(a), (4)(b), (4)(c), and (4)(d) amended, (HB 22-1256), ch. 451, pp. 3232, 3233, §§ 36, 37, effective August 10; (3.6)(a)(III) amended, (HB 22-1038), ch. 92, p. 442, § 26, effective January 9, 2023. **L. 2023:** (7) amended, (HB 23-1027), ch. 284, p. 1683, § 15, effective June 1; (3.6)(a)(III), (3.6)(a)(IV), and (3.6)(a)(V) amended and (3.6)(a)(VI), (3.6)(c), and (9) added, (HB 23-1024), ch. 367, p. 2205, § 3, effective August 7. **L. 2026:** IP(3.6)(a)(IV) and (3.6)(a)(IV)(B) amended, (HB 26-1374), ch. 171, p. 1009, § 3, effective May 27; IP(3.6)(a)(IV) and (3.6)(a)(V) amended, (HB 26-1314), ch. 271, p. 1533, § 4, effective June 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection IP(3.6)(a)(IV) by HB 26-1314 and HB 26-1374 were harmonized.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (3.6), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2005 act amending subsection (3.6), see section 1 of chapter 194, Session Laws of Colorado 2005. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of Colorado 2023. For the legislative declaration in HB 23-1027 see section 1 of chapter 284, Session Laws of Colorado 2023. For the legislative declaration in HB 26-1314, see section 1 of chapter 271, Session Laws of Colorado 2026.

ANNOTATION

Law reviews. For article, "Disclosure and Discovery in Dependency and Neglect Cases", see 54 Colo. Law. 44 (Jan.-Feb. 2025).

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

Shelter hearing is a preadjudicatory stage of the case and is not intended to resolve the rights of natural parents to the legal custody of their child. S.L. v. Dist. Court, 676 P.2d 12 (Colo. 1984); W.H. v. Juvenile Court, 735 P.2d 191 (Colo. 1987).

A temporary custody hearing under subsection (3.5) is a true judicial proceeding because it bears all the hallmarks of a typical judicial proceeding, even though it occurs early on in a child-abuse investigation. Berryman v. Niceta, 143 F.4th 1134 (10th Cir. 2025).

A witness is entitled to absolute immunity for statements made during witness testimony at the custody hearing. Berryman v. Niceta, 143 F.4th 1134 (10th Cir. 2025).

The policies underlying both the expedited procedures and sibling group preference do not permit the application of the shorter incarceration period so as to terminate parental rights concerning an older child whose parent is subject to the longer incarceration period. The termination of parental rights concerning the older child must still be subject to the longer allowable incarceration period. People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010).

19-3-403.5. Temporary shelter.

(1) Temporary shelter is the temporary care of a child in a physically unrestricted setting pending a return to the child's home or placement in an appropriate alternate setting pursuant to applicable state law. Receiving temporary care in temporary shelter is voluntary and a child may leave at any time. A child may not be placed in a licensed temporary shelter facility for more than five days.

(2) A person or entity providing temporary shelter must allow for professionals to complete assessments to determine the child's treatment needs and establish plans to safely transition the child back to the care of the child's parent, guardian, legal custodian, or kin, or to another community-based facility or home, as informed by the relative information form described in section 19-2.5-1404 (1)(b)(VIII). A child in temporary shelter must have access to ongoing educational services.

(3) The general assembly strongly encourages a judicial district's juvenile services planning committee, or the judicial district if the judicial district has not established a juvenile services planning committee, to consider less restrictive settings, including kinship placement, foster care, respite care, and group homes that are small, home-like, and based in the community of the sheltered child, before relying on licensed temporary shelter facilities.

Source: L. 2022: Entire section added, (HB 22-1056), ch. 383, p. 2740, § 3, effective June 7.

19-3-404. Temporary shelter - child's home.

The court may find that it is not necessary to remove a child from his or her home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the county or district department of human or social services, which has emergency caretaker services available, to remain in the child's home with the child until a parent, legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the state department, to resume charge of the child. In no event must such period of time exceed seventy-two hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the state department, to resume charge of the child. The director of the county or district department of human or social services shall designate in writing the representatives of the county or district departments of human or social services authorized to perform such duties.

Source: L. 87: Entire title R&RE, p. 778, § 1, effective October 1. **L. 2018:** Entire section amended, (SB 18-092), ch. 38, p. 421, § 57, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-103.5 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-3-405. Temporary protective custody.

(1) In addition to other powers granted to the court for the protection of children, the court may issue verbal or written temporary protective custody orders or emergency protection orders, or both. Each judicial district shall be responsible for making available a person appointed by the judge of the juvenile court, who may be the judge, a magistrate, or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the court to issue such orders.

(2) (a) Temporary protective custody orders may be requested by the county department of human or social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child he or she reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the circumstances or conditions of the child are such that continuing the child's place of residence or in the care and custody of the person responsible for the child's care and custody would present a danger to that child's life or health in the reasonably foreseeable future.

(b) Emergency protection orders may be requested by the county department of human or social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child the physician reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the child is able to remain safely in the child's place of residence or in the care and custody of the person responsible for the child's care and custody only if certain emergency protection orders are entered. An emergency protection order may include but is not limited to:

(I) Restraining a person from threatening, molesting, or injuring the child;

(II) Restraining a person from interfering with the supervision of the child; or

(III) Restraining a person from having contact with the child or the child's residence.

(3) The county department of human or social services must be notified of such action immediately by the court-appointed official in order that child protection proceedings may be initiated.

(4) In any case, such temporary protective custody or emergency protection shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays.

Source: L. 90: Entire section added, p. 1036, § 3, effective April 3. **L. 91:** (1) amended, p. 363, § 34, effective April 9. **L. 97:** Entire section amended, p. 519, § 7, effective July 1. **L. 2018:** (2)(a), IP(2)(b), and (3) amended, (SB 18-092), ch. 38, p. 421, § 58, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "Disclosure and Discovery in Dependency and Neglect Cases", see 54 Colo. Law. 44 (Jan.-Feb. 2025).

Temporary protective custody orders are not subject to appeal. Temporary protective custody orders are interim orders pending a final factual determination of the allegations set forth in the petition in dependency or neglect. Because they are of short duration and terminate with the ruling of the preliminary injunction, an immediate appeal is not necessary to protect the rights of the parties. People ex rel. M.W., 140 P.3d 231 (Colo. App. 2006).

19-3-406. Relatives or kin as providers of emergency, nonemergency, or continued placement for children or youth - initial criminal history record check - fingerprint-based criminal history record check - criteria for disqualification - use of criminal justice records - rules - definitions.

(1) (a) (I) Any time a child or youth is taken into temporary custody by a law enforcement officer and any time the court places temporary custody of a child or youth with a county department, or the county department has the legal authority for placement pursuant to this part 4, and a relative or kin, as defined in section 19-1-103, is identified as a potential emergency placement for the child or youth, the county department or a local law enforcement agency shall immediately conduct an initial criminal history record check of the relative or kin and any adult

who resides at the home prior to the county department or the law enforcement officer placing the child or youth in the emergency placement.

(II) A county department may perform initial criminal history record checks through its staff or may collaborate with local law enforcement agencies to perform the initial criminal history record checks. When a county department has temporary custody of a child or youth pursuant to this part 4 and contacts the local law enforcement agency for an initial criminal history record check of the relative or kin and any adult who resides at the home pursuant to this section, the local law enforcement agency shall immediately provide the county department with a verbal response regarding the relative's or kin's and any adult who resides at the home's criminal history and shall not provide the county department with documentation of the relative's or kin's and any adult who resides at the home's criminal history, consistent with Public Law 92-544, and its regulations promulgated, as amended.

(b) The child or youth may not be placed with the relative or kin if the initial criminal history record check conducted pursuant to subsection (1)(a) of this section reflects a criminal history, as described in subsection (5) of this section.

(c) The child or youth may be placed with the relative or kin if the initial criminal history record check does not reflect a criminal history, as described in subsection (5) of this section. After placement, the relative or kin and any adult who resides at the home who are not disqualified based upon the results of the initial criminal history record check conducted pursuant to subsection (1)(a) of this section shall complete a fingerprint-based criminal history record check as described in subsection (2) of this section.

(2) (a) A relative or kin and any adult who resides at the home who are not disqualified as an emergency placement for a child or youth pursuant to subsection (1)(c) of this section and who are authorized for placement of a child or youth on an emergency basis pursuant to this part 4 shall submit a complete set of fingerprints to the county department or through another designated third party approved by the Colorado bureau of investigation no later than seven calendar days after the child or youth is placed in the relative's or kin's home or no later than fourteen calendar days when exigent circumstances exist. The county department or Colorado bureau of investigation-approved designated third party shall forward the complete set of fingerprints to the Colorado bureau of investigation to perform the fingerprint-based criminal history record check pursuant to subsection (4) of this section.

(b) If the relative or kin or any adult who resides at the home fails to submit a complete set of fingerprints, the county department shall notify the parties to the case. Within seventy-two hours of notification, any party wanting the child or youth to remain in that placement shall file a motion with the court regarding placement of the child or youth. The county department or a law enforcement officer, as appropriate, shall remove the child or youth from the physical custody of the relative or kin if no party, with proper notification, has filed a motion to maintain the child or youth in the placement within seventy-two hours. The county department shall confirm within

fourteen calendar days after the child or youth has been placed with the relative or kin that the relative or kin and any adult who resides at the home submitted a complete set of fingerprints within the time period specified by this subsection (2).

(3) A county department shall initiate or request that a local law enforcement agency initiate a fingerprint-based criminal history record check of the relatives or kin and any adult who resides at the home prior to placing a child or youth with a relative or kin on a non-emergency basis, when the child or youth is placed on a non-court-involved basis, when the county department has temporary legal custody, or when the county has the legal authority for placement of a child or youth.

(4) (a) A fingerprint-based criminal history record check, as described in subsection (2) of this section, must be completed by local law enforcement, the county department, or another designated third party approved by the Colorado bureau of investigation. The county department shall conduct all of the other required background checks described in this section. If an approved third party takes the fingerprints, the fingerprints may be electronically captured using Colorado bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the information for more than thirty days, unless requested to do so by the relative or kin and any adult who resides at the home.

(b) When a relative or kin and any adult who resides at the home submit a complete set of fingerprints to the county department, the county department shall immediately forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. The Colorado bureau of investigation shall immediately forward the results of the state and national fingerprint-based criminal history record checks conducted pursuant to this section to the county department or local law enforcement agency authorized to receive the information. If the fingerprint-based criminal history record check indicates that the relative or kin and any adult who resides at the home have a criminal history described in subsection (5) of this section, the county department or the local law enforcement officer, whichever is appropriate, shall remove the child or youth from the placement, unless there is a motion regarding placement pending before the court, or if no party, with proper notification, has filed a motion to maintain the child or youth in the placement within seventy-two hours, and shall not place a child or youth in the home where a person with the criminal conviction resides without a court order affirming placement of the child or youth in the home or pursuant to state board rules. The court may order the reports of fingerprint-based criminal history record checks from the Colorado bureau of investigation or from the federal bureau of investigation that were relied upon by the county to evaluate the placement to be released by the county department after providing an opportunity for the individual whose results would be released to object or request appropriate protections or redactions.

(5) A county department or a local law enforcement agency shall not place or continue the placement of a child or youth in a home where a person has a criminal history of one or more of the following convictions, as "conviction" is defined in subsection (12) of this section:

(a) Felony child abuse, as described in section 18-6-401;

(b) Murder in the first degree, as described in section 18-3-102; murder in the second degree, as described in section 18-3-103; manslaughter, as described in section 18-3-104; criminally negligent homicide, as described in section 18-3-105; and vehicular homicide, as described in section 18-3-106;

(c) Kidnapping in the first or second degree, as described in sections 18-3-301 and 18-3-302; or felony false imprisonment, as described in section 18-3-303;

(d) A felony crime of violence enhancer, as defined in section 18-1.3-406 (2)(a)(I), excluding the conviction of escape;

(e) An offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), including sexual exploitation of a child, human trafficking for sexual servitude, and human trafficking of a minor for sexual servitude;

(f) A felony, the underlying factual basis of which has been found by the court to include an act of domestic violence, as defined in section 18-6-800.3, within the preceding five years;

(g) A felony involving physical assault, as described in section 18-3-202 or 18-3-203, within the preceding five years;

(h) A felony drug-related offense within the preceding three years. If the relative or kin has a felony drug-related conviction less than five years prior, any kinship or guardianship assistance payments on behalf of the child or youth must not be made with federal money provided pursuant to Title IV-E of the federal "Social Security Act", as amended.

(i) A pattern of misdemeanor convictions related to domestic violence, as defined by rule of the state board, within the preceding five years; or

(j) An offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in subsections (5)(a) to (5)(i) of this section.

(6) If a relative or kin was not disqualified as a placement based upon the initial criminal history record check or the fingerprint-based criminal history record checks of any adult who resides at the home, the county department shall perform the following additional background checks of the relative or kin and any adult who resides at the home prior to placement:

(a) A check of the Colorado courts data access system to determine the status or disposition of any criminal charges;

(b) A check of the state department's child welfare information system and the equivalent registries and databases in other states if the individual has resided in another state in the prior five years, as prescribed by rule, for information to inform decisions about placement to determine if the relative or kin and any adult who resides at the home have been identified as having a finding of child abuse or neglect; and

(c) A check against the state's sex offender registry and against the national sex offender public registry operated by the United States department of justice that checks names and addresses against the known names and addresses in the registries and the interactive database system for Colorado and the equivalent registries and databases in other states if the individual has resided in another state in the prior five years, as prescribed in rule, to determine if a relative or kin or any adult who resides in the home is a registered sex offender.

(7) A county department shall not leave a child or youth in placement or place a child or youth with a relative or kin if the relative or kin or any adult who resides in the home:

(a) Has been convicted of any of the crimes listed in subsection (5) of this section; or

(b) Has been identified as having a child abuse or neglect-founded finding through a check of the child welfare information system within the preceding five years and that finding has been determined to present an unsafe placement for the child or youth, unless there is an appeal pending for the founded finding; or

(c) Is a registered sex offender in the sex offender registry created pursuant to section 16-22-110, or is a registered sex offender as determined by a check of the national sex offender registry operated by the United States department of justice.

(8) A county department may make a placement with or allow continued placement with a relative or kin who would otherwise be disqualified pursuant to subsection (7) of this section if such placement occurs according to the rules promulgated by the state board or if there is a court order affirming placement of the child or youth with the relative or kin. When another child or youth subsequently needs placement in the same home, the county department may place that child or youth with a relative or kin who would otherwise be disqualified pursuant to subsection (7) of this section based on the previous determination with regard to the background check. The relative or kin shall still comply with the requirements of subsection (2) of this section, and the county department or the court shall affirm placement of the subsequent child or youth.

(9) The state board shall promulgate rules related to background checks of relatives or kin and placement of children or youth with relatives or kin, consistent with the provisions contained in part 3 of article 72 of title 24.

(10) Notwithstanding any other provision of this section, if the county department verifies and documents that all of the criminal history record checks and other background checks described in this section have been completed in the preceding three months for a relative or kin

and any adult who resides in the home, the county department does not need to repeat the fingerprint-based criminal history record check of that relative or kin and any adult who resides in the home; except that the county department shall repeat the other background checks described in this section and contact local law enforcement to determine if there were any new charges for offenses filed against that relative or kin and any adult who resides in the home during the preceding three months since the last fingerprint-based criminal history record check.

(11) (a) The Colorado bureau of investigation shall flag the fingerprints of and notify the applicable county department of any new arrests of an individual whose fingerprints the county department submits to a local law enforcement agency that the county department also intends to be subsequently used for foster care certification.

(b) The county department shall notify the Colorado bureau of investigation within five calendar days after submitting the request for a fingerprint-based criminal history record check when the county department intends to accept an application for foster care certification from that person so that the flagging and automatic notification to the county department of new arrests pursuant to subsection (11)(a) of this section occurs for that person and continues through the duration of the individual's foster care certification. The county department shall use the same fingerprints received pursuant to this subsection (11) and any updated fingerprint-based criminal history record check results from the automatic notification as a substitute for meeting the fingerprint requirements for a person who is applying for foster care certification pursuant to section 26-6-910.

(12) For purposes of this section, unless the context otherwise requires:

(a) "Conviction" means a conviction by a jury or court and includes a deferred judgment and sentence agreement, or a plea of guilty or nolo contendere determined through the records of the Colorado bureau of investigation or the federal bureau of investigation and the Colorado courts data access system in the state judicial department. "Conviction" does not include a diversion or deferral or plea for a person who participated in and successfully completed the child abuse and child neglect diversion program established pursuant to section 19-3-310. A conviction does not include juvenile deferred judgment or adjudication agreements, adjudications, diversion, deferral, or plea agreements. The convictions identified in this subsection (12)(a) and subsection (5) of this section must be determined according to the records of the Colorado bureau of investigation or the federal bureau of investigation and the Colorado courts data access system in the state judicial department. A screening request in Colorado must be made pursuant to section 19-1-307 (2)(k), rules promulgated by the state board pursuant to section 19-3-313.5, and 42 U.S.C. sec. 671 (a)(2). A certified copy of the judgment of a court of competent jurisdiction of the conviction or a deferred adjudication agreement is prima facie evidence of a conviction or agreement.

(b) "Initial criminal history record check" means a Colorado crime information center or national crime information center check.

Source: L. 2005: Entire section added, p. 616, § 1, effective May 27. **L. 2007:** (2) amended, p. 1017, § 6, effective May 22. **L. 2015:** Entire section amended, (SB 15-087), ch. 263, p. 1012, § 9, effective June 2. **L. 2017:** (1)(c), (2), and (3) amended, (SB 17-189), ch. 149, p. 499, § 6, effective August 9. **L. 2022:** (4.5)(a)(I) and (8)(b) amended, (HB 22-1295), ch. 123, p. 835, § 39, effective July 1. **L. 2023:** Entire section R&RE, (HB 23-1043), ch. 20, p. 73, § 1, effective August 7. **L. 2024:** (12)(a) amended, (HB 24-1450), ch. 490, p. 3411, § 27, effective August 7.

19-3-407. Noncertified kinship care - requirement for background checks and other checks - definitions. (Repealed)

Source: L. 2015: Entire section added, (SB 15-087), ch. 263, p. 1016, § 10, effective June 2. **L. 2017:** IP(1) and IP(1)(a) amended, (SB 17-189), ch. 149, p. 500, § 7, effective August 9. **L. 2021:** (4) amended, (SB 21-059), ch. 136, p. 732, § 77, effective October 1. **L. 2023:** Entire section repealed, (HB 23-1043), ch. 20, p. 79, § 2, effective August 7.

PART 5

PETITION, ADJUDICATION, DISPOSITION

19-3-500.2. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) It is beneficial for a child who is removed from his or her home and placed in foster care to be able to continue relationships with his or her brothers and sisters, regardless of age, in order that the siblings may share their strengths and association in their everyday and often common experiences. The general assembly also finds that the initial decisions about temporary placement of a child may affect the ultimate permanent placement of the child or of the children in a sibling group.

(b) When parents and other adult relatives are no longer available to a child, the child's siblings constitute his or her biological family;

(c) When placing children in foster care, efforts should be made to place siblings together, unless there is a danger of specific harm to a child or it is not in the child's or children's best interests to be placed together. The general assembly further finds that if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, there should be a rebuttable presumption that placement of the entire sibling

group in the joint placement is in the best interests of the children. Such presumption should be rebuttable by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(2) The general assembly also declares that nothing in this article regarding the placement of sibling groups together should be construed as requiring the removal of a child from his or her home and placement into foster care if that is not in the best interests of the child.

Source: L. 2000: Entire section added, p. 474, § 2, effective July 1. **L. 2003:** (1)(c) amended, p. 2624, § 4, effective June 5.

ANNOTATION

This section does not broaden a juvenile court's personal jurisdiction to include nondependent siblings of a youth in foster care or require the siblings to attend therapeutic visitation with the youth. In re People in Interest of S.A., 2022 CO 27, 511 P.3d 597.

19-3-501. Petition initiation - preliminary investigation - informal adjustment.

(1) Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the court's jurisdiction, as provided in this article 3, the law enforcement officer or other person may refer the matter to the court, which shall make a preliminary investigation to determine whether the interests of the child or of the community require that further action be taken. The probation department, county department of human or social services, or any other agency designated by the court shall make the investigation. On the basis of the preliminary investigation, the court may:

(a) Decide that no further action is required, either in the interests of the public or of the child;

(b) Authorize a petition to be filed; or

(c) (I) Make whatever informal adjustment is practicable without a petition if:

(A) The child and his parents, guardian, or other legal custodian were informed of their constitutional and legal rights, including being represented by counsel at every stage of the proceedings;

(B) The facts are admitted and establish prima facie jurisdiction; except that such admission shall not be used in evidence if a petition is filed; and

(C) Written consent is obtained from the parents, guardian, or other legal custodian and also from the child, if of sufficient age and understanding.

(II) Efforts to effect informal adjustment may extend no longer than six months.

(2) (a) Upon receipt of a report filed by a law enforcement agency, or any other person required to report pursuant to section 19-3-304 (2) indicating that a child has suffered abuse as defined in section 19-1-103 (1) and that the best interests of the child require that he be protected from risk of further such abuse, the court shall then authorize and may order the filing of a petition.

(b) Upon receipt of a report, as described in paragraph (a) of this subsection (2), from any person other than those specified in said paragraph (a), the court, after such investigation as may be reasonable under the circumstances, may authorize and may order the filing of a petition.

Source: L. 87: Entire title R&RE, p. 778, § 1, effective October 1. **L. 2002:** (2)(a) amended, p. 1035, § 78, effective June 1. **L. 2018:** IP(1) amended, (SB 18-092), ch. 38, p. 422, § 59, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

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

The state is the exclusive party to bring neglect and dependency proceedings. A private person, such as a grandparent, can request the county department of social services to bring such a proceeding or refer the matter to the juvenile court, as provided in subsection (2), but she cannot bring a neglect and dependency petition on her own. McCall v. Dist. Court ex rel. County of Montezuma, 651 P.2d 392 (Colo. 1982).

While a grandparent can report suspected child abuse or neglect and, thereby, initiate an investigation, this section does not require that the court undertake its own investigation by granting a hearing at the request of a grandparent, nor does this section require

that the court order the county department of social services to conduct an additional investigation if it appears that a preliminary investigation has already been completed and the county department saw no need to pursue the matter. In re L.F., 121 P.3d 267 (Colo. App. 2005).

"Petition" signifies initial pleading of dependency or neglect requesting the court to take jurisdiction rather than discussion of termination of parental rights appearing in a social worker's report. People in Interest of H.A.C. v. D.C.C., 198 Colo. 260, 599 P.2d 881 (1979).

Age is a jurisdictional prerequisite both at the filing of a petition and at the time of adjudication. In a case where the child was just shy of 18 at the time the dependency and neglect petition was filed but turned 18 before the hearing, the juvenile court lost subject matter jurisdiction by the time of the hearing. People in Interest of M.C.S., 2014 COA 46, 327 P.3d 360.

A petition which shows on its face that the child is neither dependent nor delinquent deprives the court of jurisdiction. Carrera v. Kelley, 131 Colo. 421, 283 P.2d 162 (1955).

That the mother of a child is convicted of a felony, and leaves the child in the care of its grandmother who is giving it proper care, does not invoke the jurisdiction of a juvenile court in a dependency proceeding, and speculation as to the future conduct of the mother has no place in such proceedings. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958).

In a proceeding to declare a child dependent and neglected, initiated under former section by parties having temporary care of the child, there being no evidence that the child was at any time in improper hands or in unwholesome surroundings, and the petition showing on its face that its purpose was to secure a continuation of the situation existing at the time the action was commenced, no grounds for dependency existed. Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

And should be dismissed on a court's own motion when it is fully advised of the fact, or could take notice thereof, that petitioner and respondent in dependency proceeding under former section, husband and wife, had continued to live together over the years involved. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

The mere act of dismissing the petition does not decree custody of the child, for custody in dependency cases can only be determined after the child has been decreed dependent and neglected. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

This section provides for proceedings in the name of the state for the protection of a child and, in which proceedings, the claims of the warring contestants must give way to the welfare of the child. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Petitioner represents the state, not a party to a dispute over custody of a child. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947).

A petition in dependency must be filed, not in behalf of any individual, but only in

behalf of the state for the purpose of protecting a minor child. Such petition should not be filed by any petitioner, and particularly not by an attorney at law, who is an officer of the court, except singly for the protection of the child. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Geisler v. People, 135 Colo. 121, 308 P.2d 1000 (1957).

Petition essential for jurisdiction. Without a petition in writing setting forth all the facts concerning what constitutes the child a dependent and verified by the affidavit of the petitioner, a juvenile court has no jurisdiction over the subject matter. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

A petition in dependency should be filed only upon credible information and belief that the child is so circumstanced that for its own protection and well-being it should be taken from existing custody and become a ward of the state. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953).

Petitioner should not file a petition without knowledge of facts justifying belief of dependency and, when the petition is filed, should see that evidence is presented supporting it. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947).

One assuming to sign a petition equally assumes the obligation to present evidence sustaining it, and one should not verify any allegation of such a petition as true of his own knowledge, unless the facts set forth therein are within his personal knowledge. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953).

In addition to the other requirements for jurisdiction, the essential element in all cases is that the petitioner have knowledge of a child in his county who appears to be dependent. Geisler v. People, 135 Colo. 121, 308 P.2d 1000 (1957).

Petition did not cover children born subsequently. A petition verified on a certain date, covering the facts as of that date, cannot cover children born at a later date. Any order entered on such a petition regarding support is void, and consequently, all subsequent orders are likewise void. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

This section does not preclude correction of erroneous statutory reference. People in Interest of M.M., 43 Colo. App. 65, 599 P.2d 968 (1979).

Termination of parental rights is a drastic remedy. People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980).

The state is the exclusive party to file a petition in dependency and neglect, and a guardian ad litem has no authority to assume the role of the state. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986).

The state, in its role as parens patriae, is the sole party that may prosecute dependency and neglect proceedings. Nothing in this code gives a guardian ad litem or a counsel for youth authority to prosecute a dependency and neglect petition. People in Interest of R.M.P., 2025 CO 34, 569 P.3d 1202.

However, the trial court is not required to dismiss a dependency and neglect petition merely because the state chooses for any reason not to pursue the proceedings. McCall v. Dist. Ct., 651 P.2d 392 (Colo. 1982); People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986), overruled in People in Interest of R.M.P., 2025 CO 34, 569 P.3d 1202, to the extent the R.E. opinion allowed a non-state party to prosecute a dependency and neglect petition when the state has determined that doing so would not be a valid exercise of its parens patriae authority; L.G. v. People, 890 P.2d 647 (Colo. 1995).

Dependency and neglect petition may not be dismissed over the objection of the guardian ad litem. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986), overruled in People in Interest of R.M.P., 2025 CO 34, 569 P.3d 1202, to the extent the R.E. opinion allowed a non-state party to prosecute a dependency and neglect petition when the state has determined that doing so would not be a valid exercise of its parens patriae authority.

If there is such an objection by the guardian ad litem, the trial court must conduct a hearing and specifically determine whether the petition is supported by a preponderance of the evidence and the child is in fact dependent and neglected. That determination may be appealed by the guardian ad litem. People in Interest of R.E., 729 P.2d 1032 (Colo. App. 1986), overruled in People in Interest of R.M.P., 2025 CO 34, 569 P.3d 1202, to the extent the R.E. opinion allowed a non-state party to prosecute a dependency and neglect petition when the state has determined that doing so would not be a valid exercise of its parens patriae authority.

Dependency and neglect action differs from adversarial proceeding since the safety of the child, not the custodial interest of the parent, is the paramount concern. L.G. v. People, 890 P.2d 647 (Colo. 1995).

Parental Kidnapping Prevention Act of 1979 does not apply to a dependency and neglect action and therefore does not preempt state law. L.G. v. People, 890 P.2d 647 (Colo. 1995).

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-3-502. Petition form and content - limitations on claims in dependency or neglect actions.

(1) The petition and all subsequent court documents in any proceedings brought under this article shall be entitled "The People of the State of Colorado, in the Interest of _____, a child (or children) and Concerning _____, Respondent." The petition shall be verified, and the statements in the petition may be made upon information and belief.

(2) The petition shall set forth plainly the facts which bring the child within the court's jurisdiction. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, custodian, legal custodian, stepparent, or spousal

equivalent or of his nearest known relative if no parent, guardian, custodian, legal custodian, stepparent, or spousal equivalent is known.

(2.5) The petition in each case where removal of a child from the home is sought shall either state that reasonable efforts to prevent out-of-home placement were made and shall summarize such efforts or, if no services to prevent out-of-home placement were provided, the petition shall contain an explanation of why such services were not provided or a description of the emergency which precluded the use of services to prevent out-of-home placement of the child. The petition shall be verified.

(2.7) (a) Pursuant to article 1.2 of this title 19, the petition must:

(I) Include a statement indicating what continuing inquiries the county department of human or social services has made in determining whether the child who is the subject of the proceeding is an Indian child;

(II) Identify whether the child is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the Indian child's parent or Indian custodian and to the Indian child's tribe pursuant to article 1.2 of this title 19, the postal receipts must be attached to the petition and filed with the court or filed within fourteen days after the filing of the petition, as specified in article 1.2 of this title 19.

(3) All petitions filed alleging the dependency or neglect of a child shall include the following statements:

(a) "Termination of the parent-child legal relationship is a possible remedy available if this petition alleging that a child is dependent or neglected is sustained. A separate hearing must be held before such termination is ordered. Termination of the parent-child legal relationship means that the child who is the subject of this petition would be eligible for adoption."

(b) "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 a permanent placement for the child."

(c) "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, as appropriate. If you are a party to the action, you have a right to object to an administrative review, and if you object, the review shall be conducted by the court."

(4) No counterclaim, cross claim, or other claim for damages may be asserted by a respondent in an action alleging the dependency or neglect of a child, but nothing in this

subsection (4) shall be construed to prohibit a respondent from asserting a claim for damages in an action independent of an action alleging the dependency or neglect of a child.

(4.5) A child or youth named in the petition shall be a party to the proceedings and have the right to attend and fully participate in all hearings related to the child's or youth's case. As a party to the proceedings, a child or youth has legal standing regarding all matters related to the child's or youth's interests and the right to have the child's or youth's interests fully represented by the guardian ad litem or counsel for youth throughout the proceedings, including appeals. The child's or youth's guardian ad litem or counsel for youth shall provide developmentally appropriate notice to the child or youth of all hearings related to the child's or youth's case.

(4.7) (a) If a county department of human or social services seeks dismissal of a petition filed pursuant to section 19-3-501 prior to the adjudicatory hearing held pursuant to section 19-3-505, and the child or youth, through the child's or youth's guardian ad litem or counsel for youth, objects to the dismissal and articulates a basis upon which the child is abused or neglected pursuant to section 19-1-103 (1)(a), the court shall set a hearing to determine whether or not the county department of human or social services has a reasonable basis to dismiss the case. The court may hear from the parties regarding the appropriateness of the dismissal. If the court determines the county department of human or social services shows a reasonable basis for dismissal, the court shall dismiss the petition, but if the county department of human or social services does not show reasonable basis to dismiss the case, the court must allow the case to proceed.

(b) This subsection (4.7) does not authorize a child or youth to file a petition on the child's or youth's behalf.

(c) This subsection (4.7) does not limit a party's right to demand a jury trial pursuant to section 19-3-202.

(5) Any parent, guardian, or legal custodian alleged to have abused or neglected a child shall be named as a respondent in the petition concerning such child. The county attorney, city attorney of a city and county, or special county attorney may name any other parent, guardian, custodian, legal custodian, stepparent, or spousal equivalent as a respondent in the petition if he determines that it is in the best interests of the child to do so.

(5.5) (a) A person named a respondent is a party to the proceedings and has the right and responsibility to attend and fully participate in all proceedings related to the respondent. A respondent's failure to appear for a hearing does not constitute a violation of the respondent's due process rights and nothing in this section prohibits the court from proceeding if a respondent fails to appear.

(b) (I) If the court becomes aware that a respondent is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail, the court shall issue a writ for the respondent's personal attendance or

attendance through audio-visual communication technology at all hearings, unless the court finds it necessary to hold separate hearings pursuant to section 19-1-106. If the respondent is represented by counsel, counsel shall file a motion for the respondent's personal attendance or attendance through audio-visual communication technology at the hearing if counsel knows the respondent is incarcerated and wants to personally attend a contested hearing or attend any hearing through audio-visual communication technology. If the respondent is not represented by counsel, the court shall file a writ for the respondent's personal appearance or appearance through audio-visual communication technology. If a writ for appearance through audio-visual communication technology is issued, the court shall include information on the writ concerning the manner by which the respondent may appear and shall ensure the writ is provided to the litigation coordinator at the facility or jail where the respondent is incarcerated. If the respondent is represented by counsel, the court may order the counsel to inform the litigation coordinator.

(II) If the personal attendance writ issued by the court pursuant to subsection (5.5)(b)(I) of this section is not honored, the court must permit the respondent to attend and participate in a hearing through audio-visual communication technology.

(c) (I) A court, the county department of human or social services, the sheriff, or the executive director of the department of corrections may develop and implement procedures to facilitate the notification of proceedings and personal appearance of a respondent who is incarcerated.

(II) A representative of the facility or jail where the respondent is incarcerated shall, when possible, inform the court not less than seventy-two hours prior to the proceeding if it cannot facilitate transportation of the respondent to a proceeding.

(III) A representative of the facility or jail where the respondent is incarcerated shall inform the court if the respondent refuses transportation, and the circumstances of the refusal, as soon as practicable.

(IV) If the facility where the respondent is incarcerated cannot facilitate transportation of the respondent to a hearing pursuant to this subsection (5.5), the facility shall make every reasonable effort to facilitate the respondent's participation at the hearing through audio-visual communication technology, so long as the requirements pursuant to subsection (5.5)(b)(I) of this section are satisfied.

(6) A person may be named as a special respondent on the grounds that he resides with, has assumed a parenting role toward, has participated in whole or in part in the neglect or abuse of, or maintains a significant relationship with the child. Personal jurisdiction shall be obtained over a special respondent once he is given notice by a service of summons and a copy of the petition or motion describing the reasons for his joinder. A special respondent shall be afforded an opportunity for a hearing to contest his joinder and the appropriateness of any orders that affect

him and shall have the right to be represented by counsel at such hearing. At any other stage of the proceedings, a special respondent may be represented by counsel at his own expense.

(7) In addition to notice to all parties, the court shall ensure that notice is provided of all hearings and reviews held regarding a child to the following persons with whom a child is placed: Foster parents, pre-adoptive parents, or relatives. Such persons have the right to be heard at such hearings and reviews. The foster parent, pre-adoptive parent, or relative providing care to a child shall not be made a party to the action for purposes of any hearings or reviews solely on the basis of such notice and right to be heard. Notice of hearings and reviews must not reveal to the respondent parent or other relative the address, last name, or other such identifying information regarding any person providing care to the child.

Source: L. 87: Entire title R&RE, p. 779, § 1, effective October 1. **L. 92:** (3) amended, p. 224, § 10, effective July 1. **L. 93:** (3)(b) amended, p. 389, § 2, effective April 19; (2.5) added, p. 2016, § 7, effective July 1. **L. 94:** (3)(c) amended, p. 2684, § 202, effective July 1. **L. 98:** (7) added, p. 1418, § 4, effective July 1. **L. 99:** (3)(b) amended, p. 911, § 5, effective July 1. **L. 2002:** (2.7) added, p. 786, § 6, effective May 30. **L. 2007:** (7) amended, p. 1017, § 7, effective May 22. **L. 2018:** IP(2.7)(a) and (2.7)(a)(I) amended, (SB 18-092), ch. 38, p. 422, § 60, effective August 8. **L. 2022:** (4.5) added and (7) amended, (HB 22-1038), ch. 92, p. 436, § 10, effective January 9, 2023. **L. 2023:** (5.5) added, (SB 23-039), ch. 191, p. 954, § 4, effective January 1, 2024. **L. 2025:** IP(2.7)(a) and (2.7)(b) amended, (HB 25-1204), ch. 338, p. 1817, § 6, effective August 6. **L. 2026:** (4.5) amended and (4.7) added, (HB 26-1227), ch. 269, p. 1527, § 1, effective August 12.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (3)(b), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2002 act enacting subsection (2.7), see section 1 of chapter 217, Session Laws of Colorado 2002. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (Nov. 2002). For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (Aug. 2004). For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023). For article, "Safeguarding Children's Voices in Child Protective Proceedings", see 102 Denv. L. Rev. 41 (2024).

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

Admission by a mother with whom children did not reside that child had been assaulted and lacked proper parental care is not sufficient to sustain an adjudication of dependency and neglect against a father who disputed such allegations and demanded a jury trial. People in Interest of A.M., 786 P.2d 476 (Colo. App. 1989).

Stepparent not required to be named a respondent in a dependency or neglect proceeding; the county attorney is vested with discretion in deciding whether it is in the best interests of the child to name a stepparent as a respondent. People ex rel. of E.S., 49 P.3d 1221 (Colo. App. 2002).

The general assembly did not grant relatives who do not have placement of the child, including grandparents, a right of notice to hearings in dependency and neglect cases. People in Interest of C.N., 2018 COA 165, 431 P.3d 1219.

19-3-503. Summons - issuance - contents - service.

(1) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall also contain a statement, when appropriate, that the termination of the parent-child legal relationship is a possible remedy under the proceedings and shall set forth the constitutional and legal rights of the child, his parents, guardian, or legal custodian, or any other respondent or special respondent, including the right to have an attorney present at the hearing on the petition.

(2) No summons shall issue to any respondent who appears voluntarily or who waives service, but any such person shall be provided with a copy of the petition and summons upon appearance or request.

(3) The summons shall require the person or persons having the physical custody of the child to appear, and it may order the child to appear before the court at a time and place stated. If the person or persons so summoned are not the parents or guardian of the child, then a summons shall also be issued to the parents or guardian, or both, notifying them of the pendency of the case and of the time and place set for hearing.

(4) The court on its own motion or on the motion of any party may join as a respondent or special respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on his own behalf or on behalf of the child.

(5) If it appears that the welfare of the child or of the public requires that the child be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the child into custody at once.

(6) The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the district court.

(7) Summonses shall be served personally, pursuant to the Colorado rules of civil procedure. If personal service is used, it shall be sufficient to confer jurisdiction if service is effected not less than two days before the time fixed in the summons for the appearance of the person served; except that personal service shall be effected not less than five days prior to the time set for a hearing concerning a dependent or neglected child.

(8) If the respondent required to be summoned under subsection (3) of this section cannot be found within the state, the fact of the child's presence in the state shall confer jurisdiction on the court as to any absent respondent if due notice has been given in the following manner:

(a) When the residence of the person to be served outside the state is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete within five days after return of the requested receipt.

(b) When the person to be served has no residence within Colorado and his place of residence is not known or when he cannot be found within the state after due diligence, service may be by publication pursuant to rule 4 (g) of the Colorado rules of civil procedure; except that service may be by a single publication and must be completed not less than five days prior to the time set for a hearing concerning a dependent or neglected child.

Source: L. 87: Entire title R&RE, p. 780, § 1, effective October 1. **L. 2019:** (8)(b) amended, (SB 19-241), ch. 390, p. 3467, § 18, effective August 2.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "Medical Diagnosis as a Gateway to the Child Welfare System: A Legal Review for Physicians, Lawyers, and Social Workers", see 65 Den. U. L. Rev. 213 (1988).

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

Substantial compliance with the statutory provisions is essential and must appear of record. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

For the distinction between notice required by this section and that required by § 19-4-107, see People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Voluntary appearance waives personal service. The voluntary appearance of juvenile's mother and her participation in the transfer hearing constitutes a waiver of her right to personal service. People in Interest of G.A.T., 183 Colo. 111, 515 P.2d 104 (1973).

Parent's constitutional rights of due process were not violated where she was given adequate notice that the juvenile court would determine at the hearing whether her parental rights should be terminated, and was afforded an opportunity to be heard on this issue. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

In a custody proceeding where parents of allegedly dependent and neglected children were timely served with summons, were advised of their rights by court, had adequate time in which to prepare a defense, appeared, proceeded to trial, and were represented by able counsel, the rights of the parents were not impaired and there was substantial compliance with requirements of this section relating to service of summons. Robinson v. People in Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970).

Service on mother confined in penitentiary was effective. Bd. of Control of State Home v. Mulertz, 60 Colo. 468, 154 P. 742 (1916).

Proceedings defective where service did not comply with section. In a proceeding to determine the dependency of children, it was held, under the disclosed facts, that there was no timely service or waiver of service, that the parents were not advised regarding the nature and effect of the proceeding as required by this section, that the court was without jurisdiction, and that the entire proceedings, decree, and order of commitment were void. Ziemer v. Wheeler, 89 Colo. 242, 1 P.2d 579 (1931).

Service by publication ineffective for father in case under Uniform Child Custody Jurisdiction and Enforcement Act involving

termination of parental rights. Affidavit for service by publication included factual errors and did not establish what efforts were made to locate father in Iran or whether the department attempted to provide personal service by any means that would likely result in father receiving actual notice. People in Interest of A.B-A., 2019 COA 125, 451 P.3d 1278.

The joining of the district attorney and law enforcement officers as parties to case does not exceed the court's jurisdiction to join as a respondent any person it deems necessary to the action. Where court concluded in dependency and neglect proceedings based on alleged sexual abuse that appropriate treatment plan required confidentiality of communications, the court joined law enforcement officials as parties to assure that they would not seek to learn the content of such communications. People v. District Court, 731 P.2d 652 (Colo. 1987).

Mother who deliberately concealed herself from law enforcement and the court lacked standing to challenge the constitutionality of subsection (8)(b) authorizing service by a single publication because her claimed injury was self-inflicted. People ex rel. J.C.S., 169 P.3d 240 (Colo. App. 2007).

Juvenile court erred in denying father's motion to vacate the dependency and neglect orders entered against him because the county division of children, youth, and families did not fully comply with the requirements of subsection (8)(b) of this section and C.R.C.P. 4(g). The county division of children, youth, and families failed to make sufficient effort to identify, locate, or personally serve the father and failed to explain why further efforts would have been futile. Matter of J.N. in Interest of C.G., 2022 COA 69, 518 P.3d 788.

19-3-504. Contempt - warrant.

(1) Any person summoned or required to appear as provided in section 19-3-503 who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

(2) If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the court, a bench warrant may be issued for the respondent or for the child.

Source: L. 87: Entire title R&RE, p. 781, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Neither the Colorado Children's Code nor C.R.C.P. 107 authorizes default judgment as a sanction against a parent for failing to appear at a dependency and neglect adjudicatory hearing. People in Interest of K.J.B., 2014 COA 168, 342 P.3d 597.

19-3-505. Adjudicatory hearing - findings - adjudication.

(1) At the adjudicatory hearing, the court shall consider whether the allegations of the petition are supported by a preponderance of the evidence; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

(2) Evidence tending to establish the necessity of separating the child from the parents or guardian may be admitted but shall not be required for the making of an order of adjudication.

(3) Adjudicatory hearings shall be held at the earliest possible time, but in no instance shall such hearing be held later than ninety days after service of the petition, or, in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), in no instance shall such hearing be held later than sixty days after service of the petition unless the court finds that the best interests of the child will be served by granting a delay. If the court determines that a delay is necessary, it shall set forth the specific reason why such delay is necessary and shall schedule the adjudicatory hearing at the earliest possible time following the delay.

(4) (a) When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

(b) In such event, the court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

(c) If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party, or the court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

(d) If it appears from the evidence that the child may have a mental health disorder or an intellectual and developmental disability as these terms are defined in article 10.5 of title 27, subsections (4)(a) to (4)(c) of this section do not apply, and the court shall proceed pursuant to section 19-3-506.

(5) After making a finding as provided by paragraph (a) of subsection (7) of this section but before making an adjudication, the court may continue the hearing from time to time, allowing the child to remain in his own home or in the temporary custody of another person or agency subject to such conditions of conduct and of visitation or supervision by a juvenile probation officer as the court may prescribe, if:

(a) Consent is given by the parties, including the child and his parent, guardian, or other legal custodian after being fully informed by the court of their rights in the proceeding, including their right to have an adjudication made either dismissing or sustaining the petition;

(b) Such continuation shall extend no longer than six months without review by the court. Upon review, the court may continue the case for an additional period not to exceed six months, after which the petition shall either be dismissed or sustained.

(6) When the court finds that the allegations of the petition are not supported by a preponderance of the evidence, the court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His or her parents, guardian, or legal custodian shall also be discharged from any restriction or other previous temporary order. The court shall inform the respondent that, pursuant to section 19-3-313.5 (3)(f), the department shall expunge the records and reports for purposes related to employment or background checks.

(7) (a) When the court finds that the allegations of the petition are supported by a preponderance of the evidence, except when the case is continued as provided in the introductory portion to subsection (5) of this section, the court shall sustain the petition and shall make an order of adjudication setting forth whether the child is neglected or dependent. Evidence that child abuse or nonaccidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent, and such evidence shall be sufficient to support an adjudication under this section.

(b) The court shall then hold the dispositional hearing, but such hearing may be continued on the motion of any interested party or on the motion of the court. Such continuance shall not exceed thirty days unless good cause exists. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the dispositional hearing shall be held within thirty days after the adjudicatory hearing unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay. It is the intent of the general assembly that the dispositional hearing be held on the same day as the adjudicatory hearing, whenever possible.

Source: L. 87: Entire title R&RE, p. 781, § 1, effective October 1. **L. 94:** (3) and (7) amended, p. 2053, § 6, effective July 1. **L. 96:** (6) amended, p. 1290, § 3, effective January 1, 1997. **L. 2000:** (6) amended, p. 1723, § 5, effective June 1. **L. 2003:** (6) amended, p. 1407, § 12, effective

January 1, 2004. **L. 2006:** (4)(d) amended, p. 1402, § 58, effective August 7. **L. 2017:** (4)(d) amended, (SB 17-242), ch. 263, p. 1315, § 163, effective May 25.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (6), see section 1 of chapter 196, Session Laws of Colorado 2003. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ANNOTATION

I. General Consideration.

II. Evidence and Burden of Proof.

III. Illustrative Cases.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For article, "Disclosure and Discovery in Dependency and Neglect Cases", see 54 Colo. Law. 44 (Jan.-Feb. 2025).

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

The adjudication procedure allows parents with limited financial ability to obtain proper treatment for their developmentally disabled children, and thereby furthers the legislative purpose of securing for such children the care that will best serve their welfare and the interests of society. The best interests of the child, rather than the parents' finances, determine what care the child receives. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Adjudication of dependency and neglect was proper where father had been bound over for trial on charge of murder of mother and held without bond because child could be found dependent and neglected under the ground that she lacked parental care or was not domiciled with her parent. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987).

Was also proper where the jury verdict was based on allegations in the petition in dependency and neglect; the only argument presented to support the finding of dependency was the allegation in the petition of the act of sexual molestation initially told to a pediatrician by the child

and subsequently investigated by the department of social services; the father did not contend that the jury's determination rested on some unknown other incident and not the sole allegation concerning him; and the verdict was intended to be a determination of the status of the child, and not a specific finding of the acts creating that status. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Admission by one respondent not necessarily dispositive of allegations disputed by any other respondents. One party's admissions, while binding upon that party, are legally insufficient to establish the allegations in a dependency and neglect petition in the face of the other party's denial. People ex rel. U.S., 121 P.3d 326 (Colo. App. 2005).

"Fault" admissions made by father involving mother, which she denied and which were not proved at an adjudicatory hearing, cannot form the basis for requiring mother to comply with a treatment plan in the absence of an adjudication. People ex rel. U.S., 121 P.3d 326 (Colo. App. 2005).

Admission by a mother with whom children did not reside that child had been assaulted and lacked proper parental care is not sufficient to sustain an adjudication of dependency and neglect against a father who disputed such allegations and demanded a jury trial. People in Interest of A.M., 786 P.2d 476 (Colo. App. 1989).

Purpose of hearing. The purpose of the adjudicatory hearing is to determine whether the facts show, by a preponderance of the evidence, that the child is in fact neglected and dependent. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

The primary purpose of a dependency adjudication is to furnish the jurisdictional bases for state intervention to assist the parents and child in establishing a relationship and home environment that will preserve the family unit. People in Interest of O.E.P., 654 P.2d 312 (Colo. 1982).

An adjudicatory hearing on dependency or neglect is designed to determine whether the child, for whatever reason, lacks the benefit of parental guidance, concern, protection or support to which he is entitled. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Focus. While the acts or omissions of the parents singly and together are relevant in determining the status of the child, the primary focus of the adjudicatory hearing is to determine the condition and circumstances of the child at the time of the hearing. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

Adjudications of neglect or dependency are not made "as to" the parents, but rather relate only to the status of the child. People in Interest of P.D.S., 669 P.2d 627 (Colo. App. 1983); People in Interest of C.T., 746 P.2d 56 (Colo. App. 1987).

Constitutional rights guaranteed. The interest of the state in a hearing to determine if a child is dependent or neglected must be exercised without denial of fundamental fairness as required by due process clause of the fourteenth amendment. Robinson v. People in Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970).

Due process rights of parent. Due process requires that a parent be given adequate notice of the possibility of termination of parental rights and afforded an opportunity to be heard on that issue. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Father had no constitutional right to confront witness in civil dependency and neglect proceeding. Furthermore, the trial was fundamentally fair where child testified from another room via closed-circuit television and father had real-time communication with his attorney during child's testimony. People ex rel. S.X.M., 271 P.3d 1124 (Colo. App. 2011).

Jury instructions concerning dependency and neglect adjudication were not misleading where instructions were stated in the past tense rather than the present tense. People ex rel. S.X.M., 271 P.3d 1124 (Colo. App. 2011).

When adjudication becomes final judgment. The adjudication of a child as dependent or neglected, with the dispositional hearing continued to a future date, does not become a final judgment until a decree of disposition is entered. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Only final orders of juvenile court may be appealed. People in Interest of B.W., 43 Colo. App. 235, 601 P.2d 1086 (1979).

Interest and welfare of child control. Even the parental right to its custody and control must yield to the interests and welfare of the child. Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954).

The presumption that parents are fit and proper persons to have care and custody of their children is subject to the qualification that in custody proceedings the welfare and best interests of the children is the paramount consideration. Devlin v. Huffman, 139 Colo. 417, 339 P.2d 1008 (1959).

The interest of the state in a child is based upon the statutory grounds of dependency, neglect, or abandonment, and in order for a child to be snatched from a blood relation who is giving him love and care, there certainly must be some showing as to the necessity therefor. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958).

Neglect or dependency proceeding is preventive as well as remedial. People in Interest of D.L.R., 638 P.2d 39 (Colo. 1981).

Jurisdiction, duties, etc., of court and welfare department. It is the court which has the original and exclusive jurisdiction, and the duty, to adjudicate whether a child is dependent and neglected, to determine whether it is in the best interest of the child to terminate the legal relationship with the child's parents, and to make such further disposition as deemed necessary. If so requested by the court, it is the function of the welfare department to aid the court in the court's pursuit of its obligations. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Issue to be resolved in dependency proceeding. In a dependency proceeding the question to be resolved is not the comparative rights of different claimants of custody, but solely that of whether or not the

existing custody and surroundings of the child are such that it is the duty of the state, as parens patriae, to take over its custody and make it a ward of the state. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Foxgruber v. Hansen, 128 Colo. 511, 265 P.2d 233 (1953); Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

In a dependency proceeding, the only matter at issue before the court in the first place is that of dependency. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947); In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

In a petition in dependency nothing can be determined except that a child or children involved are dependent and neglected children. Kearney v. Blue, 134 Colo. 217, 301 P.2d 515 (1956).

Under former subsection (3)(b) now subsection (5)(b), after the juvenile court finds that the allegations in the petition to adjudicate a child dependent and neglected are supported by a preponderance of the evidence, the court can hold hearings on the petition for a maximum of two six-month periods after which it can take no other action than either to dismiss or sustain the petition. People in Interest of K.M.J., 698 P.2d 1380 (Colo. App. 1984).

Parental care is not sole issue. Whether or not a child is receiving parental care is not the sole issue in a dependency proceeding. Care of a child by other sources is relevant. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958).

If child found not dependent, action should be dismissed. If the child is found not dependent, then there is nothing further to be considered and the action should be dismissed. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947); In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

No judgment of dependency was entered by the trial court which is a prerequisite to establish responsibility against petitioner to contribute to the child's support. Rios v. People in Interest of Martinez, 154 Colo. 88, 388 P.2d 402 (1964).

Once jury found child not dependent and neglected, the dependency and neglect court was without jurisdiction to enter further orders despite mother's no-fault admission. The court must dismiss the case and discharge the father and child from any detention or restriction previously ordered. Mother's no-fault admission was sufficient only to support court's continuing jurisdiction pending a determination by the jury as to whether the child was dependent and neglected. The court did not have jurisdiction to entertain subsequent motion by paternal grandfather for custody of the child. People ex rel. A.H., 271 P.3d 1116 (Colo. App. 2011).

Despite mother's admission, the court did not have jurisdiction to enter any orders beyond dismissing the petition once court found that the allegations of the petition regarding father were not proven. The dismissal order from father's adjudicatory hearing resulted in the child being discharged from any detention or restriction previously ordered and the

juvenile court lost jurisdiction over the child to hold a fitness hearing or enter an allocation of parental responsibilities order in favor of the grandparents. People in Interest of S.T., 2015 COA 147, 361 P.3d 1154.

Disposition issue follows finding of dependency. If the child shall first have been found dependent upon proper evidence, then, and only then, should the court in orderly procedure receive evidence concerning, and determine, the disposition of the child. Peterson v. Schwartzmann, 116 Colo. 235, 179 P.2d 662 (1947); In re People in Interest of Murley, 124 Colo. 581, 239 P.2d 706 (1951).

Adjudicatory and dispositional hearings may be combined or separate. The clear meaning and import of the hearing provisions provide in proper cases that the adjudicatory hearing and the dispositional hearing may be separate hearings, but that also, in a proper case, providing prior notice thereof is given, the dispositional hearing may be had coextensively with the adjudicatory hearing. When the latter alternative is followed, it is necessary that there be presented at the hearing, evidence relating to factors which the court must consider before it can make a proper disposition. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

The Colorado Children's Code provides for either a combined or bifurcated adjudicatory-dispositional procedure. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Court's grant of extension of time for adjudicatory hearing, upon request of child's guardian ad litem, satisfied statutory requirements and court's refusal to dismiss case was not erroneous. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987).

Subsection (5)(b)'s 12-month time limit for holding a hearing is not a jurisdictional requirement. Thus, the court's failure to follow the statutory requirement was an erroneous decision not affecting jurisdiction. Since the mother joined in the motion that continued the matter beyond the 12-month period she is not entitled to relief. People ex rel. A.W., 74 P.3d 497 (Colo. App. 2003).

This section does not broaden a juvenile court's personal jurisdiction to include nondependent siblings of a youth in foster care or require the siblings to attend therapeutic visitation with the youth. In re People in Interest of S.A., 2022 CO 27, 511 P.3d 597.

Court's failure to enter adjudicatory order did not divest the court of subject matter jurisdiction to conduct further proceedings. Mother admitted the child was dependent and neglected and the court accepted the admission and deferred adjudication pursuant to subsection (5). Subsequently, mother voluntarily participated in termination proceedings and did not deny that the child was dependent and neglected nor object to court's erroneous finding that the child had been adjudicated dependent and neglected. People ex rel. N.D.V., 224 P.3d 410 (Colo. App. 2009); People in Interest of J.W., 2017 CO 105, 406 P.3d 853.

Party wishing to file a motion for summary judgment cannot comply with both this section and C.R.C.P. 56(c). Under C.R.C.P. 81, the timing of subsection (3) of this section controls. People ex rel. A.C., 170 P.3d 844 (Colo. App. 2007).

Court correct in allowing the guardian ad litem to present his evidence before ruling on mother's motion for a directed verdict since primary focus of hearing concerned the child's best interests, and since the guardian ad litem had advised the court of his intent to align the child's case with that of the people. People in Interest of M.M.T., 676 P.2d 1238 (Colo. App. 1983).

Order based on conflicting evidence is conclusive. The power of a juvenile court in matters involving the custody of minor children is great, and while it should be exerted with the utmost circumspection, an order based upon conflicting evidence will not be disturbed on review. Hudson v. Mattingley, 69 Colo. 528, 195 P. 113 (1921).

Where trial court resolves conflicting evidence, its findings will not be disturbed on review, even though it would be possible for reasonable men to arrive at different conclusions based on the same facts. In re People in Interest of R.L., 32 Colo. App. 29, 505 P.2d 968 (1973).

Attorney fees. The attorney retained by a petitioner therein must secure his compensation, if any is to be had, from the petitioner. Cederquist v. Archuleta, 127 Colo. 41, 253 P.2d 431 (1953); Geisler v. People, 135 Colo. 121, 308 P.2d 1000 (1957).

Applied in People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976); People in Interest of T.H., 197 Colo. 247, 593 P.2d 346 (1979); People in Interest of V.A.E.Y.H.D., 199 Colo. 148, 605 P.2d 916 (1980); People v. Dist. Court, 199 Colo. 197, 606 P.2d 450 (1980); People in Interest of C.A.K., 628 P.2d 136 (Colo. App. 1980).

II. EVIDENCE AND BURDEN OF PROOF.

A determination of dependency and neglect must be based on a consideration of existing circumstances and not on speculation concerning future possibilities. People in Interest of C.T., 746 P.2d 56 (Colo. App. 1987).

State has burden of proof. Where a mother files a petition asking the state to seek a determination of dependency and neglect, in order to gain the relief requested, the state has the burden of establishing the assertion thereon that the children are "neglected or dependent". In re People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Dependency requires preponderance of proof. It is only necessary to prove the allegations of the petition alleging children to be dependent and neglected in a custody hearing by a preponderance of the evidence. Robinson v. People in Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970).

In an action to declare children dependent or neglected, petitioner must prove the elements by a preponderance of the evidence. In re People in Interest of R.K., 31 Colo. App. 459, 505 P.2d 37 (1972).

Preponderance of evidence standard does not violate due process. Subsection (1), which permits a dependency adjudication under the preponderance of evidence standard, does not violate due process of law. People in Interest of O.E.P., 654 P.2d 312 (Colo. 1982).

Where petitioner was deprived of significant parental rights that did not amount to a permanent termination of the parent-child relationship, her constitutional due process rights were not violated by the application of a preponderance of the evidence standard. While the court's order granted custody of the petitioner's children to the department, appointed the foster parents as permanent legal guardians, and ordered that the petitioner was to have no contact with her children until they were over 18, the trial court did retain jurisdiction over the case until the children were 21 and the petitioner retained the right to consent or withhold consent to adoption, the right to reasonable parenting time except as restricted by the court, and the right to determine the children's religious affiliation. L.L. v. People, 10 P.3d 1271 (Colo. 2000).

This section does not lessen or shift the burden of proof. It allows the trial court to submit a case to the jury once the petitioner has presented a prima facie case, i.e., evidence that nonaccidental injury has occurred, and if the jury finds the children are neglected or dependent, that prima facie evidence shall be sufficient to uphold the jury's determination. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976); People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976).

This section does not direct that an adjudication of neglect or dependency shall be made on evidence merely showing nonaccidental injury, nor does it indicate that a respondent has the burden to rebut the evidence presented. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

Nor direct adjudication of neglect or place burden on respondent to rebut. This section does not direct that an adjudication of neglect and dependency shall be made on evidence merely showing nonaccidental injury, nor does it indicate that a respondent has the burden to rebut the evidence presented. People in Interest of M.A.L., 37 Colo. App. 307, 592 P.2d 415 (1976).

Evidence must be clear and convincing and not based on hearsay to support finding that child was neglected and dependent. Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

Testimony admitted for its effect on the listener, and not for the truth of the matter asserted, cannot be used as evidence to prove a child was dependent or neglected because the testimony is inadmissible hearsay. People in Interest of D.M.F.D., 2021 COA 95, 497 P.3d 14.

A parent, if a fit and suitable person, has the prior right of custody of his children over a grandparent or any other person or the state. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Wellbrink v.

Walden, 142 Colo. 102, 349 P.2d 697 (1960).

And a parent is presumed to be a fit and suitable person to have the custody of his children. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Devlin v. Huffman, 139 Colo. 417, 339 P.2d 1008 (1959); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

The legal presumption is that natural parents are entitled to the custody of their children unless otherwise clearly established. Carrera v. Kelley, 131 Colo. 421, 283 P.2d 162 (1955).

The presumption is that the parents are fit and suitable persons to be entrusted with the care of their minor children, and that the interests and welfare of such children are best subserved when under such care and control. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

Such presumption can be overcome only by convincing evidence to the contrary. Everett v. Barry, 127 Colo. 34, 252 P.2d 826 (1953); Wellbrink v. Walden, 142 Colo. 102, 349 P.2d 697 (1960).

Such presumption is like the presumption of innocence in a criminal case, ever present, throughout the controversy, until overcome by the most solid and substantial reasons established by plain and certain proofs. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

Such presumption is ever present and can be overcome only by plain and certain proofs. Devlin v. Huffman, 139 Colo. 417, 339 P.2d 1008 (1959).

The statute of limitations for determining paternity does not apply to a proceeding to determine liability for support of a dependent, illegitimate child. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

Question for trier of fact. Where, in a neglect or dependency proceeding, it is shown that a child has sustained a nonaccidental injury resulting from an instance of parent-administered corporal punishment, the reasonableness of that punishment is a question to be decided by the trier of fact. People in Interest of M.A.L., 37 Colo. App. 307, 553 P.2d 103 (1976).

Treatment of other children as consideration. Although physical injury to a child was not shown, it was proper for the trial court to consider a treatment accorded the other children in reaching a conclusion regarding the nonabused daughter. People in Interest of C.R., 38 Colo. App. 252, 557 P.2d 1225 (1976).

The trial court could reasonably infer that a nonabused child lacked proper parental care from the evidence establishing mistreatment of the others. People in Interest of C.R., 38 Colo. App. 252, 557 P.2d 1225 (1976).

The trial court may properly consider the treatment accorded the parents' other children in determining whether the child before it is neglected and dependent. People in Interest of D.L.R., 638 P.2d 39 (Colo. 1981).

While a parent's treatment of one child may be considered in determining whether

another child is dependent or neglected, consideration of the individual needs, strengths, and weaknesses of each child and each parent is also probative. People ex rel. T.T., 128 P.3d 328 (Colo. App. 2005).

Evidence of a child's physical care, surroundings, and well-being is competent and material evidence to the issues in a dependency action. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958).

The consent to adoption signed by the parents had no legal effect other than as evidence of an intent to abandon the child. In re People in Interest of R.L., 32 Colo. App. 29, 505 P.2d 968 (1973).

Cause of illness must be proven. To justify finding of dependency and termination of parental rights, evidence must be shown that illness or disease in specific case was caused or resulted from lack of parental care. Daugaard v. People in Interest of Daugaard, 176 Colo. 38, 488 P.2d 1101 (1971).

Evidence of care from other than parental sources admissible. If, through arrangements made by a parent, a child is being properly cared for by those who have a genuine interest in its welfare, the fact that the mother has obtained such help and has sought out and procured proper care for the child is evidence that the parent is not neglecting the child. It is also evidence of proper concern for the child's welfare and tends to establish that she was not abandoned or left homeless. Diernfeld v. People, 137 Colo. 238, 323 P.2d 628 (1958); Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

Evidence that child has been mistreated or abused in the past was sufficient to support adjudication of dependency and neglect of child. People in Interest of T.R.W., 759 P.2d 768 (Colo. App. 1988).

Admission by a mother with whom children did not reside that child had been assaulted and lacked proper parental care is not sufficient to sustain an adjudication of dependency and neglect against a father who disputed such allegations and demanded a jury trial. People in Interest of A.M., 786 P.2d 476 (Colo. App. 1989).

Summary judgment in favor of defendant and against mother of 9-year-old child was inappropriate under § 19-3-102 (1)(b) to (1)(d) where other than child's claim of abuse, there was no evidence of abuse under subsection (7)(a) which might have occurred while the child, who also spent time with noncustodial father, was in the mother's custody. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Further, even if court were to characterize the enlarged vaginal opening as evidence of abuse pursuant to subsection (7)(a), it would establish only prima facie, not conclusive, evidence that child was neglected or dependent under this section. People in Interest of C.C.G., 873 P.2d 41 (Colo. App. 1994).

Application of exclusionary rule in a dependency and neglect case requires the court to balance the deterrent benefits of applying the rule against the societal cost of excluding relevant evidence. People ex rel. A.E.L., 181 P.3d 1186 (Colo. App. 2008).

Here, applying the rule would have a high societal cost in terms of protecting child welfare interests. Therefore, the court did not err in denying mother's motion to suppress evidence. People ex rel. A.E.L., 181 P.3d 1186 (Colo. App. 2008).

Presumption afforded parent under Troxel v. Granville, 530 U.S. 57 (2000), that parent is acting and will act in the best interests of the child is overcome by adjudicatory order finding a child dependent or neglected. The mere judicial authorization to file a petition alleging dependency or neglect does not overcome the Troxel presumption. People ex rel. N.G., 2012 COA 131, 303 P.3d 1207.

The Troxel presumption will ordinarily survive a deferred adjudication because a deferred adjudication is not final as to the merits of the allegations set forth in the dependency and neglect petition, especially where the determination is based only on the parent's no-fault admission. People ex rel. N.G., 2012 COA 131, 303 P.3d 1207.

The statutory criteria for adjudicating a child as dependent or neglected satisfies Troxel and does not require that the court find that both parents are unavailable, unable, or unwilling to provide reasonable parental care prior to adjudication. Adjudicatory proceedings are distinct from termination proceedings, and each has different goals and requirements. By requiring the state to prove that neither parent was available, able, and willing to provide reasonable parental care, the trial court erred in unnecessarily conflating the statutory dependency and neglect criteria with the termination criteria. People in Interest of J.G., 2016 CO 39, 370 P.3d 1151.

Mother should have been afforded presumption under Troxel when court allocated parenting time to paternal grandmother after court's earlier findings that mother had complied with her treatment plan and was a fit parent. Trial court did not apply a presumption in favor of mother's determination that a transition plan should be developed to return children to her care and that she should have joint decision-making authority. Court must apply clear and convincing evidence standard and place the ultimate burden on grandmother and guardian ad litem to show allocation is in children's best interests and must identify special factors that justify interfering with mother's decisions. People in Interest of J.G., 2021 COA 47, 486 P.3d 504.

Evidence of mother's acts in prior dependency and neglect cases for other children was relevant to jury's determination as to whether day-old child who had never been in mother's care would be exposed to an injurious environment. People in Interest of A.W., 2015 COA 144M, 363 P.3d 784.

Court erred in admitting prejudicial evidence relating to psychosexual evaluation and polygraph examination during adjudication hearing. Father's participation in testing pre-adjudication was voluntary and father was under no obligation to participate in county department of human service's evaluation process. People in Interest of G.E.S., 2016 COA 183, 409 P.3d 645.

III. ILLUSTRATIVE CASES.

Lacking transcript, evidence, order reversed. Where an order was entered declaring a child neglected and dependent, severing parental rights, and holding the child's grandfather in contempt of court for failure to deliver the child, but the court reporter certified that there had been no transcript made of any of the hearings prior to the one on the contempt violation, and since there was no evidence or showing that the home environment which the grandfather might provide for the child would be unsatisfactory, the judgment and orders of the trial court were reversed. C.B. v. People in Interest of J.T.B., 30 Colo. App. 269, 493 P.2d 691 (1971).

Prima facie dependency established. Campbell v. Gilliam, 127 Colo. 471, 257 P.2d 965 (1953).

Proper parental care established. A child placed with relatives or friends does have proper parental care when the parent or parents have sent gifts of clothing, money, food, household items, toys, and medical supplies to the child, and have frequently visited and communicated with the child. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

The single fact that a father has ceased making support payments to the mother for those children on whose behalf the state is invoking the doctrine of parens patriae does not establish that the children are "neglected or dependent". This is particularly true where the father is acting under what he considers to be a controlling order of court which placed custody of the children with him. Under these circumstances, there is no showing that the father is failing or refusing to perform his obligations toward the children. In re People in Interest of E.F.C., 30 Colo. App. 190, 490 P.2d 706 (1971).

Lack of parental care established. Most of the evidence presented in support of the petition was undisputed and the totality of all the evidence clearly supports the finding and order of the juvenile court that the evidence established beyond a reasonable doubt that the infant child lacked proper parental care because of his mother's apparent limitations and because of her actions and omissions. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

Where the mother has disappeared after refusing to support the child, where the alleged father is in the penitentiary, and where the child has been abandoned in the care of strangers who are in no way related to the natural parents or said child, who are under no legal obligation to care for and support the child, it is error for the trial court to find that the child was receiving proper parental care. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

Effect of parent's conviction of crime. The fact alone that a father had been convicted of a violation of the prohibition laws of the state did not justify a court order depriving him of the custody and control of his minor children. Ziemer v. Wheeler, 89 Colo. 242, 1 P.2d 579 (1931).

Finding of abandonment justified. Where the evidence disclosed that the father of children, serving in the United States

Navy, had notice of a dependency proceeding by mail, but upon returning failed to make any such arrangements or provision for the care of the children, a finding that he had abandoned such children was justified. Olsen v. Davidson, 142 Colo. 205, 350 P.2d 338 (1960).

Where the evidence discloses that a child had been abandoned by its natural parents, a holding that such child was not dependent because it was in the custody of parties who were giving it proper care was erroneous. Jones v. Koulos, 142 Colo. 92, 349 P.2d 704 (1960).

Evidence of abandonment insufficient. Where a young mother deserted by her husband is forced to make a living for herself and, if possible, for her child as well, who, faced with this emergency, and by agreement with her sister, has the sister take care of the child, and the child is well cared for in the sister's household, it cannot be said that such child is a dependent child within the meaning of this section nor can it be said that the mother had abandoned the child under the circumstances. Foxgruber v. Hansen, 128 Colo. 511, 265 P.2d 233 (1953).

Habeas corpus proceeding is not adjudication of abandonment. An adjudication in a habeas corpus proceeding involving custody of a minor child is not an adjudication of abandonment as defined in the adoption statute, nor as used in the dependent and neglected child statute, a district court having no jurisdiction in abandonment proceeding. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Applied in Ross v. Ross, 89 Colo. 536, 5 P.2d 246 (1931).

19-3-506. Child with a mental health disorder or an intellectual and developmental disability - procedure.

(1) (a) If it appears from the evidence presented at an adjudicatory hearing or otherwise that a child may have an intellectual and developmental disability, as defined in article 10.5 of title 27, the court shall refer the child to the case management agency, as defined in section 25.5-6-1702, in the defined service area where the action is pending for an eligibility determination pursuant to article 6 of title 25.5 or article 10.5 of title 27.

(b) If it appears from the evidence presented at an adjudicatory hearing or otherwise that a child may have a mental health disorder, as defined in section 27-65-102, and the child has not had a mental health disorder prescreening pursuant to section 19-3-403 (4), the court shall order a prescreening to determine whether the child requires further evaluation. The prescreening must be conducted as expeditiously as possible, and a prescreening report must be provided to the court within twenty-four hours after the prescreening, excluding Saturdays, Sundays, and legal holidays.

(c) If the mental health professional finds, based upon a prescreening done pursuant to this section or section 19-3-403 (4), that the child may have a mental health disorder, as defined in

section 27-65-102, the court shall review the prescreening report within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, and order the child placed for an evaluation at a facility designated by the commissioner of the behavioral health administration for an emergency mental health hold pursuant to section 27-65-106. On and after January 1, 1986, if the child to be placed is in a detention facility, the designated facility shall admit the child within twenty-four hours after the court orders an evaluation, excluding Saturdays, Sundays, and legal holidays.

(d) An evaluation conducted pursuant to this subsection (1) must be completed within seventy-two hours, excluding Saturdays, Sundays, and legal holidays. A county jail or a detention facility, as described in article 2.5 of this title 19, is not considered a suitable facility for evaluation, although a mental health disorder prescreening may be conducted in any appropriate setting.

(e) If the mental health professional finds, based upon the prescreening, that the child does not have a mental health disorder, the court shall review the prescreening report within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, and copies of the report shall be furnished to all parties and their attorneys. Any interested party may request a hearing on the issue of the child's mental health disorder, and the court may order additional prescreenings as deemed appropriate. The court shall not enter an order for a seventy-two-hour treatment and evaluation unless a hearing is held and evidence indicates that the prescreening report is inadequate, incomplete, or incorrect and that competent professional evidence is presented from a mental health professional that indicates that a mental health disorder is present in the child. The court shall make, prior to the hearing, such orders regarding temporary custody of the child as are deemed appropriate.

(2) (a) When an evaluation is ordered by the court pursuant to subsection (1) of this section, the order must specify the person or agency to whom the child shall be released when the evaluation indicates that the child does not have a mental health disorder.

(b) When the court orders an evaluation pursuant to subsection (1) of this section, such order shall not obligate the person doing the prescreening or the agency which such person represents to pay for an evaluation or for any hospitalization provided to the child as a result of an evaluation.

(3) (a) When the evaluation conducted pursuant to subsection (1) of this section states that the child has a mental health disorder, as defined in section 27-65-102, the court shall treat the evaluation report as a certification under section 27-65-109 and shall proceed pursuant to article 65 of title 27, assuming all of the powers granted to a court in such proceedings.

(b) When, subsequent to referral to a case management agency, as defined in section 25.5-6-1702, pursuant to subsection (1) of this section, it appears that the child has intellectual and

developmental disabilities, the court may proceed pursuant to article 10.5 of title 27 or may follow any of the recommendations contained in the report from the case management agency.

(c) If the child remains in treatment or receives services ordered pursuant to paragraph (a) or (b) of this subsection (3), the court may suspend the proceedings or dismiss any actions pending under this title.

(d) If a child receiving treatment or services ordered pursuant to paragraph (a) or (b) of this subsection (3) leaves a treatment facility or program without prior approval, the facility or program shall notify the court of the child's absence within twenty-four hours. When such child is taken into custody, the facility or program shall be notified by the court and shall readmit the child within twenty-four hours after receiving such notification, excluding Saturdays, Sundays, and legal holidays.

(4) (a) When the report of the evaluation or eligibility determination conducted pursuant to subsection (1) of this section states that the child does not have a mental health disorder or an intellectual and developmental disability, the child shall be released to the person or agency specified pursuant to subsection (2) of this section within twenty-four hours after the evaluation has been completed, excluding Saturdays, Sundays, and legal holidays. The child must not be detained unless a new detention hearing is held within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, and the court finds at that hearing that secure detention is necessary.

(b) When the evaluation report or eligibility determination states that the child does not have a mental health disorder or an intellectual and developmental disability, the court shall set a time for resuming the hearing on the petition or any other pending matters.

Source: L. 87: Entire title R&RE, p. 783, § 1, effective October 1; (1)(b) and (1)(c) amended, p. 1586, § 58, effective October 1. **L. 92:** (1)(a) amended, p. 1398, § 57, effective July 1. **L. 94:** (1)(c) amended, p. 2684, § 203, effective July 1. **L. 2006:** (1)(b), (1)(c), (1)(e), (2)(a), (3)(a), and (4) amended, p. 1402, § 59, effective August 7. **L. 2010:** (1)(b), (1)(c), and (3)(a) amended, (SB 10-175), ch. 188, p. 792, § 45, effective April 29. **L. 2017:** (1), (2)(a), (3)(a), and (4) amended, (SB 17-242), ch. 263, p. 1315, § 164, effective May 25. **L. 2021:** (1)(d) amended, (SB 21-059), ch. 136, p. 732, § 78, effective October 1; (1)(a) and (3)(b) amended, (HB 21-1187), ch. 83, p. 327, § 11, effective July 1, 2024. **L. 2022:** (1)(b), (1)(c), and (3)(a) amended, (HB 22-1256), ch. 451, p. 3233, § 38, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ANNOTATION

Law reviews. For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For article, "Guidance for Attorneys When Children's Mental Health Concerns are Implicated", see 31 Colo. Law. 33 (Oct. 2002).

19-3-507. Dispositional hearing - rules.

(1) (a) After making an order of adjudication, the court shall hear evidence on the question of the proper disposition best serving the interests of the child and the public. Such evidence shall include, but not necessarily be limited to, the social study and other reports as provided in section 19-1-107.

(b) Prior to any dispositional hearing, the caseworker of the county department assigned to the case shall submit to the court a statement that details the services that were offered to or provided to the family to prevent unnecessary out-of-home placement of the child and to facilitate the reunification of the child with the family. The statement must contain an explanation of the services or actions that, had such services or actions been available, would have been necessary to enable the child to remain at home safely. In the alternative, the caseworker may submit a statement as to why no services or actions would have made it possible for the child to remain at home safely. If the child is part of a sibling group, as defined in section 19-1-103, and the child was not placed with his or her siblings, the caseworker shall submit to the court a statement about whether it continues to be in the best interests of the child or the children in the sibling group to be placed separately. If the caseworker locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(b.5) If the county department locates a capable, willing, and available relative or kin for the child or youth, it is presumed that placement of the child or youth with the relative or kin is in the best interests of the child or youth. The presumption may be rebutted by a preponderance of the evidence, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and child or

youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification.

(b.7) Upon the motion of a party for placement of a child or youth with a relative or kin, if the party objects to the requested placement, the court shall hold a hearing within sixty-three days after the objection to determine whether the child or youth may be placed with the relative or kin. When a child or youth resides with a relative or kin, any other relative or kin seeking a placement change shall address the factors set forth in section 19-3-702 (6).

(c) If one or both of the parents have a disability, reasonable accommodations and modifications, as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations, are necessary to ensure the treatment plan components are accessible. If applicable, any identified accommodations and modifications must be listed in the report prepared for the dispositional hearing.

(d) If the court denies placement with a relative or kin, the court shall make detailed findings regarding the reasons for denial. A decision by a relative or kin to not be initially identified as a potential placement resource must not be the sole basis for the court to later rule out the relative or kin as the child's or youth's permanent placement. When determining whether a child or youth should be placed with a relative or kin, the court shall give primary consideration to a child's or youth's mental, physical, and emotional needs. The court shall not consider any of the following factors unless one of the factors would threaten the mental, physical, and emotional health or safety of the child or youth:

(I) The size of the home, including whether the child or youth would have a separate room;

(II) The socioeconomic status of the relative or kin compared to other available placement options;

(III) The ability of the relative or kin to support the child's or youth's participation in extracurricular activities;

(IV) Ordinary bonding or attachment that occurred during time spent in foster placement;

(V) Immigration status of the relative or kin; or

(VI) Age or any disability of the relative or kin.

(e) The court may consider the relative's or kin's criminal background, as permitted by section 19-3-406. When considering whether to allow a placement with a relative or kin who has been disqualified for placement pursuant to section 19-3-406, the court shall consider the following factors:

(I) Whether the child's or youth's mental, physical, or emotional needs would be adversely affected;

(II) The nature of the crime of conviction;

(III) Whether there is a direct relationship between the conviction and the relative's or kin's ability to provide competent and safe care to the child or youth;

(IV) Length of time since conviction; and

(V) Evidence of rehabilitation.

(f) (I) If a child is eligible for services pursuant to section 19-3-208, and the child's parent is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail, then prior to any dispositional hearing, the county department, upon knowledge of the incarceration, shall make reasonable efforts to involve the parent who is incarcerated in planning the services for the child, or document the caseworker's efforts to include the parent who is incarcerated in the planning. Reasonable efforts include:

(A) In any meeting customarily attended by a parent, permitting and facilitating, to the extent reasonably practicable, a parent's remote attendance and participation through audio-visual communication technology;

(B) Opportunities for meaningful family time between the child and parent. If in-person family time is not reasonably practicable, the caseworker shall communicate with the facility or jail regarding the facility's or jail's ability to facilitate family time between the child and parent through audio-visual communication technology and arrange for available virtual family time. The court shall consider the preferences of the child and parent when determining whether in-person family time should occur. Nothing in this subsection (1)(f) requires the court to order family time if a protection order prohibits contact between the child and the parent, or if the court determines that family time would jeopardize the child's mental, emotional, or physical health. The court shall not determine that family time is not in the child's best interests based solely on the fact that in-person family time would occur in a facility or jail.

(C) Communicating with the facility's or jail's designee.

(II) The department may promulgate rules necessary to comply with the requirements of this subsection (1)(f).

(2) If the court has reason to believe that the child may have an intellectual and developmental disability, the court shall refer the child to the case management agency, as defined in section 25.5-6-1702, in the defined service area where the action is pending for an eligibility determination pursuant to article 6 of title 25.5 or article 10.5 of title 27. If the court has reason to believe that the child may have a behavioral or mental health disorder, the court

shall order a behavioral or mental health disorder prescreening to be conducted in any appropriate place.

(3) (a) Except as provided in section 19-3-508 (1), the court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence.

(b) If the hearing is continued, the court shall make an appropriate order for detention of the child or for such child's release in the custody of such child's parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

(c) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from such child's home before an order of disposition has been made.

(4) (a) In any case in which the disposition is placement out of the home, except for children or youth committed to the department of human services, the court shall, at the time of placement, set a review within ninety-one days to determine whether continued placement is necessary and in the best interests of the child or youth and the community, and whether reasonable efforts have been made to return the child or youth to the home or, in the case of a sibling group, whether it is in the best interests of the children or youth in the sibling group to be placed together. If the county department locates an appropriate, capable, willing, and available joint placement for all of the children or youth in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children or youth. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child, children, or youth.

(b) If the county department locates a capable, willing, and available relative or kin for the child or youth, it is presumed that placement of the child or youth with a relative or kin is in the best interests of the child or youth. The presumption may be rebutted by a preponderance of the evidence, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and the child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification.

(c) The judge shall review the family services plan document regarding placement of siblings and efforts to locate relatives or kin. If the child or youth is residing with a relative or kin, the family services plan must describe the efforts made by the county to maintain the child or youth in the relative or kinship home and to not remove the child or youth from the kinship or relative

home except to effectuate a permanency goal of reunification or after finding that remaining in the kinship placement is contrary to the child's or youth's mental, physical, or emotional needs, or when the relative or kinship placement decides they are no longer able to care for the child or youth. The court shall give notice of the review to all parties and to the director of the facility or agency in which the child or youth is placed and any person who has physical custody of the child or youth and any attorney or guardian ad litem of record. The review shall be conducted in accordance with section 19-1-115 (8)(f).

(5) (a) Parents, grandparents, or relatives who have information or knowledge concerning the care and protection of the child or youth, or kin caregiver who has the child in the caregiver's care for more than three months, may intervene as a matter of right following adjudication with or without counsel.

(b) A county department of human or social services that placed a child in foster care shall provide the foster parent of the child and any pre-adoptive parent or relative providing care for the child with notice of any administrative review of the child's case.

(c) Upon the written request of the foster parent, pre-adoptive parent, or relative, notice of a court hearing for the child's case shall be provided in written form and may be provided through the caseworker at the usual periodic meetings with the person providing care for the child. The notice shall include, at a minimum:

(I) The child's court case number;

(II) The date and time of the next court hearing; and

(III) The name of the magistrate or judge and the court division to which the case has been assigned.

(d) Foster parents who have the child or youth in their care for twelve months or more may intervene, as a matter of right, with or without counsel, following adjudication. The purpose of intervention is to provide knowledge or information concerning the care and protection of the child or youth, including the child's or youth's mental, physical, and emotional needs.

(e) An intervenor may not, on the intervenor's own motion, seek to restrict family time between a child or youth and the parent or relatives, file a petition to terminate parental rights, or appeal a denial of termination of parental rights.

(6) In adopting a treatment plan, the court shall consider services and programs that provide the parent and child with language access and effective communication and identify the manner in which the county department ensures the provision of language access and effective communication consistent with the requirements of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended, and its related amendments and implementing regulations, and Title IV of the federal "Civil Rights Act of 1964", 42 U.S.C. sec. 2000d et seq., as amended, and its related amendments and implementing regulations.

Source: L. 87: Entire title R&RE, p. 784, § 1, effective October 1. **L. 92:** (2) amended, p. 1398, § 58, effective July 1. **L. 93:** Entire section amended, p. 389, § 3, effective April 19; (1) amended, p. 2017, § 8, effective July 1. **L. 94:** (1)(b) and (4) amended, p. 2684, § 204, effective July 1. **L. 97:** (5) added, p. 1439, § 14, effective July 1. **L. 99:** (4) amended, p. 911, § 6, effective July 1. **L. 2000:** (1)(b) and (4) amended, p. 476, § 4, effective July 1. **L. 2003:** (1)(b) and (4) amended, p. 2624, § 5, effective June 5. **L. 2004:** (5) amended, p. 972, § 1, effective August 4. **L. 2006:** (2) amended, p. 1404, § 60, effective August 7. **L. 2008:** (4) amended, p. 1894, § 66, effective August 5. **L. 2017:** (2) amended, (SB 17-242), ch. 263, p. 1317, § 165, effective May 25. **L. 2018:** (1)(c) added, (HB 18-1104), ch. 164, p. 1135, § 7, effective April 25; (5)(b) amended, (SB 18-092), ch. 38, p. 422, § 61, effective August 8. **L. 2021:** (1)(b) amended, (SB 21-059), ch. 136, p. 732, § 79, effective October 1; (2) amended, (HB 21-1187), ch. 83, p. 328, § 12, effective July 1, 2024. **L. 2023:** (1)(b.5), (1)(b.7), (1)(d), (1)(e), (5)(d), and (5)(e) added and (4) and (5)(a) amended (HB 23-1024), ch. 367, p. 2210, § 4, effective August 7; (1)(f) added, (SB 23-039), ch. 191, p. 955, § 5, effective January 1, 2024. **L. 2024:** (6) added, (HB 24-1031), ch. 327, p. 2214, § 4, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-3-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section in House Bill 93-1058 and Senate Bill 93-28 were harmonized.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (4), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of Colorado 2023. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (Aug. 2004).

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

Dispositional and adjudicatory hearings may be combined. The clear meaning and import of the hearing provisions provide in proper cases that the adjudicatory hearing and the dispositional hearing may be separate hearings, but that also, in a proper case, providing prior notice thereof is given, the dispositional hearing may be had coextensively with the adjudicatory hearing. When the latter alternative is followed, it is necessary that there be presented at the hearing evidence relating to factors which the court must consider before it can make a proper disposition. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

The Colorado Children's Code provides for either a combined or bifurcated adjudicatory-dispositional procedure. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

It is not sufficient for a court to substantially comply with the procedural requirements of the section. It must conduct an actual dispositional hearing concerning an appropriate treatment plan. People in Interest of B.C., 2018 COA 45, 418 P.3d 538.

A trial court may not enter a dispositional order without having first entered an order adjudicating the child dependent or neglected. People ex rel. J.L., 121 P.3d 315 (Colo. App. 2005).

Duty of court. Having determined that the child is dependent and neglected, the court has the duty in a dispositional hearing to formulate a remedy which will secure for each child such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

The juvenile court has the power and the duty to make such determinations as it deems appropriate regarding the custody and care of a child adjudicated to be within its exclusive jurisdiction. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

Interests of child primary issue. The primary and controlling issue in child custody cases is the determination of what will serve the best interests of the child. It applies with greater reason and was clearly meant to apply in proceedings where a child has been declared dependent and neglected. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

The Colorado Children's Code does not supply definition of "interested party". In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

But contemplates their participation. While the Colorado Children's Code does not expressly define those persons who may become "parties" to proceedings, it does contemplate the participation of interested third parties. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

The Children's Code expressly contemplates the active participation of "interested parties" at the dispositional hearing. The code does not, however, delineate who is entitled to participate as an interested party. People in Interest of

M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

The Children's Code expressly contemplates participation of interested parties in juvenile cases. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

This section does not broaden a juvenile court's personal jurisdiction to include nondependent siblings of a youth in foster care or require the siblings to attend therapeutic visitation with the youth. In re People in Interest of S.A., 2022 CO 27, 511 P.3d 597.

Includes person furnishing child support pursuant to juvenile court order. Since the juvenile court has the power to compel legally responsible persons to support a child, it necessarily follows that a person furnishing support to a child in accordance with an order of the juvenile court has the right to intervene in a child in need of supervision proceeding as an interested party for the purpose of recovering the cost of that support. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Those having custodial experience with the child have sufficient interest, knowledge, and concern relative to the child to bring them within the classification of "interested parties" and thus they are entitled, upon application, to intervene as a matter of right in the dispositional hearing. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Those who may aid court. Among those who can be considered interested parties are individuals who, because of their relationship with or particular knowledge concerning the child, can materially aid the court in its determination of what in fact is in the child's best interest. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Intervenor in dependency and neglect proceeding only entitled to full participation when the child is not in the parent's custody. Foster parent intervenor could testify regarding the best interests of the child only since the child had returned to the custody of the mother before the hearing. People ex rel. A.W.R., 17 P.3d 192 (Colo. App. 2000).

Foster parents who meet the required statutory criteria to intervene may participate fully in the termination hearing without limitation. A.M. v. A.C., 2013 CO 16M, 296 P.3d 1026.

Foster parents are statutorily permitted to intervene in dependency and neglect proceedings to provide information about the child; however, the foster parents do not have an interest, as a matter of law, in the outcome of a termination of parental rights proceeding. It is further not necessary to allow foster parents to represent the best interests of the child in an appeal proceeding because the appointed guardian ad litem is expressly authorized by the Colorado Children's Code to fulfill that role. Further, in an appeal proceeding concerning the termination of parental rights, the foster parents lack standing because they have not suffered an injury in fact because the adoption they hope for is, at the time of the

appeal, merely speculative. C.W.B., Jr. v. A.S., 2018 CO 8, 410 P.3d 438.

Parents' due process rights are not impacted by the full participation of foster parents in a termination hearing. A.M. v. A.C., 2013 CO 16M, 296 P.3d 1026.

Foster parent does not have constitutionally protected liberty interest in continued relationship with child. Unlike the natural family, foster parents derive their rights from statute and the contractual relationship with the state. People ex rel. A.C., 304 P.3d 589 (Colo. App. 2011), aff'd sub nom. M.S. v. People, 2013 CO 35, 303 P.3d 102.

Grandmother's standing as interested party. While grandmother, who petitioned for custody of children who had been adjudicated dependent and neglected, but who had failed to enter the proceeding in which the adjudication had been made, had no "right" to custody, she had standing as an "interested party" to challenge the court's order granting temporary custody to the county welfare department for the purpose of placing the children for adoption. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Grandmother as petitioner seeking custody. Although joinder of grandmother as a "respondent" in dispositional stage would be inappropriate since such proceedings do not purport to affect any existing legal relationship between her and the children, this, however, does not preclude her from becoming a "party" to such proceedings as a petitioner seeking custody. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Procedural rights. Grandmother's right of participation seeking custody at dispositional stage included the right to be informed by the court of her right of cross-examination, to put on evidence in her own behalf in asserting her fitness for custody, and to receive notice of any subsequent hearings. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Relative who does not make application. Court in the dispositional stage need not give notice to, nor consider the rights of, relatives who are seeking custody of children adjudicated neglected or dependent, if such relatives have not made timely application. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

In order to terminate parental rights (now parent-child legal relationship), the trial court must find that the condition which results in the determination that the child is dependent and neglected will in all probability continue into the future and the court must further find that under no reasonable circumstances can the welfare of the child be served by a continuation of the parent-child relationship. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Court's failure to conduct a dispositional hearing and approve a new treatment plan after children were adjudicated dependent or neglected did not prejudice mother's ability to preserve her parental rights when court conducted proceeding in substantial compliance with

the statutory requirements for termination. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007).

A court may hold a dispositional hearing and find that no appropriate treatment plan can be devised for a parent after it has already approved an initial treatment plan for the parent at a prior hearing. The purposes of the Colorado Children's Code — to preserve and strengthen family ties and protect the best interests of the child — require courts to have the flexibility to modify or adopt new dispositional orders. People in Interest of Z.P.S., 2016 COA 20, 369 P.3d 814.

A court may rely on evidence that was previously considered, or could have been presented, at a prior hearing when it modifies its orders at a subsequent hearing to hold that an appropriate treatment plan cannot be devised. People in Interest of Z.P.S., 2016 COA 20, 369 P.3d 814.

Counsel for children required in petition to terminate parental rights (now parent-child legal relationship). Where the object of an amended petition was to terminate parental rights, it was plain error to proceed to a dispositional hearing in the absence of counsel for the children. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

Juvenile court may delegate responsibility for placement of child. City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973).

C.R.C.P. 24 has no application in proceeding under the Colorado Children's Code, as the code itself expressly contemplates the active participation of interested parties. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Admission of study with cross-examination satisfies due process. Where parents obtained attendance of authors of social reports admitted in proceeding to adjudge child to be dependent and neglected and to terminate parental rights, and where parents cross-examined each author, admission of such reports did not deny due process to parents. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Common-law hearsay objections as to admissibility of social study are not applicable. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Where this section authorizes consideration of social reports, fact that they may contain hearsay or are prepared by non-experts becomes matter concerning their weight and probative value and not their admissibility. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Waiver of jurisdiction is not final disposition of action. It is evident from the provisions of this section and §§ 19-3-108(4) and 19-3-106 that an order of the juvenile division of the district court waiving jurisdiction is not a final disposition of the action. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

Grandparents have right to intervene in a dependency and neglect proceeding under C.R.C.P. 24(a). Denial of grandparents' motion to intervene is a final appealable order because grandparents may intervene as a matter of right under § 19-3-507 (5)(a). People ex rel. O.C., 2012 COA 161, 312 P.3d 226, aff'd, 2013 CO 56, 308 P.3d 1218.

Parents, grandparents, or other relatives may intervene in a dependency and neglect proceeding as a matter of right at any time after adjudication. That right is not contingent upon having had the child in their care for more than three months. Only foster parents are required to provide care to the child for three months before being permitted to intervene. People ex rel. O.C., 2012 COA 161, 312 P.3d 226, aff'd, 2013 CO 56, 308 P.3d 1218.

Grandmother had standing to seek allocation of parental responsibilities order as an intervenor under subsection (5)(a). People in Interest of J.G., 2021 COA 47, 486 P.3d 504.

Mother should have been afforded presumption under Troxel v. Granville, 530 U.S. 57 (2000), when court allocated parenting time to paternal grandmother after court's earlier findings that mother had complied with her treatment plan and was a fit parent. Trial court did not apply a presumption in favor of mother's determination that a transition plan should be developed to return children to her care and that she should have joint decision-making authority. Court must apply clear and convincing evidence standard and place the ultimate burden on grandmother and guardian ad litem to show allocation is in children's best interests and must identify special factors that justify interfering with mother's decisions. People in Interest of J.G., 2021 COA 47, 486 P.3d 504.

Applied in Overturf v. District Court, 198 Colo. 516, 602 P.2d 850 (1979); People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-3-508. Neglected or dependent child or youth - disposition - concurrent planning - definition.

(1) When a child or youth has been adjudicated to be neglected or dependent, the court may enter a decree of disposition the same day, but in any event it shall do so within forty-two days, unless the court finds that the best interests of the child or youth will be served by granting a delay. In a county designated pursuant to section 19-1-123, if the child or youth is less than six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall enter a decree of disposition within twenty-eight days after the adjudication and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child or youth will be served by granting the delay. It is the intent of the general assembly that the dispositional hearing be held on the same day as the adjudicatory hearing, whenever possible. If a delay is granted, the court shall set forth the reasons why a delay is necessary and the minimum

amount of time needed to resolve the reasons for the delay and shall schedule the hearing at the earliest possible time following the delay. When the proposed disposition is termination of the parent-child legal relationship, the hearing on termination must not be held on the same date as the adjudication, and the time limits set forth above for dispositional hearings do not apply. When the proposed disposition is termination of the parent-child legal relationship, the court may continue the dispositional hearing to the earliest available date for a hearing in accordance with subsection (3)(a) of this section and part 6 of this article 3. When the decree does not terminate the parent-child legal relationship, the court shall approve an appropriate treatment plan that must include, but not be limited to, one or more of the following provisions of subsections (1)(a) to (1)(d) of this section:

(a) The court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the court deems necessary and appropriate. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2) and is placed with a parent or guardian who is a named respondent in a petition filed pursuant to section 19-3-502, the treatment plan shall include a requirement that the family obtain services specific to the family's needs if available in the community where the family resides and based on the social study and reports provided pursuant to section 19-1-107 (2.5).

(b) The court may place the child or youth in the legal custody of a relative or kin, including the child's or youth's grandparent, or other suitable person, with or without protective supervision, under such conditions as the court deems necessary and appropriate. If a child or youth is not placed with a parent pursuant to subsection (1)(a) of this section, the court shall give preference to placement with a grandparent or other relative or kin. If the county department locates a capable, willing, and available relative or kin for the child or youth, it is presumed that placement of the child or youth with a relative or kin is in the best interests of the child or youth. The presumption may be rebutted by a preponderance of the evidence, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and the child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification.

(c) The court may place legal custody in the county department of human or social services or a child placement agency for placement in a foster care home or other child care facility. When the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(d) (I) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that the child receive other special care and may place the child in a hospital or other suitable facility for such purposes; except that the child may not be placed in a mental health facility operated by the department of human services until the child has received a behavioral or mental health disorder prescreening resulting in a recommendation that the child be placed in a facility for evaluation pursuant to section 27-65-106, or a hearing has been held by the court after notice to all parties, including the department of human services. An order for an emergency mental health hold must not be entered unless a hearing is held and evidence indicates that the prescreening report is inadequate, incomplete, or incorrect and that competent professional evidence is presented by a mental health professional that indicates that a behavioral or mental health disorder is present in the child. The court shall make, prior to the hearing, such orders regarding temporary custody of the child as are deemed appropriate.

(II) Placement in any facility operated by the department of human services shall continue for such time as ordered by the court or until the professional person in charge of the child's treatment concludes that the treatment or placement is no longer appropriate. If placement or treatment is no longer deemed appropriate, the court shall be notified and a hearing held for further disposition of the child within five days, excluding Saturdays, Sundays, and legal holidays. The court shall make, prior to the hearing, such orders regarding temporary custody of the child as are deemed appropriate.

(e) (I) Except where the proposed disposition is termination of the parent-child legal relationship, the caseworker assigned to the case shall submit an appropriate treatment plan and the court shall approve an appropriate treatment plan involving the child named and each respondent named and served in the action. If a child's parent is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail, the caseworker assigned to the case, upon knowledge of the incarceration, shall include information in the report that details the services and treatment available to a parent at the facility or jail where the parent is incarcerated or the caseworker's efforts to obtain that information. The county department shall communicate with the facility or jail where the parent is incarcerated regarding the requirements of the court-ordered treatment plan. However, the court may find that an appropriate treatment plan cannot be devised as to a particular respondent because the child has been abandoned as set forth in section 19-3-604 (1)(a) and the parents cannot be located, or because the child has been adjudicated as neglected or dependent based upon section 19-3-102 (2), or due to the unfitness of the parents as set forth in section 19-3-604 (1)(b). When the court finds that an appropriate treatment plan cannot be devised, the court shall conduct a permanency hearing as set forth in section 19-3-702 (1), unless a motion for termination of parental rights has been filed within thirty days after the court's finding.

(II) Repealed.

(III) If, after the dispositional hearing, the child's parent becomes continuously incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail for more than thirty-five days, then the caseworker assigned to the case, upon knowledge of incarceration, shall provide information that details the services and treatment available to a parent at the facility or jail where the parent is incarcerated or the caseworker's efforts to obtain the information at the next scheduled court hearing.

(2) Before a disposition other than that provided in paragraph (a) of subsection (1) of this section is made, it shall be established by a preponderance of the evidence that a separation of the child from the parents or guardian is in the best interests of the child.

(3) (a) The court may enter a decree terminating the parent-child legal relationship of one or both parents pursuant to part 6 of this article. Pursuant to section 19-3-602 (1), in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall hear a motion for termination within one hundred twenty days after such motion is filed, and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay in accordance with the requirements of section 19-3-104.

(b) Upon the entry of a decree terminating the parent-child legal relationship of both parents, of the sole surviving parent, or of the only known parent, the court may:

(I) Vest the county department of human or social services or a child placement agency with the legal custody and guardianship of the person of a child for the purposes of placing the child for adoption; or

(II) Make any other disposition provided in paragraph (b), (c), or (d) of subsection (1) of this section that the court finds appropriate.

(b.5) In making a disposition pursuant to paragraph (b) of this subsection (3), the court may give preference to making a disposition as provided in paragraph (b) of subsection (1) of this section, if in the best interests of the child.

(c) Upon the entry of a decree terminating the parent-child legal relationship of one parent, the court may:

(I) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(II) Make any other disposition provided in subsection (1) of this section that the court finds appropriate.

(4) (Deleted by amendment, L. 97, p. 520, § 8, effective July 1, 1997.)

(5) (a) In placing the legal custody or guardianship of the person of a child or youth with an individual or a private agency, the court shall give primary consideration to the welfare of the

child or youth but shall take into consideration the religious and cultural preferences of the child or youth or of the parents, whenever practicable.

(b) (I) If the court finds that placement out of the home is necessary and is in the best interests of the child or youth and the community, the court shall place the child or youth with a relative or kin, including the child's or youth's grandparent, as provided in subsection (1)(b) of this section. In considering the placement, the court shall give primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and the child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification. The court shall place the child or youth in the facility or setting that most appropriately meets the needs of the child or youth, the family, and the community. In making its decision as to proper placement, the court shall utilize the evaluation for placement prepared pursuant to section 19-1-107. If the court deviates from the recommendations of the evaluation for placement in a manner that results in a difference in the cost of the disposition ordered by the court and the cost of the disposition recommended in the evaluation, the court shall make specific findings of fact relating to its decision, including the monthly cost of the placement, if ordered. The court shall send a copy of such findings to the chief justice of the supreme court, who shall report annually on such orders and findings of fact to the joint budget committee, the public and behavioral health and human services committee of the house of representatives, and the health and human services committee of the senate, or any successor committees.

(II) Notwithstanding subsection (5)(b)(I) of this section to the contrary, when the child or youth is part of a sibling group and the sibling group is being placed out of the home, if the county department locates a capable, willing, and available joint placement for all of the children or youth in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children or youth. The presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child, children, or youth.

(III) If the county department locates a capable, willing, and available relative or kin for the child or youth, it is presumed that placement of the child or youth with the relative or kin is in the best interests of the child or youth. The presumption may be rebutted by a preponderance of the evidence, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and the child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification. Placement with a relative or kin must be considered and investigated when the child or youth enters foster care, is moved from a foster home, or returns to foster care after the

child or youth has achieved permanency. As used in this subsection (5), "relative" includes a member of the child's or youth's birth family, adoptive family, and kin, regardless of whether parental rights were terminated.

(6) The court may grant a new hearing as provided in the Colorado rules of juvenile procedure.

(7) 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.

(8) When entering a decree placing the child or youth in the legal custody of a relative or placing the child or youth in the legal custody of a county department for placement in a foster care home, the court shall ensure that the child's or youth's placement at the time of the hearing is in the best interests of the child or youth and shall inquire about documentation that the county department or a licensed child placement agency has adequately screened the foster care provider or the family member who is seeking to care for the child or youth and any adult residing in that home and that all of the criminal history record checks and other background checks have been completed as required pursuant to section 26-6-910 or 19-3-406.

Source: L. 87: Entire title R&RE, p. 785, § 1, effective October 1. **L. 91:** (1)(b), (3), and (5)(b) amended, p. 265, § 9, effective May 31. **L. 94:** IP(1), (1)(a), IP(4), and (4)(a) amended, p. 2054, § 7, effective July 1; (1)(d) amended, p. 2685, § 205, effective July 1. **L. 96:** (1)(e)(II) repealed, p. 85, § 11, effective March 20; IP(1) and (1)(c) amended, p. 265, § 17, effective July 1; (5)(b) amended, p. 1246, § 116, effective August 7. **L. 97:** IP(1), (1)(e)(I), and (4) amended, p. 520, § 8, effective July 1; (1)(e)(I) and (5)(b) amended, pp. 1439, 1441, §§ 15, 18, effective July 1. **L. 98:** (1)(e)(I) amended and (7) added, p. 1418, § 5, effective July 1. **L. 99:** (1)(e)(I) amended, p. 912, § 7, effective July 1. **L. 2001:** (2) amended, p. 847, § 9, effective June 1. **L. 2003:** (1)(c) and (5)(b) amended, p. 2625, § 6, effective June 5; IP(1) and (3)(a) amended, p. 1225, § 1, effective August 6. **L. 2007:** (7) amended, p. 1018, § 8, effective May 22. **L. 2010:** (1)(d)(I) amended, (SB 10-175), ch. 188, p. 793, § 46, effective April 29. **L. 2015:** (8) added, (SB 15-087), ch. 263, p. 1019, § 11, effective June 2. **L. 2017:** IP(1) and (1)(d)(I) amended, (SB 17-242), ch. 263, p. 1317, § 166, effective May 25. **L. 2018:** (1)(c) and (3)(b)(I) amended, (SB 18-092), ch. 38, p. 422, § 62, effective August 8. **L. 2022:** (8) amended, (HB 22-1295), ch. 123, p. 836, § 40, effective July 1; (1)(d)(I) amended, (HB 22-1256), ch. 451, p. 3234, § 39, effective August 10. **L. 2023:** IP(1), (1)(b), and (5) amended, (HB 23-1024), ch. 367, p. 2212, § 5, effective August 7; (1)(d)(I) amended, (HB 23-1301), ch. 303, p. 1821, § 23, effective August 7; (8) amended, (HB 23-1043), ch. 20, p. 79, § 3, effective August 7; (1)(e)(I) amended and (1)(e)(III) added, (SB 23-039), ch. 191, p. 956, § 6, effective January 1, 2024.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (1)(e)(I) by Senate Bill 97-218 and Senate Bill 97-71 were harmonized.

(3) Although subsection (7) refers to the term "custodian", references to the term "custody", and related terms, have been changed in other places in the Colorado Revised Statutes to correspond with the use of the term "parental responsibilities" as described in § 14-10-124.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (5)(b), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 1999 act amending subsection (1)(e)(I), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2001 act amending subsection (2), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of Colorado 2023. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Workmen's Compensation, Attorneys and Family Law", see 31 Dicta 1 (1954). For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For note, "Enforcement of Support Duties in Colorado", see 33 Rocky Mt. L. Rev. 70 (1960). For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For note, "In re Gault and the Colorado Children's Code", see 44 Den. L. J. 644 (1967). For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "Colorado Residential Child Care Facilities: A Plea for Adequate Funding", see 13 Colo. Law. 2241 (1984). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Parts I and II", see 14 Colo. Law. 568 and 794 (1985). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989).

Annotator's note. (1) The following annotations include cases decided under former provisions similar to this section.

(2) A number of the cases annotated below were decided prior to the 1977 amendment changing the term "parental rights" to "parent-child legal relationship".

This section was enacted with an understanding and appreciation of societal interest in maintaining and protecting the natural parents' interests in the child, and those of the child in the parent, absent parental acts or omissions sufficiently harmful to the child to mandate a forfeiture of those rights. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

Parental rights are personal between each parent and child. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

The Colorado Children's Code does not recognize difference between deprivation of parental custody and termination of parental rights. The Children's Code does not by its language clearly recognize the substantial difference between deprivation of parental custody and termination of parental rights. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

Jurisdiction of court to determine placement. It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent. State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs., 642 P.2d 16 (Colo. App. 1981).

Section 19-1-109 (2)(c) is not meant to delay permanent placement decisions while appeals of dependency and neglect orders are litigated. Section 19-1-109 (2)(c) provides the trial court with continuing jurisdiction to enter further permanent custody orders under § 19-3-702 if it furthers the child's best interests, even if those orders are entered after the order adjudicating the child dependent or neglected is appealed. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

Power of court over custody. The court and not the probation officer prescribes and determines what the terms and conditions are under which the child shall be maintained by its custodian, and to make the same specific in its order or judgment. Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Criminal sanctions not provided. In a hearing to determine if a child is neglected or dependent, there is no fine or confinement to a state institution nor any other criminal sanctions. These are not criminal proceedings. The state is in the position of parens patriae, and the matter for determination is what will serve the best interests of the child. This is the rule which prevails in Colorado and elsewhere in child custody cases. Robinson v. People in Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970).

No standards or guidance in selecting alternative dispositions. This section provides alternative methods of disposition for children adjudicated neglected and dependent, but other than directing the court to operate in the best interests of the child, the Colorado Children's Code establishes no standards and provides no guidance to the courts in choosing between these alternatives. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

Although this section provides alternative methods of disposition, the Children's Code, as a whole, does not establish standards and guidelines to assist the courts in choosing between alternatives. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

The court does not lack subject matter jurisdiction to declare a child dependent and neglected if the act of abuse took place outside the state. Neither the Uniform Child Custody Jurisdiction Act nor the Colorado Children's Code requires that acts of abuse take place in Colorado in order to allow the state to protect an abused child who is within the state's borders. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Under subsection (1) if a child is adjudicated dependent or neglected and if the decree does not terminate the parent-child legal relationship, the court must designate legal custody of the child. Such legal custody may be placed in one of the parents. People in Interest of R.E., 721 P.2d 1233 (Colo. App. 1986).

Interest and welfare of child is controlling question. Every child is under the control of the state, and even the paternal right to its custody and control must yield to the interests and welfare of the child, and the paramount and controlling question by which courts must be guided in proceedings affecting the custody of the infant is the interest and welfare of the child. People ex rel. Flannery v. Bolton, 27 Colo. App. 39, 146 P. 489 (1915); McKercher v. Green, 13 Colo. App. 270, 58 P. 406, (1899); Wilson v. Mitchell, 48 Colo. 454, 111 P. 21 (1910); Breene v. Breene, 51 Colo. 342, 117 P. 1000 (1911); People ex rel. Broxholm v. Parks, 57 Colo. 458, 141 P. 994 (1914); Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954); Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969).

The desires and wishes of the parent become subordinate to the court's determination as to what order of custody will be for the dependent child's best interest. Young v. McLaughlin, 126 Colo. 188, 247 P.2d 813 (1952).

Under the Colorado Children's Code, parties are precluded from stipulating restrictions upon court's duty to protect best interests of child. In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972); People in Interest of G.K.H., 698 P.2d 1386 (Colo. App. 1984).

The paramount consideration of a disposition is the best interests of the child with due consideration being given to the past history of the child while in the custody of the parent or guardian. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973); People in Interest of R.E., 721 P.2d 1233 (Colo. App. 1986).

In providing for a child found to be dependent or neglected, the focus is the best interests of that child. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Court may conduct in camera interview with a child to determine child's best interests and how to allocate parental responsibilities within a dependency and neglect proceeding. Unless waived by the parties, a record of the interview must be made. The record must be made available to

parents, upon request, in situations in which a parent needs (1) to determine whether the court's findings, insofar as they relied on facts from the interview, are supported by the record, or (2) an opportunity to contest information supplied by the child during the interview and relied on by the court. People in Interest of H.K.W., 2017 COA 70, 417 P.3d 875.

Observance of parents' wishes as to religious training. The wishes of the parent as to the religious training of the child are subordinated to the controlling consideration of the child's welfare. People ex rel. Flannery v. Bolton, 27 Colo. App. 39, 146 P. 489 (1915).

Application of res judicata. A voluntary dismissal pursuant to an invalid stipulation is not a decision to which the doctrine of res judicata applies to preclude a subsequent action in dependency or neglect. People in Interest of G.K.H., 698 P.2d 1386 (Colo. App. 1984).

The court must hold a dispositional hearing and consider an appropriate treatment plan at the time or within 45 days of declaring the child dependent or neglected before terminating parental rights. People ex rel. D.R.W, 91 P.3d 453 (Colo. App. 2004).

Court did not err by holding a contemporaneous dispositional and termination hearing. Because father received a hearing and an opportunity to litigate the issue as to whether no treatment plan could be devised for him because of his unfitness, the proceedings were in substantial compliance with the statutory scheme. People ex rel. T.L.B., 148 P.3d 450 (Colo. App. 2006).

When rights may be terminated. A parent's rights may be terminated only as part of a corrective program and then only when the continuation of the parent-child relationship will obstruct the other measures taken by the court for the child's benefit. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

In order to terminate parental rights, the trial court must find that the condition which results in the determination that the child is dependent and neglected will in all probability continue into the future and the court must further find that under no reasonable circumstances can the welfare of the child be served by a continuation of the parent-child relationship. People in Interest of M.B., 188 Colo. 370, 535 P.2d 192 (1975).

In order to declare child neglected or dependent as a preliminary to separating him from his parents or custodians, the evidence must clearly establish its necessity, and state intervention should be limited to instances of neglect and dependency as defined in the Colorado Children's Code. People in Interest of T.H., 197 Colo. 247, 593 P.2d 346 (1979).

Former standard for termination of parental rights was "best interests and welfare of child". People in Interest of C.S., 200 Colo. 213, 613 P.2d 1304 (1980); People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

Standard set forth in former subsection (2)(a) is not unconstitutionally vague and

overbroad. People in Interest of C.S., 200 Colo. 213, 613 P.2d 1304 (1980).

Circumstances dictating termination of parental rights. Termination of parental rights following a determination of dependency and neglect should result only where there is a history of severe and continuous neglect by the particular parent whose rights are sought to be terminated, a substantial probability of future deprivation, and a determination that under no reasonable circumstances can the welfare of the child be served by a continuation of the legal relationship of the child with that parent. People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

A decree may terminate all parental rights of one or both parents in the child, but such an order must be based upon a finding of: (1) Severe and continuous neglect by the particular parent whose rights are at issue; (2) a substantial probability of continued deprivation; and (3) a determination that under no reasonable circumstances can the welfare of the child be served by a continuation of the legal relationship of the child with that parent. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The "best interest and welfare of the child" standard was met only when it is shown that: (1) there has been a history of severe and continuous neglect by the parent whose rights are sought to be terminated; (2) there is a substantial probability of future deprivation; and (3) under no reasonable circumstances can the welfare of the child be served by a continuation of the legal relationship of the child with the parent. People in Interest of C.S., 200 Colo. 213, 613 P.2d 1304 (1980).

Fact insufficient to terminate rights. That the ongoing relationship of parent and child may not presently be a positive factor in the child's environment or development is insufficient, in and of itself, to warrant termination of parental rights in a dependency proceeding. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

The possible rehabilitation of the parent is a matter which must be considered in a dependency proceeding in determining whether the parental relationship should be ended. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Adjudications of neglect or dependency are not made "as to" the parents, but rather relate only to the status of the child. People in Interest of P.D.S., 669 P.2d 627 (Colo. App. 1983).

To permit adjudication of dependency and neglect on basis of non-custodial parent's admission that child was not domiciled with her through no fault of her own where finder of fact has determined that child was not dependent and neglected would produce an absurd result and contravene the purposes of this title. People in Interest of T.R.W., 759 P.2d 768 (Colo. App. 1988).

Petition in dependency may not be used to punish parent. A petition in dependency may only be used to correct and improve the situation of the child, and may not be used to punish a parent for his alleged poor behavior by terminating his parental rights. People in

Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A proceeding to determine whether a child is, in fact, dependent or neglected is not designed to punish his parent or parents but is merely an attempt to determine if, at the time of adjudication, he does not, for whatever reason, have the benefit of parental guidance, concern, protection, or support to which he is entitled. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A petition in dependency may not be converted into a proceeding for stepparent adoption by the actions either of the parties, the referee, or the trial court. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

An action in dependency may not be used as a means of making a child available for adoption in a stepparent adoption proceeding. Such tactic is inappropriate and contrary to the statutory language as well as the legislative intent of the Colorado Children's Code. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Procedures are not interchangeable. Since a petition in dependency concerns different matters and fulfills a different purpose than a proceeding for a stepparent adoption, procedures applicable to one may not be used to accomplish the ends of the other. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Adoption proceeding distinguished. The question of abandonment is one of the elements involved in adoption proceedings, but that does not change adoption proceedings to an abandonment proceeding under this section. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

When a child has been adjudicated dependent or neglected, all matters related to that child's status must be addressed through the open dependency and neglect case. The dependency and neglect court maintains continuing, exclusive jurisdiction over any such child. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875.

A county department of human services seeking to terminate through article 5, relinquishment and adoption, an incarcerated father's parental rights to children who had been adjudicated as dependent and neglected was required to proceed instead through the laws and courts created for this article 3, dependency and neglect. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875.

Court is not free to delegate its initial responsibility of electing between alternative dispositions provided by the Colorado Children's Code. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Court may ultimately delegate responsibility of placing children for adoption to the welfare department. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

At which point it is not wise for court to interfere. Once the final selection of

disposition has been made by the court and custody has been placed in the welfare department for adoption purposes, it is not wise for the court to interfere with the adoption process, even though the court has the power to do so. In re People in Interest of C.P., 34 Colo. App. 54, 524 P.2d 316 (1974).

Duty of court, aided by welfare department. It is the court which has the original and exclusive jurisdiction, and the duty, to adjudicate whether a child is dependent and neglected, to determine whether it is in the best interest of the child to terminate the legal relationship with the child's parents, and to make such further disposition as deemed necessary. If so requested by the court, it is the function of the welfare department to aid the court in the court's pursuit of its obligations. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

Authority of welfare department. Inasmuch as the general assembly has granted the court exclusive jurisdiction over adoptions, has expressly authorized adoptive placement, and has given the court the final and sole responsibility of approving or disapproving adoptions, it would be totally inconsistent to conclude that the welfare department or licensed placement agencies are the sole entities authorized to place a child for adoption following termination of parental rights (now parent-child legal relationship). People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

No termination for "constructive" abandonment. The general assembly has not provided for the termination of parental rights on the ground of "constructive" abandonment. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982).

Implicit in each of options under this section is continuing jurisdiction of court entering the decree to supervise the custodian as well as the child. People in Interest of C.A.K., 628 P.2d 136 (Colo. App. 1980), rev'd on other grounds, 652 P.2d 603 (Colo. 1982).

Termination of parental rights supported by evidence. Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969); In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972).

Decree terminating parental rights to a child not upheld. In re People in Interest of R.L., 32 Colo. App. 29, 505 P.2d 968 (1973).

Requirement that the court order an appropriate treatment plan implicitly authorizes the court to issue such orders as are reasonably necessary to implement that mandate. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

Protective orders were properly issued when confined to the reasonably necessary relief to promote the therapeutic objectives of the treatment plans, where no protection was provided for disclosure of plans for future criminal conduct or past criminal conduct not related to the treatment plans, and where communications between therapists and children and between the therapists and parents who had not engaged in sexually abusive conduct were not

protected. People v. Dist. Court, 731 P.2d 652 (Colo. 1987).

Treatment plan. Nothing in subsection (1)(e)(I) grants a court the power to impose a treatment plan on a parent when the child has not been found to be dependent and neglected by that parent. People ex rel. U.S., 121 P.3d 326 (Colo. App. 2005).

During a dispositional hearing, a trial court may find that a parent is unfit and that no appropriate treatment plan can be devised under subsection (1)(e)(I) if the state shows, by a preponderance of the evidence, that the child has suffered a single incident resulting in serious bodily injury or disfigurement as set forth in § 19-3-604 (1)(b). People in Interest of L.S., 2023 CO 3M, 524 P.3d 847.

A court may hold a dispositional hearing and find that no appropriate treatment plan can be devised for a parent after it has already approved an initial treatment plan for the parent at a prior hearing. The purposes of the Colorado Children's Code — to preserve and strengthen family ties and protect the best interests of the child — require courts to have the flexibility to modify or adopt new dispositional orders. People in Interest of Z.P.S., 2016 COA 20, 369 P.3d 814.

A court may rely on evidence that was previously considered, or could have been presented, at a prior hearing when it modifies its orders at a subsequent hearing to hold that an appropriate treatment plan cannot be devised. People in Interest of Z.P.S., 2016 COA 20, 369 P.3d 814.

The court properly ordered a treatment plan compelling action by father even though the jury verdict, which formed part of the basis for the ultimate order, did not expressly find that the father had committed an act of abuse. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Where jury had found the child to be dependent and neglected as to the father, but had not found that the father had subjected the child to "mistreatment or abuse", the juvenile court had the discretion to order a treatment plan that required the father to be evaluated and possibly treated for sexual aggression. People in Interest of C.L.S., 934 P.2d 851 (Colo. App. 1996).

The approval of a treatment plan which addresses the placement of a minor child following an adjudication of dependency and neglect constitutes a disposition and renders the adjudication final for purposes of appeal. People in Interest of B.M., 738 P.2d 45 (Colo. App. 1987).

Joint custody is a placement alternative under this section. People in Interest of A.A.G., 902 P.2d 437 (Colo. App. 1995), aff'd in part, rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

The appropriateness of a treatment plan must be measured against the factors which existed at the time of adoption of the plan and must be evaluated by its likelihood of success in reuniting the family. People in Interest of C.S.M., 805 P.2d 1129 (Colo. App. 1990).

The fact that a plan is not ultimately successful does not mean that it was

therefore inappropriate. People in Interest of A.G.G., 899 P.2d 319 (Colo. App. 1995).

However, the court is required to make a finding that the treatment plan is appropriate. People in Interest of B.C., 2018 COA 45, 418 P.3d 538.

Parent's irremediable conduct at a dispositional hearing negates requirement that the court devise a treatment plan since such plan would be doomed to failure and would contravene the purposes of the Colorado Children's Code. People in Interest of T.W., 797 P.2d 821 (Colo. App. 1990).

Nine-month period between the adoption of an appropriate treatment plan and the hearing to terminate parental rights was a reasonable amount of time for the mother to attempt to comply with the treatment plan. People in Interest of T.S.B., 757 P.2d 1112 (Colo. App. 1988), aff'd, 785 P.2d 132 (Colo. 1990).

Mother's due process rights were protected by her opportunity to challenge the department of human services' recommendation on the issue of her child's placement at both the motions and termination hearings. At both hearings, the trial court afforded mother a full opportunity to be heard and to present evidence in contravention of the department's placement recommendation. People in Interest of C.J., 2017 COA 157, 410 P.3d 839.

Termination of parental rights supported by evidence. People in Interest of A.H., 736 P.2d 427 (Colo. App. 1987); People in Interest of C.R., 772 P.2d 672 (Colo. App. 1989).

An adjudication of dependency and neglect becomes final for purposes of appeal upon disposition. People in Interest of T.R.W., 759 P.2d 768 (Colo. App. 1988).

Subsection (1)(e) must be read in pari materia with § 19-3-604 (1)(b) since they are part of the same code and pertain to the same subject. People in Interest of T.W., 797 P.2d 821 (Colo. App. 1990).

Applied in People in Interest of H.A.C. v. D.C.C., 198 Colo. 260, 599 P.2d 881 (1979); Lovato v. Dist. Court, 198 Colo. 419, 601 P.2d 1072 (1979); People in Interest of B.W., 43 Colo. App. 235, 626 P.2d 742 (1981); People in Interest of E.A., 638 P.2d 278 (Colo. 1981); People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982); People v. Coyle, 654 P.2d 815 (Colo. 1982); People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

PART 6

TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP

Law reviews: For article, "Difficult Issues in Adoption -- Part 1", see 24 Colo. Law. 851 (1994); for article, "Difficult Issues in Adoption -- Part 2", see 24 Colo. Law. 1083 (1994).

19-3-601. Short title.

This part 6 shall be known and may be cited as the "Parent-Child Legal Relationship Termination Act of 1987".

Source: L. 87: Entire title R&RE, p. 787, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983).

There is no statutory authority for a guardian ad litem to exercise "protective supervision" over one or both parents pursuant to subsection (1)(a). People ex rel. E.D., 221 P.3d 65 (Colo. App. 2009).

19-3-602. Motion for termination - separate hearing - right to counsel - no jury trial.

(1) Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall hear the motion for termination within one hundred twenty days after such motion is filed, and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay in accordance with the requirements of section 19-3-104.

(1.5) (a) Pursuant to section 19-1.2-125, the motion for termination must:

(I) Include a statement indicating what continuing inquiries the county department of human or social services has made in determining whether the child who is the subject of the termination proceeding is an Indian child;

(I.5) Include a statement indicating that a grandparent, aunt, uncle, brother, or sister of the child must file a request for guardianship and legal custody of the child within twenty days of the filing of the motion;

(II) Identify whether the child is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the Indian child's parent or Indian custodian and to the Indian child's tribe, pursuant to section 19-1.2-108, the postal receipts, or copies thereof, must be attached to the motion for termination and filed with the court or filed within fourteen days after the filing of the motion for termination, as specified in section 19-1.2-107 (1)(b).

(2) After a motion for termination of a parent-child legal relationship is filed pursuant to this part 6, the parent or parents shall be advised of the right to counsel if not already represented by counsel of record; and counsel shall be appointed in accordance with the provisions of section 19-1-105. The parent or parents shall also be advised that a grandparent, aunt, uncle, brother, or sister of the child must file a request for guardianship and legal custody of the child within twenty days of the filing of the motion. Advisement of right to counsel and the time for a relative to file a request may be done in open court or in a writing served as provided by law for motions and notices in a proceeding under section 19-1-104 (1)(b).

(3) Repealed.

(4) There shall be no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

Source: L. 87: Entire title R&RE, p. 788, § 1, effective October 1. **L. 2002:** (1.5) added, p. 787, § 7, effective May 30. **L. 2003:** (1) amended, p. 1226, § 2, effective August 6. **L. 2005:** (1.5)(a)(I.5) added and (2) amended pp. 94, 93, §§ 3, 2, effective March 31. **L. 2022:** (3)(b) added by revision, (HB 22-1038), ch. 92, pp. 437, 446, §§ 11, 37. **L. 2024:** IP(1.5)(a) and (1.5)(a)(I) amended, (HB 24-1222), ch. 155, p. 689, § 9, effective August 7. **L. 2025:** IP(1.5)(a) and (1.5)(b) amended, (HB 25-1204), ch. 338, p. 1817, § 7, effective August 6.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(b) provided for the repeal of subsection (3), effective January 9, 2023. (See L. 2022, pp. 437, 446.)

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (1.5), see section 1 of chapter 217, Session Laws of Colorado 2002. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982). For comment, "Lassiter v. Department of Social Services: Due Process Takes an Ad Hoc Turn — What's a Parent to Do?", see 59 Den. L.J. 591 (1982). For casenote, "People in Interest of A.M.D.: Are Parental Rights Terminated Too Easily in Colorado?", see 55 U. Colo. L. Rev. 423 (1984). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part I", see 14 Colo. Law. 568 (1985). For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (Nov. 2002).

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

Termination of parental rights is a drastic remedy. People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980).

Such remedy will not be imposed unless all the conditions of this section are met. Where the state failed to file a written motion thirty days prior to the hearing, there was no compliance with the statute. People in Interest of C.L.S., 705 P.2d 1026 (Colo. App. 1985).

When the state seeks to terminate the relationship between a parent and child, it must comply with the due process clause, which requires a fundamentally fair procedure. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

For procedural due process purposes, fairness is assessed by application of the three-factor test set forth in Mathews v. Eldridge, 424 U.S. 319 (1976), which requires consideration of three distinct factors: (1) The private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the state interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

Due process requires that respondent father be given notice of termination proceedings, an opportunity to be heard or defend, and to have the assistance of legal counsel. Because respondent had the

opportunity to appear through court-appointed counsel, his absence was not prejudicial error. People in Interest of V.M.R., 768 P.2d 1268 (Colo. App. 1989).

Issue of notice and pleading of constitutional proportions. Even if an allegation in a mother's motion for a new trial after the termination of her parental rights in her child was inadequate to raise the issue of adequacy of notice and pleading in a juvenile proceeding, it is of constitutional proportions, and the court of appeals is obliged to address the issue on its merits. People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980).

Due process requires notice of hearing. Despite the fact that this section contains no notice requirement, due process requires that a parent receive adequate notice of a termination hearing and an opportunity to protect his interests at the hearing. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Absence of notice provision in statute does not violate due process. Where parent had been given adequate notice of the hearing, the absence of a notice provision in the statute is not a violation of due process. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

When basis for delay is apparent from the record and parents did not object, trial court's failure to make express findings that there was good cause for delay not error. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007); People ex rel. D.M., 186 P.3d 101 (Colo. App. 2008).

The statutory time in which to conduct a termination hearing is not jurisdictional; therefore, parents' failure to raise the issue in the trial court precludes relief on appeal. People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007).

Failure to hold a hearing within 120 days does not warrant reversal because the statutory time in which to conduct a termination hearing is not jurisdictional. People ex rel. D.M., 186 P.3d 101 (Colo. App. 2008).

Section does not require court to appoint counsel, sua sponte, for any parent who does not have counsel at the time that a motion to terminate parental rights is filed. People in Interest of V.W., 958 P.2d 1132 (Colo. App. 1998).

In determining whether an indigent parent has the right to appointed counsel in a termination proceeding resulting from a dependency and neglect adjudication, a court is to consider whether (1) the parent's interest is an extremely important one; (2) the state shares with the parent an interest in a correct decision, has a relatively weak pecuniary interest, and, in some but not all cases, has a possibly stronger interest in informal procedures; and (3) the complexity of the proceeding and the incapacity of the uncounselled parent could be, but would not always be, great enough to make the risk of an erroneous deprivation of the parent's rights insupportably high. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

These factors should be considered to resolve parent's due process argument in a

stepparent adoption proceeding. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

These factors should also be considered to resolve parent's due process argument in adoption proceedings when parent is incarcerated out of state and has no ability to participate in the proceedings. In re R.L.S., 2019 COA 112, 451 P.3d 1249.

The decision whether due process calls for the appointment of counsel for indigent parents in stepparent adoption proceedings must be answered in the first instance by the trial court, subject to appellate review. In re C.A.O., 192 P.3d 508 (Colo. App. 2008).

Court erroneously denied father his statutory right to counsel by effectively dismissing counsel by entering a default judgment against father without father being present. The erroneous denial of father's statutory right to counsel during a substantial part of a parental rights termination hearing constituted reversible error per se under the circumstances presented. People ex rel. R.D., 2012 COA 35, 277 P.3d 889.

Father not denied due process by the court's failure to appoint counsel for him when father concedes that he received written notice of the right to counsel both at the commencement of the dependency and neglect case and when the motion to terminate was filed and concedes that he earned too much money to qualify for state-paid counsel under judicial guidelines but complains that he should have received an application form to establish indigency after the motion to terminate was filed; rather, it was father's duty to request indigency status again, if he so desired. People ex rel. M.C., 94 P.3d 1220 (Colo. App. 2004).

Mother did not have a due process right to counsel during interview with expert witness in dependency and neglect proceedings. A party to a dependency and neglect proceeding is not entitled to the same due process rights as a defendant in a criminal proceeding. People in Interest of K.N.B.E., 2019 COA 157, 457 P.3d 140.

Court must follow the prejudice test in Strickland v. Washington, 466 U.S. 668 (1984), for ineffective assistance of counsel claims in termination of parental rights proceedings. To establish prejudice from counsel's deficient performance in a dependency and neglect proceeding, a party must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. People in Interest of A.R., 2020 CO 10, 456 P.3d 1266; People in Interest of A.L.W, 2020 CO 11, 456 P.3d 1284.

This section does not violate the requirement of equal protection of the laws by requiring appointment of a guardian ad litem for a minor parent but not for a mentally disabled parent. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

It was not a violation of father's equal protection right when sheriff failed to transport him at state expense to parental termination hearing. No group of individuals is entitled by law to be transported to these hearings. Indigent non-incarcerated individuals are thus not granted special preference over indigent incarcerated

individuals. Hence, the trial court ruling does not create a classification nor have special impact on father. People in Interest of C.G., 885 P.2d 355 (Colo. App. 1994).

C.R.C.P. 56 is applicable in a termination of parental rights proceeding under the Colorado Children's Code. Because termination of the parent-child relationship is a drastic remedy that affects a parent's liberty interest, a court deciding a summary judgment motion seeking to terminate parental rights must apply the standard of clear and convincing evidence to the applicable statutory criteria. People in Interest of A.E., 914 P.2d 534 (Colo. App. 1996).

Service requirements of C.R.C.P. 5(d) apply to motion for termination of parental rights. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

The context of subsection (3) requires that "minor" be defined as a person 18 years of age or older. Defining "minor" in subsection (3) as a person under the age of 21 would be inconsistent with § 13-22-101 and the definitions of "child" and "adult" in the Colorado Children's Code. People ex rel. L.A.C., 97 P.3d 363 (Colo. App. 2004).

The definition of a "minor" in § 2-4-401 (6) is not applicable in subsection (3) of this section because "the context otherwise requires". People ex rel. L.A.C., 97 P.3d 363 (Colo. App. 2004).

In a dependency and neglect case under this article 3, a parent's parental rights may be terminated only through the Parent-Child Legal Relationship Termination Act of 1987, §§ 19-3-601 to 19-3-612. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875.

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982); People in Interest of P.N., 663 P.2d 253 (Colo. 1983); People in Interest of M.H., 683 P.2d 807 (Colo. App. 1984); People in Interest of L.L., 715 P.2d 334 (Colo. 1986).

19-3-603. Notice - abandonment.

Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file, only if the location of a parent remains unknown, an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

Source: L. 87: Entire title R&RE, p. 788, § 1, effective October 1. **L. 97:** Entire section amended, p. 521, § 9, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

Guardian ad litem may file the motion to terminate the parent-child legal relationship as guardian of the child's best interests even though the state is the exclusive party to bring a petition in dependency and neglect. People in Interest of M.N., 950 P.2d 674 (Colo. App. 1997).

Applied in People in Interest of K.C., 685 P.2d 1377 (Colo. App. 1984).

19-3-604. Criteria for termination.

(1) 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:

(a) That the child has been adjudicated dependent or neglected and has been abandoned by the child's parent or parents as follows:

(I) That the parent or parents have surrendered physical custody of the child for a period of six months or more and have not manifested during such period the firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child except in cases when voluntary placement is renewable under section 19-1-115 (8)(a);

(II) That the identity of the parent of the child is unknown and has been unknown for three months or more and that reasonable efforts to identify and locate the parent in accordance with section 19-3-603 have failed;

(b) That the child is adjudicated dependent or neglected and the court finds that an appropriate treatment plan cannot be devised to address the unfitness of the parent or parents. In making such a determination, the court shall find one of the following as the basis for unfitness:

(I) An emotional illness, a behavioral or mental health disorder, or an intellectual and developmental disability 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. The court shall make findings that the provision of reasonable accommodations and modifications pursuant to the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations, will not remediate the impact of the parent's disability on the health or welfare of the child.

(II) A single incident resulting in serious bodily injury or disfigurement of the child;

(III) Repealed.

(IV) Serious bodily injury or death of a sibling due to proven parental abuse or neglect;

(V) An identifiable pattern of habitual abuse to which the child or another child has been subjected and, as a result of which, a court has adjudicated another child as neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such abuse has caused the death of another child;

(VI) An identifiable pattern of sexual abuse of the child; or

(VII) The torture of or extreme cruelty to the child, a sibling of the child, or another child of either parent;

(c) That the child or youth is adjudicated dependent or neglected and all of the following exist:

(I) That an appropriate treatment plan approved by the court has not been reasonably complied with by the parent or parents or has not been successful or that the court has previously found, pursuant to section 19-3-508 (1)(e), that an appropriate treatment plan could not be devised. In a county designated pursuant to section 19-1-123, if a child or youth is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall not find that a parent is or parents are in reasonable compliance with or to have been successful at a court-approved treatment plan when:

(A) The parent has not attended family time with the child or youth as set forth in the treatment plan, unless good cause can be shown for failing to attend; or

(B) The parent exhibits the same problems addressed in the treatment plan without adequate improvement, including but not limited to improvement in the relationship with the child, and is unable or unwilling to provide nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions despite earlier intervention and treatment for the family. The court may receive testimony regarding the family's progress under the treatment plan from the child's physician or therapist, foster parent, educational or religious teachers, CASA volunteer, or caseworker.

(II) That the parent is unfit; and

(III) That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.

(2) In determining unfitness, conduct, or condition for purposes of paragraph (c) of subsection (1) of this section, the court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious bodily injury to the

child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care to include, at a minimum, nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions. In making such determinations, the court shall consider, but not be limited to, the following:

(a) Any one of the bases for a finding of parental unfitness set forth in paragraph (b) of subsection (1) of this section;

(b) Conduct towards the child of a physically or sexually abusive nature;

(c) History of violent behavior;

(d) A single incident of life-threatening or serious bodily injury or disfigurement of the child;

(e) Excessive use of intoxicating liquors or controlled substances, as defined in section 18-18-102 (5), C.R.S., which affects the ability to care and provide for the child;

(f) Neglect of the child;

(g) 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;

(h) Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents;

(i) That any parent who is a named respondent in the termination proceeding has had prior involvement with the department of human services concerning an incident of abuse or neglect involving the child and a subsequent incident of abuse or neglect occurs;

(j) Whether a parent committed felony assault that resulted in serious bodily injury to the child or to another child of the parent;

(k) That the child has been in foster care under the responsibility of the county department for fifteen of the most recent twenty-two months, unless:

(I) The child is placed with a relative of the child;

(II) The county department or a state agency has documented in the case plan, which shall be available for court review, that filing such a motion would not be in the best interests of the child;

(III) Where required to make reasonable efforts, services identified as necessary for the safe return of the child to the child's home have not been provided to the family consistent with the time period in the case plan; or

(IV) The child has been in foster care under the responsibility of the county department for such period of time due to circumstances beyond the control of the parent such as incarceration of the parent for a reasonable period of time, court delays or continuances that are not attributable to the parent, or such other reasonable circumstances that the court finds are beyond the control of the parent;

(l) Whether, on two or more occasions, a child in the physical custody of the parent has been adjudicated dependent or neglected in a proceeding under this article or comparable proceedings under the laws of another state or the federal government;

(m) Whether, on one or more prior occasions, a parent has had his or her parent-child legal relationship terminated pursuant to this article or section 19-5-105 or comparable proceedings under the laws of another state or the federal government.

(3) In considering the termination of the parent-child legal relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions. For the purpose of determining termination of the parent-child legal relationship, written reports and other materials relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence; but the court, if so requested by the child, his parent or guardian, or any other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the court may order the person who prepared the report or other material to appear if it finds that the interest of the child so requires.

Source: L. 87: Entire title R&RE, p. 788, § 1, effective October 1. **L. 90:** (1)(a) amended, p. 1037, § 5, effective April 3. **L. 91:** (1)(a)(I) amended, p. 1159, § 5, effective July 1. **L. 92:** (3) amended, p. 224, § 11, effective July 1. **L. 94:** (1) and IP(2) amended and (2)(i) added, p. 2055, § 8, effective July 1. **L. 97:** IP(1) and (1)(b) amended, p. 521, § 10, effective July 1; (1)(b) amended, p. 1440, § 16, effective July 1. **L. 98:** (1)(b), IP(2), (2)(d), and (2)(g) amended and (2)(j) and (2)(k) added, pp. 1419, 1420, §§ 6, 7, effective July 1. **L. 2001:** (2)(l) and (2)(m) added, p. 499, § 1, effective May 4; (1)(b)(V) and (1)(b)(VI) amended and (1)(b)(VII) added, p. 847, § 10, effective June 1. **L. 2003:** (1)(c)(I)(B) amended, p. 754, § 6, effective March 25. **L. 2008:** (1)(a)(I) amended, p. 1894, § 67, effective August 5. **L. 2012:** (2)(e) amended, (HB 12-1311), ch. 281, p. 1625, § 61, effective July 1. **L. 2017:** (1)(b)(I) amended, (HB 17-1046), ch. 50, p. 158, § 10, effective March 16; (1)(b)(I) amended, (SB 17-242), ch. 263, p. 1318, § 167, effective May 25. **L. 2018:** IP(1)(b) and (1)(b)(I) amended, (HB 18-1104), ch. 164, p. 1135, § 8, effective April 25. **L. 2023:** IP(1)(c), IP(1)(c)(I), and (1)(c)(I)(A) amended, (HB 23-1027), ch. 284, p. 1683, § 16, effective June 1; (1)(b)(III)(B) added by revision, (SB 23-039), ch. 191, pp. 957, 962 §§ 7, 13.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-11-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments made to subsection (1)(b) by Senate Bill 97-218 and Senate Bill 97-71 were harmonized.

(3) Subsection (1)(b)(III)(B) provided for the repeal of subsection (1)(b)(III), effective January 1, 2024. (See L. 2023, pp. 957, 962.)

Cross references: For the legislative declaration contained in the 2001 act amending subsections (1)(b)(V) and (1)(b)(VI) and enacting subsection (1)(b)(VII), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For casenote, "People in the Interest of A.M.D.: Are Parental Rights Terminated Too Easily in Colorado?", see 55 U. Colo. L. Rev. 423 (1984). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings — Part II", see 14 Colo. Law. 794 (1985). For article, "Colorado's Implementation of the Federal Adoption and Safe Families Act", see 28 Colo. Law. 73 (Mar. 1999). For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (Aug. 2004).

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

Section not violative of equal protection. Where lack of an extended family or financial resources were not factors in termination and where termination is based on a parent's failure or inability to comply with a treatment plan, parental unfitness, and unlikelihood of change in the future, a termination of parental rights is not violative of equal protection under the law. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Subsection (1)(b)(III) does not violate due process. The court recognizes that a parent has a fundamental right in the care, custody, and management of a child. The state has a compelling interest to assure that a Colorado child is neither neglected nor dependent, and that a stable home atmosphere exists for the child. Therefore, if a parent cannot provide such an environment within a reasonable time, the state has a

compelling interest in terminating the rights of the parent. People in Interest of E.I.C., 958 P.2d 511 (Colo. App. 1998).

Statute does not violate equal protection clause rights of mentally ill parents because parental rights of such parents are not terminable on the basis of mental illness alone. People in Interest of C.B., 740 P.2d 11 (Colo. 1987); People in Interest of C.Z., 2015 COA 87, 360 P.3d 228.

Section not violative of due process. This section is sufficiently definite to provide notice of the conduct or conditions upon which termination of the relationship can be predicated, adequately minimizes the potential for arbitrary and discriminatory application, and gives the courts sufficient guidelines to enable them to apply the law consistently and in accord with legislative intent, and therefore does not violate due process of law. People in Interest of M.S.H., 656 P.2d 1294 (Colo. 1983).

A guardian ad litem lacks standing to appeal a juvenile court's denial of the state's motion to terminate parental rights when the state declines to appeal the denial. The guardian ad litem or another non-state party cannot step into the state's shoes to prosecute the appeal. People in Interest of N.K.S., 2025 COA 100, 585 P.3d 880.

Subsection (1) is permissive with court. The court is granted discretion in making its decision to terminate parental rights. People in Interest of K.C., 685 P.2d 1377 (Colo. App. 1984).

A motion to terminate is sufficient so long as it is couched in the statutory language set forth in subsection (1). People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

Subsection (1)(a) does not require a juvenile court to provide a parent with a treatment plan or to allow a reasonable time for compliance with the treatment plan before termination of parental rights. People in Interest of S.Z.S., 2022 COA 133, 524 P.3d 1209.

Because the juvenile court isn't required to adopt a treatment plan under subsection (1)(a), the court isn't required to make a finding of reasonable efforts when it terminates parental rights under that subsection. People in Interest of S.Z.S., 2022 COA 133, 524 P.3d 1209.

A written adjudicatory order, a minute order reflecting the approval of a treatment plan, and a copy of the treatment plan are sufficient to establish for purposes of subsection (1)(c) that the children were adjudicated dependent or neglected. That the adjudicatory order did not become appealable until the judgment of termination was entered does not undermine or affect either its validity or its probative value. People ex rel. J.M., 74 P.3d 475 (Colo. App. 2003).

The requirements of subsection (1)(c) are not jurisdictional. The court's failure to enter adjudicatory order was not an error affecting the court's jurisdiction to enter termination order. Mother admitted the child was dependent and neglected, the court accepted that admission, and mother

voluntarily participated in the termination proceedings without objecting to the absence of an adjudicatory order, thereby waiving any procedural error arising from subsection (1)(c). People ex rel. N.D.V., 224 P.3d 410 (Colo. App. 2009); People in Interest of J.W., 2017 CO 105, 406 P.3d 853.

The term "reasonable parental care" is not too indefinite to satisfy constitutional standards. This term must be interpreted in light of the specific factors in subsection (2) which the court is directed to consider in determining whether a parent is unwilling or unable to give a child reasonable parental care. People in Interest of M.S.H., 656 P.2d 1294 (Colo. 1983).

Termination of parental rights is a decision of paramount gravity, and the state must exercise extreme caution in terminating such rights. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982).

Termination is an unfortunate but necessary remedy when all reasonable means of establishing a satisfactory parent-child relationship have been tried and found wanting. It is not a desired outcome for which the state should strive from the inception of a dependency or neglect proceeding. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

Strict compliance with termination standards required. Strict compliance by the trial court with the appropriate standards for termination of a parent-child relationship is an absolute necessity. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982).

This section sets forth the criteria for termination of the parent-child legal relationship and such criteria does not require a child to be removed from her parents' home prior to the termination of such relationship. People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

The court must hold a dispositional hearing and consider an appropriate treatment plan at the time or within 45 days of declaring the child dependent or neglected before terminating parental rights. People ex rel. D.R.W, 91 P.3d 453 (Colo. App. 2004).

Consideration of alternatives to termination. A trial court must consider and eliminate less drastic alternatives to termination of the parent-child relationship. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002); People ex rel. D.B-J., 89 P.3d 530 (Colo. App. 2004).

If a trial court's findings conform to the statutory criteria for termination and are adequately supported by evidence in the record, a reviewing court may presume that, in the absence of any indication in the record to the contrary, the trial court considered and eliminated less drastic alternatives to termination. People in Interest of M.M., 726 1108 (Colo. 1986); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006); People in Interest of R.J.B., 2021 COA 4, 482 P.3d 519.

Subsection (1) does not require that the court explicitly consider "less drastic alternatives" before ordering termination, and court's termination order concluding that the child had been adjudicated dependent and neglected, that

the parent had not complied with and could not comply with the approved treatment plan, that the parent was an unfit parent, and that her condition was unlikely to change within a reasonable time was sufficient to conform to termination requirements of this section, and a reviewing court may presume that, in the absence of any indication in the record to the contrary, the trial court considered and eliminated less drastic alternatives. C.S. v. People, 83 P.3d 627 (Colo. 2004).

No error where court failed to consider placement of children with paternal grandparents. Although the department must evaluate a reasonable number of persons identified by the parents as possible placement alternatives, it has no obligation to independently identify and evaluate other placement alternatives. People ex rel. Z.P., 167 P.3d 211 (Colo. App. 2007).

The current availability of a specific less drastic alternative (i.e., an allocation of parental responsibilities to specific individuals) is not a necessary prerequisite for a court to conclude that a less drastic alternative is available; instead, current availability is among the multitude of factors that a juvenile court may consider in assessing whether the less drastic alternative is in the child's best interests. People in Interest of H.L.B., 2025 COA 86, __ P.3d __.

To support termination of the parent-child relationship pursuant to subsection (1), the evidence must establish that: (1) The child has been adjudicated dependent or neglected; (2) an appropriate treatment plan, approved by the court, has not been complied with by the parent or has not been successful; (3) the parent is unfit; and (4) the parent's conduct or condition is unlikely to change within a reasonable time. People ex rel. A.N.W., 976 P.2d 365 (Colo. App. 1999); People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005); People ex rel. N.A.T., 134 P.3d 535 (Colo. App. 2006); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

In determining whether a parent's conduct or condition is unlikely to change within a reasonable time, a trial court may consider whether any change has occurred during the pendency of the dependency and neglect proceeding, the parent's social history, and the chronic or long-term nature of the parent's conduct or condition. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

A reasonable time is not an indefinite time, and it must be determined by considering the physical, mental, and emotional conditions and needs of the child. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

Appellate court will presume that the trial court considered less drastic alternatives prior to ordering termination of mother's parental rights, where criteria for termination and findings made pursuant to those criteria were supported by clear and convincing evidence. People in Interest of D.M.W., 752 P.2d 587 (Colo. App. 1987).

Standards for burden of proof meeting due process requirements. Due process of law is accorded to the parties to a termination of parental rights proceeding when the grounds for termination under this section are established by clear and

convincing evidence and the underlying dependency or neglect determination is established by a preponderance of the evidence. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of L.L., 715 P.2d 334 (Colo. 1986).

Sole purpose of a treatment plan is to reunite a parent and child in the kind of relationship which will be beneficial to both, under conditions which are designed to eliminate those factors which necessitated society's intrusion into the family in the first instance. Thus, the appropriateness of such a plan can only be measured by examining the likelihood of its success in accomplishing this purpose. People in Interest of B.J.D., 626 P.2d 727 (Colo. App. 1981); People in Interest of C.B., 707 P.2d 1046 (Colo. App. 1985); People in Interest of J.R., 711 P.2d 701 (Colo. App. 1985).

The purpose of a treatment plan is to preserve the parent-child relationship, whenever possible, by assisting the parent in overcoming those problems which led to the dependency adjudication. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

Appropriateness of treatment plan. The appropriateness of a treatment plan must be evaluated by examining the likelihood of success in accomplishing its purpose. The fact that the plan is not successful does not mean that it was inappropriate. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

A court may hold a dispositional hearing and find that no appropriate treatment plan can be devised for a parent after it has already approved an initial treatment plan for the parent at a prior hearing. The purposes of the Colorado Children's Code — to preserve and strengthen family ties and protect the best interests of the child — require courts to have the flexibility to modify or adopt new dispositional orders. People in Interest of Z.P.S., 2016 COA 20, 369 P.3d 814.

During a dispositional hearing, a trial court may find a parent is unfit and no appropriate treatment plan can be devised under § 19-3-508 (1)(e)(I) if the state shows, by a preponderance of the evidence, that the child has suffered a single incident resulting in serious bodily injury or disfigurement as set forth in subsection (1)(b) of this section. People in Interest of L.S., 2023 CO 3M, 524 P.3d 847.

A court may rely on evidence that was previously considered, or could have been presented, at a prior hearing when it modifies its orders at a subsequent hearing to hold that an appropriate treatment plan cannot be devised. People in Interest of Z.P.S., 2016 COA 20, 369 P.3d 814.

Although the treatment plan did not at its inception specifically address father's mental health needs, by acquiescing in the plan father is precluded from arguing that it was not appropriate. People ex rel. M.S., 129 P.3d 1086 (Colo. App. 2005).

It is incumbent on the parent to bring forth any known deficiencies in the

treatment plan prior to the termination hearing. People ex rel. M.S., 129 P.3d 1086 (Colo. App. 2005).

Father's acquiescence to his treatment plan at the dispositional hearing, and his subsequent failure to object to the services supporting the reasonable efforts to rehabilitate him, may not be used to bar appellate review of the evidence supporting the juvenile court's finding that the county department of human services proved by clear and convincing evidence that reasonable efforts were unsuccessful in rehabilitating father. People ex rel. S.N-V., 300 P.3d 911 (Colo. App. 2011).

Parent's failure to persist in his or her request for a full neuropsychological evaluation prior to the termination hearing did not estop him or her from challenging on appeal the adequacy of the juvenile court's finding as to the reasonable efforts to rehabilitate him or her. People ex rel. S.N-V., 300 P.3d 911 (Colo. App. 2011).

Respondent parent's position regarding his or her treatment plan at the time of its adoption, or at any point thereafter prior to the termination hearing, is not equivalent to, or a substitute for, a juvenile court's finding at the termination hearing by clear and convincing evidence that the services provided to the respondent parent were appropriate but unsuccessful in rendering him or her a fit parent. People ex rel. S.N-V., 300 P.3d 911 (Colo. App. 2011).

Treatment plan represents an affirmative attempt by the state to preserve the parent-child relationship whenever possible. People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982).

Questions concerning a child's health and safety are purview of trial court, which retains ultimate decision-making authority in the case. The trial court itself must make decisions regarding visitation and may not delegate this function to third parties. People ex rel. B.C., 122 P.3d 1067 (Colo. App. 2005).

In determining whether a parent is unfit, a court must consider whether department made reasonable efforts to rehabilitate parent. When department prohibited father from visiting children while he had outstanding warrants that did not pose a threat to children's health and safety, it did not meet the reasonable efforts standard. People in Interest of E.S., 2021 COA 79, 494 P.3d 1142.

Prior to 1984, termination without formulation of treatment plan not permitted. The requirement of an "appropriate" treatment plan in subsection (1)(b)(I) did not signify a legislative intent to permit the termination of a parent-child relationship without formulating any treatment plan. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982).

Criteria for judging success of treatment plan. A treatment plan can only be judged to be successful if it results in rendering the parent fit or if it corrects the conduct or condition which led to intervention by the state into the parent-child relationship. Accordingly, no explicit criteria to determine success need be included in the treatment plan itself. People in Interest of

C.A.K., 652 P.2d 603 (Colo. 1982); People in Interest of M.P., 690 P.2d 1300 (Colo. App. 1984).

The standards to be applied in evaluating the results of a treatment plan are those contained in the Colorado Children's Code. If the plan improves conditions or corrects unfit parental conduct, it will be judged successful. Explicit criteria for success need not be included in the treatment plan itself. People ex rel. L.D., 671 P.2d 940 (Colo. 1983); People in Interest of C.B., 707 P.2d 1046 (Colo. App. 1985).

Treatment plan required even though parent incarcerated. The fact that a particular parent is incarcerated at the time of an adjudication of dependency or neglect may often render more difficult the crafting of a meaningful and workable treatment plan. However, such single circumstance does not per se prohibit the creation and implementation of a treatment program appropriate for the goal the general assembly has indicated it should achieve — the building or rebuilding of a healthy parent-child relationship. People in Interest of M.C.C., 641 P.2d 306 (Colo. App. 1982); People in Interest of E.I.C., 958 P.2d 511 (Colo. App. 1998).

A court could conclude that formulation of treatment plan for parent incarcerated for more than six years is possible. The court could conclude that, even though a parent may be confined for six years or more, the age of the child, the existence of capable members of an extended family, or other factors may allow the formulation of an appropriate treatment plan and that considerations of the child's welfare would not support a termination order. People in Interest of E.I.C., 958 P.2d 511 (Colo. App. 1998).

Subsection (1)(b) must be read in pari materia with § 19-3-508 (1)(e) since they are part of the same code and pertain to the same subject. People in Interest of T.W., 797 P.2d 821 (Colo. App. 1990).

Treatment plan was an "appropriate treatment plan" within meaning of statute requiring court to find that an appropriate treatment plan approved by court has not been complied with by parent or has not been successful to terminate parent-child legal relationship. People in Interest of L.L., 715 P.2d 334 (Colo. 1986).

In deciding whether to terminate parental rights, the juvenile court should consider whether reasonable accommodations were made for a parent's disability when determining whether the treatment plan was appropriate and reasonable efforts were made to rehabilitate the parent. What constitutes a reasonable accommodation is based on an individual assessment. Further, in considering whether reasonable accommodations can be made for a parent's disability, the paramount concern must remain the child's health and safety. The requirements of the federal Americans with Disabilities Act do not protect a parent who, even by virtue of his or her disability, poses a safety risk to the child. People in Interest of S.K., 2019 COA 36, 440 P.3d 1240.

The provisions of subsection (1)(b)(I) were added to the criteria for termination of the parent-child legal relation to cover

those situations in which an appropriate treatment plan could not be devised and, thus, would not succeed in reuniting the family. People in Interest of C.S.M., 805 P.2d 1129 (Colo. App. 1990).

Substantial compliance with treatment plan not determinative. If compliance with the treatment plan was not successful in correcting the conduct or condition which initially led to state intervention, termination of the parent-child legal relationship is proper. People in Interest of D.M.W., 752 P.2d 587 (Colo. App. 1987).

Fact that a treatment plan is not ultimately successful does not mean that it was therefore inappropriate since, in many cases, it is virtually impossible to devise a plan which will guarantee success. People in Interest of L.G., 737 P.2d 431 (Colo. App. 1987).

When mother had not responded to out-patient treatment and evidence showed that no in-patient program for the mother's particular problem was available, the trial court was correct in concluding that an appropriate treatment plan could not be devised. The argument that in-patient treatment must be offered in order to determine whether it will be successful is rejected. People in Interest of C.S.M., 805 P.2d 1129 (Colo. App. 1990).

Trial court's finding that mother's conduct or condition was unlikely to change within a reasonable time to meet the child's needs was supported by the record. People in Interest of V.W., 958 P.2d 1132 (Colo. App. 1998).

Information from previous hearings may be considered. There is no prohibition by statute or common law that would prohibit a trial court from considering information gleaned from previous hearings on unsuccessful petitions to terminate parent-child relationships when making determinations of fact in resolving a pending petition to terminate the relationship. However, additional facts are required to justify a trial court's change in its conclusions from a previous hearing at which it refused to terminate such relationship. People in Interest of J.R., 711 P.2d 701 (Colo. App. 1985).

Termination of the parental relationship for children of native American status is governed by the federal Indian Child Welfare Act of 1978 (ICWA) and the standard under that act is proof beyond a reasonable doubt. People in Interest of C.A.J., 709 P.2d 604 (Colo. App. 1985).

When the federal ICWA applies, termination of parental rights may not be ordered unless it is shown beyond a reasonable doubt that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. People ex rel. A.N.W., 976 P.2d 365 (Colo. App. 1999).

"Active efforts" under the federal ICWA means more than reasonable efforts but does not mean persisting with futile efforts. The department of human services is not required to provide active efforts to a parent who voluntarily absents himself or herself from a proceeding and

cannot be located. People ex rel. A.V., 2012 COA 210, 297 P.3d 1019.

"Active efforts" is a heightened standard requiring a greater degree of engagement by agencies with Native American families than the traditional "reasonable efforts" standard. Agencies must provide a parent with remedial services and resources to complete all of the parent's treatment plan objectives. People v. V.K.L., 2022 CO 35, 512 P.3d 132.

While an agency's active efforts must be affirmative, active, thorough, and timely, such efforts also must be tailored to the facts and circumstances of the case, and the agency retains discretion to prioritize certain services and resources to address a parent's and family's most urgent needs to assist parents with completing the court-ordered treatment plan. People v. V.K.L., 2022 CO 35, 512 P.3d 132.

The federal ICWA does not require expert testimony to support a trial court's finding that "active efforts" were made to prevent breakup of an Indian family. People ex rel. A.V., 2012 COA 210, 297 P.3d 1019.

The Americans with Disabilities Act (ADA) is not a defense at parental rights termination proceedings. The focus of the hearing is on the welfare of the child. Regardless of the parent's special needs or restricted capabilities, the child is entitled to a minimum level of parental care. People ex rel. T.B., 12 P.3d 1221 (Colo. App. 2000).

The ADA does not categorically pre-empt section. If the court determines that an appropriate treatment plan cannot be devised to address the unfitness of parents with multiple mental health diagnoses so that the child's minimum level of care is provided, then it is justified in terminating the parent-child relationship. The ADA cannot be raised as a defense to such a termination of parental rights. People in Interest of C.Z., 2015 COA 87, 360 P.3d 228.

Clear and convincing evidence is the appropriate constitutional standard of proof in proceedings involving termination of a parent-child relationship. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of S.T., 678 P.2d 1054 (Colo. App. 1983); People in Interest of M.P., 690 P.2d 1300 (Colo. App. 1984); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

The clear and convincing standard strikes an appropriate balance between the risk of an erroneous termination of the parental relationship, on the one hand, and the parens patriae interest of the state in promoting the child's welfare, on the other. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

"Clear and convincing" standard applied prospectively. The "clear and convincing evidence" standard in proceedings involving the termination of a parent-child relationship will be given only prospective effect, and will apply only to termination hearings which commenced after March 24, 1982. People in Interest of C.A.K., 652 P.2d 603 (Colo. 1982); People in Interest of C.L.I., 710 P.2d 1183 (Colo. App. 1985).

Statute need not enunciate all factors which may lead to termination.

Fundamental fairness does not require a statute to enunciate in all-encompassing examples, or exactly described acts, precisely how poorly a parent can treat a child before risking loss of parental rights. People v. Jennings, 641 P.2d 276 (Colo. 1982).

Subsection (1), when read as a whole and applying ordinary meaning to the language, permits termination so long as at least one of the statutory grounds has been established by clear and convincing evidence but does not limit the court to only one statutory ground for the termination order. People ex rel. D.C.-M.S., 111 P.3d 559 (Colo. App. 2005).

When a parent is acquitted of criminal charges related to sexual abuse of his or her child and the court cannot find by clear and convincing evidence that the abuse occurred, the parent's failure to admit to the sexual abuse as part of the treatment protocol is insufficient to support termination of parental rights. People in Interest of L.M., 2018 COA 57M, 433 P.3d 114.

Mother not denied due process because she did not know on which criteria the court would terminate the parent-child relationship because motion alleged both statutory grounds as a basis for termination, giving her notice that court could move forward on either or both grounds. People ex rel. D.C.-M.S., 111 P.3d 559 (Colo. App. 2005).

The court may still consider mother's incarceration under subsection (2) even though she was eligible for parole in fewer than 36 months following the child's adjudication. That subsection requires the court to consider incarceration if a parent must wait longer than 36 months before becoming eligible for parole, but it does not preclude the court from considering the effect of a lesser period of incarceration. People in Interest of M.H., 10 P.3d 713 (Colo. App. 2000).

A court may consider parental incarceration as a factor in determining parental fitness and, thereby, as a factor affecting the needs of a child who has been adjudicated dependent or neglected. If a parent cannot be expected to provide a stable home atmosphere for the child within a reasonable period, the state's compelling interest in the welfare of the subject child justifies the termination of that parent's rights. K.D. v. People, 139 P.3d 695 (Colo. 2006).

It was within the court's statutory discretion to consider the time the child spent in foster care while the mother was incarcerated. People in Interest of M.H., 10 P.3d 713 (Colo. App. 2000).

The policies underlying both the expedited procedures and sibling group preference do not permit the application of the shorter incarceration period so as to terminate parental rights concerning an older child whose parent is subject to the longer incarceration period. The termination of parental rights concerning the older child must still be subject to the longer allowable incarceration period. People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010).

Where a parent chooses to remain in a relationship with a person who poses a threat to the welfare of the child, the conduct of that parent may prevent him or her from providing protection adequate to meet the child's needs. Accordingly, that parent may be found unfit under subsection (2). That the person who poses a threat happens to be the other parent does not alter this analysis. People ex rel. C.T.S., 140 P.3d 332 (Colo. App. 2006).

Parental admission of dependency and neglect. Where a parent, with the advice of counsel and with notice of the allegations of dependency and neglect, admits the petition, this meets the requirements of subsection (1)(b). People ex rel. J.F., 672 P.2d 544 (Colo. App. 1983).

The credibility of witnesses, the sufficiency, probative effect, and weight of the evidence, and the inferences drawn therefrom are within the province of the trial court; therefore, the trial court's findings and conclusions will not be disturbed unless they have no support in the record. People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988).

Subsection (3) applicable to determination of unfitness, not to termination. Subsection (3) does not apply directly to court's decision as to termination, but to the court's determination whether the parents are unfit. People in Interest of K.C., 685 P.2d 1377 (Colo. App. 1984).

An unfit parent is one whose conduct or condition renders him or her unable to give the child reasonable parental care. Reasonable parental care requires, at a minimum, that the parent provide nurturing and protection adequate to meet the child's physical, emotional, and mental health needs. People ex rel. A.N.W., 976 P.2d 365 (Colo. App. 1999).

The need for permanency alone is not sufficient to terminate parents' constitutional interest in the care and custody of their children. "Semi-fitness" not only does not have a generally accepted meaning, but is also not a basis upon which to terminate parental rights under this section. People in Interest of S.R.N.J-S., 2020 COA 12, 486 P.3d 1201.

Primary consideration given to needs of children. Trial court acted within proper discretion in giving primary consideration to physical, mental, and emotional conditions and needs of children, without attempting to treat mother for insight disorder identified by psychologist called at trial. People in Interest of C.B., 707 P.2d 1046 (Colo. App. 1985).

Although the term "emotional illness" in this section can be subject to different interpretations, this section is not unconstitutional because of vagueness. People in Interest of S.J.C., 776 P.2d 1103 (Colo. 1989).

The term "emotional illness" does not require a showing that parent has been diagnosed with schizophrenia, psychosis, or manic depression. The general assembly's use of both "emotional illness" and "mental illness" suggests that these terms are to be given different meanings. For a court to find that a parent has an emotional illness, it is sufficient that there be

evidence that the parent has longstanding emotional conditions that render the parent unable to provide for the needs of a child. People ex rel. K.D., 155 P.3d 634 (Colo. App. 2007).

Conviction for purposes of subsection (1)(b)(III) means a judgment of conviction in a trial court and not a final determination of conviction after appeal. To hold otherwise would violate the important policies of the Colorado Children's Code which seeks to protect the best interests of the child. People in Interest of T.T., 845 P.2d 539 (Colo. App. 1992).

Evidence sufficient to sustain termination of parent-child relationship. People in Interest of V.A.E.Y.H.D., 199 Colo. 148, 605 P.2d 916 (1980); People in Interest of S.T., 678 P.2d 1054 (Colo. App. 1983); People in Interest of M.P., 690 P.2d 1300 (Colo. App. 1984); People in Interest of C.B., 707 P.2d 1046 (Colo. App. 1985); People in Interest of A.H., 736 P.2d 427 (Colo. App. 1987); People in Interest of C.B., 740 P.2d 11 (Colo. 1987); People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988); People in Interest of T.T., 845 P.2d 539 (Colo. App. 1992); People ex rel. A.D., 56 P.3d 1246 (Colo. App. 2002).

Evidence not sufficient to sustain termination of parent-child relationship. People in Interest of C.L.I., 710 P.2d 1183 (Colo. App. 1985).

Evidence sufficient to find parents unfit. Trial court properly found parents to be unfit based on evidence of emotional illness, mental illness, mental deficiency, neglect of children, and evidence that reasonable efforts by county department of social services and mental health center had failed to rehabilitate parents. People ex rel. L.D., 671 P.2d 940 (Colo. 1983).

Parent's refusal to document sobriety through random urinalysis testing and to participate in substance abuse treatment shows that parent was not committed to meeting the child's needs and was unfit to parent. People ex rel. K.T., 129 P.3d 1080 (Colo. App. 2005); People ex rel. D.P., 181 P.3d 403 (Colo. App. 2008).

Parent's refusal to acknowledge impact of prenatal substance abuse on child prevented parent from providing reasonable parental care. People ex rel. K.T., 129 P.3d 1080 (Colo. App. 2005).

Record supports the trial court's finding that the department of social services made reasonable efforts to rehabilitate mother. Even though services specifically designed for individuals with disabilities were not provided to mother for almost one year, intensive in-home family preservation services adapted to meet her special needs were provided immediately. People ex rel. J.M., 74 P.3d 475 (Colo. App. 2003).

Father not given reasonable amount of time to comply with treatment plan where treatment plan was entered on March 6, the department filed motion to terminate father's parental rights on March 29, and termination hearing was scheduled for June 11. Once the court determines that a treatment plan can be devised for a parent and approves a treatment plan, the parent must be given a reasonable amount of time to comply with

its provisions. People ex rel. D.Y., 176 P.3d 874 (Colo. App. 2007).

Where there is no indication that father was asked to address any potential causes of children's trauma other than the criminal charges of which he was acquitted, the juvenile court erred in concluding that father's failure to address other possible issues, and the children's corresponding trauma, demonstrated that he was an unfit parent. Thus, granting custody of the children to mother was not a viable less drastic alternative to termination. People in Interest of L.M., 2018 COA 57, 433 P.3d 114.

Juvenile court's order to retain legal custody of children in department, appoint foster parents as permanent legal guardians, direct that children have no further contact with mother, and retain continuing jurisdiction is not the functional equivalent of a termination of mother's parental rights. Judge's order is supported by the record, but leaves open the possibility that mother could seek a modification of order to regain custody or obtain parenting time or other relief. People in Interest of R.W. and T.W., 989 P.2d 240 (Colo. App. 1999), aff'd sub nom. L.L. v. People, 10 P.3d 1271 (Colo. 2000).

While placement of a child in the guardianship of family members with limited or no parental contact may be a viable alternative to termination in some cases, in other instances there may be estrangement between the parents and the guardians such that nothing short of termination will be in the child's best interests. People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002).

Findings that support an order terminating the parent-child relationship are adequate as long as they conform to the statutory criteria set forth in this section. People in Interest of A.J., 757 P.2d 1165 (Colo. App. 1988); People ex rel. J.M.B., 60 P.3d 790 (Colo. App. 2002).

Order for termination not supported where court did not make findings that conform to the statutory criteria. While the order recited evidence adduced at trial and provided citations to relevant statutory and case law, the order drew no conclusions linking the recited facts to the relevant law. People ex rel. A.G., 264 P.3d 615 (Colo. App. 2010), rev'd on other grounds, 262 P.3d 646 (Colo. 2011); People in Interest of B.C., 2018 COA 45, 418 P.3d 538.

A treatment plan need not be devised if a parent has subjected a sibling of the child who is the subject of the dependency and neglect proceeding to a gravely disabling injury. People in Interest of T.W., 797 P.2d 821 (Colo. App. 1990).

Failure to reduce termination order to writing and to sign and to date the order at the time of the termination hearing does not render the termination improper. People ex rel. A.W., 74 P.3d 497 (Colo. App. 2003).

Finding of a conflict of interest between department and parents does not necessarily require a reversal of decision. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

Appellate court must apply clearly erroneous standard of review to trial court's findings of fact. In reversing trial court's order terminating the parent-child legal relationship, the appellate court improperly substituted its judgment for that of the trial court concerning witness credibility, and the sufficiency, weight, and probative value of the evidence. People ex rel. A.J.L., 243 P.3d 244 (Colo. 2010).

Trial court not required to give more weight to more recent evidence. The weighing of evidence is within the trial court's discretion after considering witness credibility and the sufficiency and probative value of the evidence. Trial court could have reasonably found that the recent, more positive evaluation of mother deserved less weight because the court could neither review the report nor adequately evaluate its veracity. People ex rel. A.J.L., 243 P.3d 244 (Colo. 2010).

Proceedings commenced before July 1, 1977. For judicial criteria for termination applicable to dependency proceedings commenced before July 1, 1977, see People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Applied in People in Interest of H.A.C. v. D.C.C., 198 Colo. 260, 599 P.2d 881 (1979); People in Interest of O.E.P., 654 P.2d 312 (Colo. 1982); People in Interest of P.N., 663 P.2d 253 (Colo. 1983); People in Interest of M.H., 683 P.2d 807 (Colo. App. 1984); People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006); People ex rel. S.M.A.M.A., 172 P.3d 958 (Colo. App. 2007); People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010); People in Interest of C.W.B., 2017 COA 68, 461 P.3d 521; People in Interest of I.J.O., 2019 COA 151, 465 P.3d 66.

19-3-605. Request for placement with family members.

(1) Following an order of termination of the parent-child legal relationship, 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 of the person 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 therefor pursuant to the requirement of this subsection (1) and the court determines that such placement is in the best interests of the child. Such request must be submitted to the court no later than twenty days after the motion for termination is filed pursuant to section 19-3-602. Nothing in this section shall be construed to require the child placement agency with physical custody of the child to notify said relatives described in this section of the pending termination of parental rights.

(2) Notwithstanding the provisions of subsection (1) of this section to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all

of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) In making placement determinations concerning a child or youth following the order of termination of the parent-child legal relationship pursuant to the provisions of this section, the court shall consider all pertinent information related to modifying the placement of the child or youth prior to removing the child or youth from the child's or youth's placement, including:

(a) An individualized assessment of the child's needs created pursuant to Title IV-E of the federal "Social Security Act", as amended, and regulations promulgated thereunder, as amended;

(b) Whether the child's or youth's placement at the time of the hearing is a safe and potentially permanent placement for the child or youth, including documentation that a county department or a licensed child placement agency has adequately screened the family member who is seeking to care for the child or youth and any adult residing in the home and that all of the criminal history record checks and other background checks have been completed as required pursuant to section 26-6-910 or 19-3-406;

(c) The child's actual age and developmental stage and, in consideration of this information, the child's attachment needs;

(d) Whether the child has significant psychological ties to a person who could provide a permanent placement for the child, including a relative, and, if so, whether this person maintained contact with the child during the child's placement out of the home;

(e) Whether a person who could provide a permanent placement for the child is willing to maintain appropriate contact after an adoption of the child with the child's relatives, particularly sibling relatives, when such contact is safe, reasonable, and appropriate;

(f) Whether a person who could provide a permanent placement for the child is aware of the child's culture and willing to provide the child with positive ties to his or her culture;

(g) The child's medical, physical, emotional, or other specific needs, and whether a person who could provide a permanent placement for the child is able to meet the child's needs; and

(h) The child's attachment to the child's caregiver at the time of the hearing and the possible effects on the child's emotional well-being if the child is removed from the caregiver's home.

Source: L. 87: Entire title R&RE, p. 789, § 1, effective October 1. **L. 2003:** Entire section amended, p. 2626, § 7, effective June 5. **L. 2005:** (1) amended, p. 93, § 1, effective March 31; entire section amended, p. 678, § 3, effective July 1. **L. 2015:** (3)(b) amended, (SB 15-087), ch. 263, p. 1019, § 12, effective June 2; (3) amended, (HB 15-1337), ch. 328, p. 1342, § 2, effective

June 5. **L. 2022:** (3)(b) amended, (HB 22-1295), ch. 123, p. 836, § 41, effective July 1. **L. 2023:** IP(3) and (3)(b) amended, (HB 23-1043), ch. 20, p. 79, § 4, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-105.5 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section by House Bill 05-1174 and House Bill 05-1173 were harmonized.

(3) Amendments to subsection (3)(b) by HB 15-1337 and SB 15-087 were harmonized.

Cross references: (1) For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 194, Session Laws of Colorado 2005.

(2) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "Interested Parties in Juvenile Dependency and Neglect Cases", see 33 Colo. Law. 109 (Aug. 2004).

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

Jurisdiction of court to determine placement. It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent. State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs., 642 P.2d 16 (Colo. App. 1981).

The provisions of this section are distinct from the proceedings for voluntary relinquishment under § 19-5-104. Under this section, a grandparent is an interested party. Under § 19-5-104, if the birth parents state that the grandparent should not have custody and the grandparent has never had physical or legal custody of the child, the grandparent does not have standing in the relinquishment proceedings. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

Aunt did not have constitutionally protected interest and failure to notify her of termination proceedings did not violate substantive or procedural due process. People in Interest of C.E., 923 P.2d 383 (Colo. App. 1996).

Grandmother did not have constitutionally protected interest where she (1) enjoyed limited visitation rights derived from statute; and (2) had a

biological but no existing custodial relationship with the child. People in Interest of C.N., 2018 COA 165, 431 P.3d 1219.

While department and trial court must consider remedies less drastic than termination, this means that the department must evaluate a reasonable number of persons suggested to it as possible placements by the family and other interested persons, but nothing requires the department to make special inquiry and independently identify and evaluate other possible placements within or outside the family. Father's testimony at termination hearing that other relatives might be interested in caring for the child, with no indication that father identified any of these relatives to the department or the court, was insufficient to require the department to explore these family members as options. People ex rel. D.B-J., 89 P.3d 530 (Colo. App. 2004).

Placing child in foster care rather than with grandparents out of state is permissible when purpose of the placement is to strengthen family ties and secure potential relative placement within the state. People ex rel. E.C., 47 P.3d 707 (Colo. App. 2002).

While placement with a grandparent who is available and appropriate is given statutory preference if such placement is in the child's best interests, placement with a grandparent is not a viable alternative to termination if the grandparent lacks appreciation of the parent's problems or of the child's needs. People ex rel. D.B-J., 89 P.3d 530 (Colo. App. 2004).

Trial court did not err in rejecting placement with the paternal grandmother as a less drastic alternative to termination when findings indicate that grandmother did not interact well with the child; that the child had an ambivalent attachment to the grandmother; that the grandmother was not interested in participating in treatment to address her relationship with the child; and that the grandmother was unlikely to comply with no contact orders. People ex rel. D.B-J., 89 P.3d 530 (Colo. App. 2004).

The policies underlying both the expedited procedures and sibling group preference do not permit the application of the shorter incarceration period so as to terminate parental rights concerning an older child whose parent is subject to the longer incarceration period. The termination of parental rights concerning the older child must still be subject to the longer allowable incarceration period. People ex rel. T.M., 240 P.3d 542 (Colo. App. 2010).

An order denying a relative's request for guardianship and custody of a child is not final and appealable because it does not resolve all issues before the court and end the dependency and neglect proceeding. People in Interest of E.B., 2022 COA 120, 523 P.3d 988.

19-3-606. Review of child's disposition following termination of the parent-child legal relationship.

(1) The court, at the conclusion of a hearing in which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days after the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the court what disposition of the child, if any, has occurred. The guardian ad litem shall provide a written report stating the guardian ad litem's position to the court based upon an independent investigation and consultation with the child regarding the disposition that is in the best interests of the child and the necessary steps to finalize the child's permanency. Counsel for youth shall provide a position statement that conveys the child's position and objectives for the child's desired disposition and necessary steps to finalize permanency. Any report required pursuant to this subsection (1) is subject to the provisions of section 19-1-309.

(2) If no adoption has taken place within a reasonable time and the court determines that adoption is not immediately feasible or appropriate, the court may order that provision be made immediately for alternative long-term placement of the child.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1. **L. 89:** (1) amended, p. 944, § 5, effective March 27. **L. 90:** (1) amended, p. 1012, § 7, effective July 1. **L. 2022:** (1) amended, (HB 22-1038), ch. 92, p. 437, § 12, effective January 9, 2023.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For article, "Report-Writing Tips for Guardians ad Litem in Dependency and Neglect Cases", see 31 Colo. Law. 87 (Oct. 2002).

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

Guardian ad litem may have access to confidential adoption information. Guardian ad litem appointed in prior

dependency and neglect proceeding may have access to the name and address of adoptive home for preparation of report required by section. People in Interest of M.C.P., 768 P.2d 1253 (Colo. App. 1988).

Applied in People in Interest of P.N., 663 P.2d 253 (Colo. 1983).

19-3-607. Expert testimony.

(1) An indigent parent has the right to have appointed one expert witness of his or her own choosing whose reasonable fees and expenses, subject to the review and approval by the office of the respondent parents' counsel, shall be paid by the state of Colorado pursuant to section 19-3-610.

(2) All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1. **L. 2016:** (1) amended, (SB 16-205), ch. 216, p. 830, § 1, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For casenote, "People in the Interest of A.M.D.: Are Parental Rights Terminated Too Easily in Colorado?", see 55 U. Colo. L. Rev. 423 (1984).

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

By taking advantage of opportunity to have an expert appointed by the court pursuant to this section, an individual submits to the disclosure of the evaluation to all parties and waives any psychologist-patient privilege which may have attached. People in Interest of T.S.B., 757 P.2d 1112 (Colo. App. 1988), aff'd, 785 P.2d 132 (Colo. 1990).

Attorney-client privilege did not attach to expert evaluation conducted by expert appointed under this section. D.A.S. v. People, 863 P.2d 291 (Colo. 1993).

Provisions of subsection (2) may be waived by a party in interest. People ex rel. J.F., 672 P.2d 544 (Colo. App. 1983).

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); People in Interest of T.R.S., 717 P.2d 1025 (Colo. App. 1986); People in Interest of L.G., 737 P.2d 431 (Colo. App. 1987).

19-3-608. Effect of decree.

(1) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, but it shall not modify the child's status as an heir at law which shall cease only upon a final decree of adoption.

(2) No order or decree entered pursuant to this part 6 shall disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian tribe, any agency, any state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Representing the Mentally Retarded or Disabled Parent in a Colorado Dependent or Neglected Child Action", see 11 Colo. Law. 693 (1982).

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

Termination includes the elimination of any right of continued visitation between parent and child, including such rights provided in a court order. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Section 15-11-119 (3) prevails over the conflicting provisions in subsection (1) of this section because § 15-11-119 (3) is both more specific and more recent. Section 15-11-119 (3) is more specific because it applies only to children who have been adopted by certain relatives of their biological parents; subsection (1) continues to apply to nonrelative adoptions. In re

Estate of Gallegos, 2021 COA 115, 499 P.3d 1058.

19-3-609. Appeals - time requirements.

(1) Appeals of court decrees made under this part 6 shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

(2) Whenever an appeal is made under this part 6, an indigent parent, upon request, shall be provided a transcript of the trial proceeding for the appeal at the expense of the state pursuant to section 19-3-610.

(3) All written orders by the district court from any appealable hearing must be made within thirty-five days after the hearing to provide timely permanency for the child or children who are the subject of the appeal.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1. **L. 2022:** (3) added, (HB 22-1113), ch. 56, p. 261, § 3, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1113, see section 1 of chapter 56, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For casenote, "People in the Interest of A.M.D.: Are Parental Rights Terminated Too Easily in Colorado?", see 55 U. Colo. L. Rev. 423 (1984).

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

Determination of indigency lies within the discretion of the trial court. Where a party has failed to provide documentation of indigency as ordered by the trial court, the court may deny such party a free transcript and such denial is not error. People in Interest of M.N., 950 P.2d 674 (Colo. App. 1997).

A party who proceeded as an indigent in the trial court may proceed as an indigent on appeal without further authorization unless the court finds, in writing, that the party is

no longer entitled to so proceed. The trial court may order the production of any documents or evidence it deems necessary to determine continuing indigency. People in Interest of M.N., 950 P.2d 674 (Colo. App. 1997).

An appointed lawyer for an indigent parent during dependency and neglect proceedings cannot withdraw solely because the lawyer determines the appeal to be without merit. Rather the lawyer must nonetheless file petitions on appeal in accordance with appellate rules. A.L.L. v. People, 226 P.3d 1054 (Colo. 2010).

Minute orders showing that magistrate accepted father's admission, sustained the petition in dependency and neglect, and approved treatment plan for father became appealable upon entry of judgment of termination. People ex rel. T.E.M., 124 P.3d 905 (Colo. App. 2005).

Applied in People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

19-3-610. Budgetary allocation for expenses.

The general assembly shall make annual appropriations to the office of the respondent parents' counsel for the purpose of meeting the expenses of sections 19-3-607 (1) and 19-3-609 (2).

Source: L. 87: Entire title R&RE, p. 791, § 1, effective October 1. **L. 2016:** Entire section amended, (SB 16-205), ch. 216, p. 830, § 2, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-611. Review of decisions regarding placement of children. (Repealed)

Source: L. 88: Entire section added, p. 755, § 2, effective May 31. **L. 91:** Entire section repealed, p. 883, § 1, effective June 5.

19-3-612. Reinstatement of the parent-child legal relationship - circumstances - petition - hearings - legislative declaration.

(1) The general assembly finds that, for various reasons, some children are not adopted after the termination or voluntary relinquishment of the parent-child legal relationship and in some

cases might benefit from a reinstatement of the parent-child legal relationship if the former parent has remediated the issues that led to the termination or voluntary relinquishment. The purpose of this section is to address the problem of children who linger in the child welfare system by giving them a second chance at achieving permanency with their rehabilitated former parent. The purpose of this section is to create a process by which the former parent's legal rights may be restored if certain conditions are met, both the child and the former parent want reinstatement of the relationship, a trial period is successful, and it is found to be in the best interests of the child. Reinstatement is a recognition that the situation of the former parent and child has changed since the time of the termination or voluntary relinquishment of the parent-child legal relationship, and reunification is now appropriate and in the best interests of the child.

(2) A county department with custody of a child whose parent's rights were terminated voluntarily or involuntarily, including a child whose parent relinquished the child pursuant to the requirements of article 5 of this title 19, or the guardian ad litem of such a child, may file a petition to reinstate the parent-child legal relationship alleging the following:

(a) (I) The child is twelve years of age or older; or

(II) The child is younger than twelve years of age and is part of a sibling group, as defined in section 19-1-103, that includes a child described in subsection (2)(a)(I) of this section for whom a petition to reinstate the parent-child legal relationship has been filed, and the younger sibling independently meets the conditions set forth in subsections (2)(b) to (2)(f) of this section;

(b) Both the child and the former parent consent to the petition for reinstatement of the parent-child legal relationship;

(c) The child does not have a legal parent, is not in an adoptive placement, and is not likely to be adopted within a reasonable period of time, and other permanency options have been exhausted;

(d) The child is in the legal custody of a county department;

(e) The date of the final order terminating the parent-child legal relationship was at least three years before the filing of the petition or, if the court finds that it is in the best interests of the child to consider a petition for reinstatement of the parent-child legal relationship, less than three years from the date of the final order terminating the parent-child legal relationship; and

(f) The dependency and neglect action did not involve substantiated allegations of sexual abuse or an incident of egregious abuse or neglect against a child, a near fatality, or a suspicious fatality or near fatality as those terms are defined in section 26-1-139, C.R.S.

(3) A child who is twelve years of age or older, or the child's guardian ad litem, may also file a petition to reinstate the parent-child legal relationship alleging that the conditions set forth in subsections (2)(b) to (2)(f) of this section are met.

(4) If a former parent whose rights have been terminated contacts either the county department that has custody of the child or the child's guardian ad litem about the possible reinstatement of the parent-child legal relationship through a petition filed pursuant to this section, the county department or the guardian ad litem who was contacted shall notify the other party, as applicable, and the court within thirty days after the contact with the name and address of the former parent.

(5) If a petition to reinstate the parent-child legal relationship is filed, a former parent who is named in the petition and whose rights the petition seeks to have reinstated is entitled to appointed counsel through the office of the respondent parents' counsel pursuant to article 92 of title 13 if the former parent meets the income eligibility criteria for public counsel, or the former parent may retain counsel at his or her own expense.

(6) The petition must state the name and age of the child; the county department that has legal custody of the child; and the name and address of the former parent named in the petition. The petition shall be verified, and the statements in the petition may be made upon information and belief. The party filing a petition to reinstate the parent-child legal relationship shall serve the petition on the following nonmovants:

(a) The child's guardian ad litem;

(b) The county department with legal custody of the child; and

(c) The former parent whose parent-child legal relationship the petition seeks to have reinstated.

(7) Upon receipt of the petition for reinstatement of the parent-child legal relationship, the court must set a date for an initial hearing to take place no more than sixty-three days after the filing of the petition. The court shall provide notice of all hearings and reviews to:

(a) The county department with legal custody of the child;

(b) The guardian ad litem;

(c) The former parent whose parent-child legal relationship the petition seeks to have reinstated;

(d) The foster parents, if any; and

(e) The child's tribe if the child is an Indian child.

(8) At the initial hearing and all subsequent hearings on the petition, the court shall consider information from the county department with legal custody of the child, the child, the child's guardian ad litem, the former parent, the person or agency that is providing care for the child, and any other person or agency that may aid the court in its review.

(9) At the initial hearing, the court shall consider and make findings about the following threshold conditions for pursuing a reinstatement of the parent-child legal relationship:

(a) Whether the allegations for filing the petition in paragraphs (a) to (f) of subsection (2) of this section or in subsection (3) of this section have been established by clear and convincing evidence;

(b) Whether the child is of a sufficient age and maturity and able to express his or her preference about reinstatement of the parent-child legal relationship;

(c) Whether the former parent has remedied the conditions that led to the child's removal and termination of the parent-child legal relationship, if applicable;

(d) What temporary transition services would be needed by the child and the former parent to have a successful reinstatement of the parent-child legal relationship;

(e) Whether the former parent can provide a safe and stable home for the child; and

(f) Whether the former parent has participated in an assessment that supports that the reinstatement of the parent-child legal relationship is in the best interests of the child. The state board may adopt rules defining the types of assessments that may be done to support reinstatement of the parent-child legal relationship. A previous finding of termination does not disqualify the former parent from being certified as an appropriate placement for a trial period under this section.

(10) At the conclusion of the initial hearing, the court shall either dismiss the petition because the threshold conditions for reinstatement set forth in subsection (9) of this section have not been met or enter an order finding that the threshold conditions for reinstatement set forth in subsection (9) of this section have been met and that it is in the best interests of the child or youth to work toward reinstatement of the parent-child legal relationship. If the court finds that it is in the best interests of the child or youth to pursue reinstatement of the parent-child legal relationship, the court must approve a transition plan developed by the county department and designed for reinstatement of the parent-child legal relationship, including family time or placement of the child or youth with the former parent for a designated trial period of up to six months, during which time legal custody of the child or youth remains with the county department. As part of the transition plan, the county department shall provide transition services, as needed. The county department shall assess the family time or temporary placement of the child or youth with the former parent and prepare a report about the success of the family time or temporary placement. The county department shall submit the report to the court, the former parent, and the guardian ad litem not later than thirty days prior to the expiration of the designated trial period. The county department may stop the family time or remove the child or youth from placement with the former parent at any time, in accordance with the procedures outlined in sections 19-3-401 and 19-3-403, if it deems that the child or youth is not safe or that

it is no longer in the best interests of the child or youth for the child or youth to remain with the former parent.

(11) (a) The court shall schedule a final hearing prior to the expiration of the designated trial period. At the final hearing, the court shall consider the following:

(I) Whether the threshold criteria for reinstatement of the parent-child legal relationship set forth in subsection (9) of this section are still met;

(II) Whether the trial period of family time or placement of the child or youth with the former parent was successful;

(III) Whether the child will lose or gain any benefits or services as a result of reinstatement and how this might affect the child; and

(IV) Whether reinstatement of the parent-child legal relationship is in the best interests of the child.

(b) The court shall make findings supporting the disposition of the petition for reinstatement. The court may make the following orders:

(I) The court may grant the petition and order the reinstatement of the parent-child legal relationship if the court finds by clear and convincing evidence that it is in the best interests of the child to reinstate the parent-child legal relationship; or

(II) The court may dismiss the petition, in which case:

(A) The county department retains the legal custody of the child; and

(B) The county department shall arrange for the immediate placement of the child in out-of-home placement; and

(C) The court shall set a hearing to determine the permanency plan in accordance with section 19-3-702; or

(III) The court may continue the matter for no more than sixty days and may issue an order requiring the former parent or the county department to take certain actions before the next hearing; except that the court shall either dismiss or grant a motion for reinstatement of the parent-child legal relationship within twelve months after the date the petition for reinstatement was filed.

(12) An order reinstating the parent-child legal relationship restores all rights, powers, privileges, immunities, duties, and obligations of the former parent as to the child, including those relating to custody, control, and support of the child. If the parent-child legal relationship is reinstated, the court may require periodic review within ninety days after reinstatement.

(13) The granting of a petition for reinstatement of the parent-child legal relationship does not vacate or otherwise affect the validity of the original order terminating the parent-child legal relationship.

(14) The granting of a petition for reinstatement of the parent-child legal relationship for one former parent does not restore or otherwise impact the rights or legal status of the other former parent.

(15) A parent whose parent-child legal relationship is restored pursuant to this section is not liable for child support or the costs of any services provided to the child from the date of the original order terminating the parent-child legal relationship to the date of the order reinstating the parent-child legal relationship.

(16) This section does not create a cause of action against the county department or its employees concerning the original order terminating the parent-child legal relationship. Nothing in this section shall be construed to limit or alter the protections granted to public entities and to their employees under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 2014: Entire section added, (SB 14-062), ch. 77, p. 310, § 1, effective August 6. **L. 2019:** (5) amended, (HB 19-1104), ch. 14, p. 56, § 2, effective August 2. **L. 2020:** (1), IP(2), and (4) amended, (HB 20-1104), ch. 50, p. 174, § 1, effective September 14. **L. 2021:** (2)(a)(II) amended, (SB 21-059), ch. 136, p. 733, § 80, effective October 1. **L. 2022:** (3) amended, (HB 22-1038), ch. 92, p. 437, § 13, effective January 9, 2023. **L. 2023:** (10) and (11)(a)(II) amended, (HB 23-1027), ch. 284, p. 1683, § 17, effective June 1.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

PART 7

REVIEW OF PLACEMENT

Law reviews. For article, "Achieving Safe, Permanent Homes for Colorado Children", see 31 Colo. Law. 37 (Oct. 2002).

19-3-701. Petition for review of need for placement. (Repealed)

Source: L. 87: Entire title R&RE, p. 791, § 1, effective October 1. **L. 91:** (1) amended, p. 1159, § 4, effective July 1. **L. 92:** (2) amended, p. 225, § 12, effective July 1. **L. 93:** (1) amended, p. 1637, § 24, effective July 1; (1) amended, p. 1139, § 75, effective July 1, 1994. **L. 94:** (2)(c) and (6) amended, p. 2686, § 206, effective July 1. **L. 96:** (6) amended, p. 1247, § 117, effective August 7. **L. 97:** (6) amended, p. 1441, § 19, effective July 1. **L. 99:** (2)(c) and (6) amended, p. 912, § 8, effective July 1. **L. 2007:** Entire section repealed, p. 1509, § 5, effective May 31.

Cross references: For the legislative declaration contained in the 2007 act repealing this section, see section 1 of chapter 351, Session Laws of Colorado 2007.

19-3-702. Permanency hearing.

(1) (a) In order to provide stable, permanent homes for every child or youth placed out of the home, in as short a time as possible, a court shall conduct a permanency planning hearing. The court shall hold the permanency planning hearing as soon as possible following the initial hearing held pursuant to a proceeding pursuant to part 3 of article 7 of this title 19 or the initial dispositional hearing pursuant to this article 3; except that the permanency planning hearing must be held no later than ninety-one days after the initial decree of disposition. After the initial permanency planning hearing, the court shall hold additional hearings at least every six months while the case remains open or more often in the discretion of the court, or upon the motion of any party. The initial permanency hearing must be held within twelve months after the child or youth enters foster care, even when a dispositional decree has not yet been entered. When possible, the permanency planning hearing must be combined with the in-person six-month review as provided for in section 19-1-115 (4)(c), subsection (6)(a) of this section, or section 19-7-312. The court shall hold all permanency planning hearings in person, provide proper notice to all parties, and provide all parties the opportunity to be heard. The court shall consult with the child or youth in a developmentally appropriate manner regarding the child's or youth's permanency goal.

(b) If the court finds that reasonable efforts to reunify the child or youth and the parent are not required pursuant to section 19-1-115 (7) or if there is a finding that no appropriate treatment plan can be devised pursuant to section 19-3-508 (1)(d)(I), the court shall hold a permanency planning hearing within thirty days after the finding. If the court finds that reasonable efforts to reunify the child or youth and the parent are not required and a motion for termination has been filed pursuant to section 19-3-602, the permanency planning hearing and the hearing on the motion for termination may be combined, and the court shall make all determinations required at both hearings in the combined hearing.

(2) (a) When the court schedules a permanency planning hearing pursuant to this section, the court or designee of the court shall promptly issue a notice stating the purpose of the hearing. The notice must set forth the constitutional and statutory rights of the child's or youth's parents or guardian and the statutory rights of the child or youth. The notice of the hearing must comply with the requirements stated in section 19-3-502 (7) and must be sent to parents or guardians, placement providers, and named children or youth.

(b) The county department of human or social services shall propose a permanency plan for each child or youth, which plan must be completed and submitted to the court in the family services plan no later than five days in advance of the permanency planning hearing.

(3) At any permanency planning hearing, the court shall first determine if the child or youth should be returned to the child's or youth's parent, named guardian, or legal custodian and, if applicable, the date on which the child or youth must be returned. If the child or youth cannot be returned home, the court shall also determine whether reasonable efforts have been made to find a safe and stable permanent home for the child or youth. The court shall not delay permanency planning by considering the placement of children or youth together as a sibling group or for purposes of maintaining financial support for a certified kinship foster care home, unless there are exceptional circumstances approved by the court. At any permanency planning hearing, the court shall make the following determinations, when applicable:

(a) Whether procedural safeguards to preserve parental rights have been applied in connection with any change in the child's or youth's placement or any determination affecting family time of the child or youth;

(b) Whether reasonable efforts have been made to finalize the permanency goal;

(c) Whether ongoing efforts have been made to identify kin and relatives that are available to be a permanent placement for the child or youth;

(d) When the child or youth 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 or youth;

(e) Whether a child or youth who is fourteen years of age or older is receiving transition services to successful adulthood, regardless of his or her permanency goal; and

(f) Whether the current placement of the child or youth could be a permanent placement, if necessary.

(4) (a) If the child or youth cannot be returned to the physical custody of the child's or youth's parent or legal guardian on the date of the hearing, the court shall enter one or more of the following permanency goals, of which subsections (4)(a)(I) to (4)(a)(V) of this section may be adopted as concurrent goals pursuant to section 19-3-508 (7):

(I) Return home;

(II) Adoption with a relative;

(III) Permanent placement with a relative through legal guardianship or allocation of parental responsibilities;

(IV) Adoption with a nonrelative;

(V) Permanent placement with a nonrelative through legal guardianship or allocation of parental responsibilities;

(VI) (A) Other planned permanent living arrangements either through emancipation or long-term foster care.

(B) Other planned permanent living arrangements may only be used as a permanency goal for children or youth in exceptional circumstances for children sixteen years of age or older who have co-occurring complex conditions that preclude their return home, their adoption or legal guardianship, or allocation of parental responsibilities; or for children and youth who are in the unaccompanied refugee minor program, regardless of their age.

(C) Other planned permanent living arrangements may not be used as a concurrent goal.

(D) The court shall ask the child or youth about his or her desired permanency outcome when considering other planned permanent living arrangements.

(b) (I) The department shall document in the family services plan the compelling reasons why it is not in the best interest of the child or youth to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative. In addition, the department shall document intensive, ongoing, and unsuccessful efforts made to return the child or youth home or to a secure placement with a fit and willing relative, including adult siblings; a legal guardian; or an adoptive parent, including efforts that utilize search technology that includes social media to find biological family members for the children or youth.

(II) The department shall document in the family services plan and the court shall review whether the child's or youth's placement is following the reasonable and prudent parent standard and whether the child or youth has regular, ongoing opportunities to engage in age-appropriate activities.

(c) Prior to closing a case before a youth's eighteenth birthday, the court or the youth's guardian ad litem or counsel for youth shall notify the youth that the youth will lose the right to receive medicaid until the maximum age provided by federal law if the case is closed prior to the youth's eighteenth birthday. Prior to closing a case after a youth's sixteenth birthday, the court shall advise the youth of the youth's eligibility for the foster youth in transition program, created in section 19-7-303, should the youth later determine the youth needs child welfare assistance from a county department.

(d) Every child who is eighteen years of age or older who is leaving foster or kinship care must be provided with his or her birth certificate, social security card, health insurance information, medical records, either a driver's license or state-issued identification card, and proof of foster care.

(e) If the court finds that there is not a substantial probability that the child or youth will be returned to a parent or legal guardian within six months and the child or youth appears to be adoptable and meets the criteria for adoption in section 19-5-203, the court may order a county department of human or social services to show cause why it should not file a motion to terminate the parent-child legal relationship pursuant to part 6 of this article 3. Cause may include, but is not limited to, any of the following conditions:

(I) The parent or legal guardian has maintained regular parenting time and contact with the child or youth, and the child or youth would benefit from continuing this relationship;

(II) A child who is twelve years of age or older objects to termination of the parent-child legal relationship;

(III) The child's foster parents are unable to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal responsibility for the child. The foster parents must be willing and capable of providing the child with a stable and permanent environment, and it must be shown that removal of the child from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the child.

(III.5) The court, in a proceeding involving an Indian child, has determined that active efforts, as defined in section 19-1.2-103 and described in section 19-1.2-111, have not been made;

(IV) The criteria for termination in section 19-3-604 have not yet been met; or

(V) If the parent:

(A) Is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail; detained by the United States department of homeland security; or deported; and

(B) Has a meaningful and safe relationship with the child or youth while incarcerated, detained, or deported.

(5) For a child or youth in a case designated pursuant to section 19-1-123 only:

(a) A permanent home is the place in which the child or youth may reside if the child or youth is unable to return home to a parent or legal guardian. If the court determines by a preponderance of the evidence that a permanent home is not currently available or that the child's or youth's current needs or situation prohibit placement, the court must be shown and the court

must find that reasonable efforts, as defined in section 19-1-103, were made to find the child or youth an appropriate permanent home and such a home is not currently available or that a child's or youth's needs or situation prohibit the child or youth from a successful placement in a permanent home.

(b) Regardless of any permanent home findings made pursuant to this section, reasonable efforts shall continue to be made to return the child or youth home unless the court has previously found or finds that reunification is not an option pursuant to section 19-1-115 (7). Any findings by the court regarding a permanent home shall not delay or interfere with reunification of a child or youth with a parent or legal guardian.

(c) At a permanency planning hearing that occurs immediately prior to twelve months after the original placement of the child or youth out of the home, the court shall make a finding identifying whether the child or youth is in a placement that can provide legal permanency. The court must make this finding to ensure that a child or youth who has been removed from his or her home is placed in a permanent home as expeditiously as possible.

(d) The court shall review the case at a permanency planning hearing at least every six months until the court finds that the child or youth is in a permanent home. The permanency planning hearings must continue as long as the court is unable to find that the child or youth is in a permanent home. At each hearing, the court must be provided evidence that a child or youth is in a permanent home or that reasonable efforts, as defined in section 19-1-103, continue to be made to find the child or youth an appropriate permanent home and such a home is not currently available or that a child's or youth's needs or situation prohibit the child or youth from successful placement in a permanent home.

(e) At each permanency planning hearing, the caseworker shall provide the court with a written or verbal report specifying what efforts have been made to identify a permanent home for the child or youth and what services have been provided to the child or youth to facilitate identification of a permanent home, including the department's ongoing efforts to identify relatives and kin and to engage the relatives and kin in providing support for the child or youth and family, and document that the relatives and kin have been provided notice as required by section 19-3-403 (3.6)(a)(IV). The department shall also report any decision regarding placing the child or youth with a relative or kin. If the department determines not to place the child or youth with a relative or kin, after giving primary consideration to the child's or youth's mental, physical, and emotional needs, or if the department decides not to place a child or youth with a relative or kin because the placement would hinder efforts to reunite the child or youth and parent, the department shall explain why any identified relatives or kin have been ruled out for placement.

(f) In determining whether a child or youth is in a permanent home, the court shall consider placement of the children or youth together as a sibling group pursuant to section 19-3-213.

(6) If a placement change is contested by a party and the child or youth is not reunifying with a parent or legal guardian, the court shall consider all pertinent information, including the child's or youth's wishes, related to modifying the placement of the child or youth prior to removing the child or youth from the child's or youth's placement, and including the following:

(a) An individualized assessment of the child's or youth's needs created pursuant to Title IV-E of the federal "Social Security Act", as amended, and regulations promulgated thereunder, as amended;

(b) Whether the child's or youth's placement at the time of the hearing is a safe and potentially permanent home for the child or youth;

(c) The child's or youth's actual age and developmental stage and, in consideration of this information, the child's or youth's attachment needs;

(d) Whether the child or youth has significant psychological ties to a person who could provide a permanent home for the child or youth, including a relative, and, if so, whether this person maintained contact with the child or youth during the child's or youth's placement out of the home;

(e) Whether a person who could provide a permanent home for the child or youth is willing to maintain appropriate contact after an adoption of the child or youth with the child's or youth's relatives, particularly sibling relatives, when such contact is safe, reasonable, and appropriate;

(f) Whether a person who could provide a permanent home for the child or youth is aware of the child's or youth's culture and is willing to provide the child or youth with positive ties to his or her culture;

(g) The child's or youth's medical, physical, emotional, or other specific needs, and whether a person who could provide a permanent placement for the child or youth is able to meet the child's or youth's needs;

(h) The child's or youth's attachment to the child's or youth's caregiver at the time of the hearing and the possible effects on the child's or youth's emotional well-being if the child or youth is removed from the caregiver's home. However, placement with a child's or youth's relative or kin should not be denied based solely upon the ordinary bonding and attachment to a foster parent as a result of time spent in the home. The court shall consider the number of prior placements, the child's or youth's mental, physical, and emotional needs, and any subsequent caregivers' ability to provide emotional and psychological support when considering a change of placement.

(i) The child's or youth's preference regarding placement.

(7) (a) If a child's parent is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail, and the parent

has maintained a meaningful and safe relationship with the child while incarcerated, the court shall make findings regarding whether a permanent placement for the child exists that permits the parent to maintain a relationship with the child, including guardianship or allocation of parental responsibilities, giving primary consideration to the child's mental, physical, and emotional needs. If the proposed permanent placement would require the child to transfer to another placement, the court shall consider the factors in subsection (6) of this section in making its determination.

(b) In making a determination whether the parent who is incarcerated has maintained a meaningful and safe relationship with the child, the court shall give primary consideration to the child's mental, emotional, and physical needs, and whether the involvement of the parent who is incarcerated in the child's life serves the child's best interests. The court shall not find that the parent's incarceration is the sole reason that a relationship with the parent is not in the child's best interests, and shall consider the parent's efforts to comply with the treatment plan under the circumstances of incarceration.

Source: L. 89: Entire section added, p. 930, § 2, effective April 23. **L. 92:** (1), (2), (4), (6), and (8) amended, p. 225, § 13, effective July 1. **L. 93:** (1), (2), (4), (6), and (7) amended, p. 390, § 4, effective April 19; (5)(a)(I) amended, p. 582, § 20, effective July 1. **L. 94:** (1) and (3) amended and (2.5) added, p. 2057, § 9, effective July 1; (6) and (8) amended, p. 2687, § 207, effective July 1. **L. 98:** (1), (3), (4), and (6) amended, p. 1421, § 9, effective July 1. **L. 99:** (1), (2), (2.5), (3), (6), and (8) amended, p. 913, § 9, effective July 1. **L. 2000:** (2.7) added, p. 476, § 5, effective July 1. **L. 2001:** Entire section amended, p. 847, § 11, effective June 1. **L. 2003:** (1), (6)(a), (6)(b), and (8)(b) amended and (6.5) added, p. 2487, § 2, effective July 1. **L. 2005:** (9) added, p. 679, § 4, effective July 1. **L. 2007:** (1) and (1.5) amended and (3.7) added, p. 1018, § 9, effective May 22. **L. 2008:** (10) added, p. 1533, § 2, effective July 1. **L. 2015:** (9) amended, (HB 15-1337), ch. 328, p. 1342, § 3, effective June 5. **L. 2018:** (2), IP(2.5), and IP(5)(a) amended, (SB 18-092), ch. 38, p. 423, § 63, effective August 8. **L. 2019:** Entire section R&RE, (HB 19-1219), ch. 237, p. 2349, § 1, effective August 2. **L. 2021:** (1)(a) and (4)(c) amended, (HB 21-1094), ch. 340, p. 2217, § 6, effective June 25; (5)(a) and (5)(d) amended, (SB 21-059), ch. 136, p. 733, § 81, effective October 1. **L. 2022:** (4)(c), (5)(e), and IP(6) amended, (HB 22-1038), ch. 92, p. 437, § 14, effective January 9, 2023. **L. 2023:** (1)(a) and (3)(a) amended, (HB 23-1027), ch. 284, p. 1684, § 18, effective June 1; (5)(e) and (6)(h) amended and (6)(i) added, (HB 23-1024), ch. 367, p. 2214, § 6, effective August 7; (4)(e)(III) and (4)(e)(IV) amended and (4)(e)(V) and (7) added, (SB 23-039), ch. 191, p. 957, § 8, effective January 1, 2024. **L. 2024:** IP(3) amended, (SB 24-008), ch. 289, p. 1931, § 2, effective September 1. **L. 2025:** IP(4)(e) amended and (4)(e)(III.5) added, (HB 25-1204), ch. 338, p. 1815, § 3, effective August 6. **L. 2026:** IP(3) amended, (HB 26-1374), ch. 171, p. 1009, § 2, effective July 1.

Cross references: (1) For the legislative declaration contained in the 1993 act amending subsection (5)(a)(I), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the 1999 act amending subsections (1), (2), (2.5), (3), (6), and (8), see section 1 of chapter 233, Session Laws of Colorado 1999. For the legislative declaration contained in the 2001 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2005 act enacting subsection (9), see section 1 of chapter 194, Session Laws of Colorado 2005. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of Colorado 2023. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of Colorado 2023.

(2) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

ANNOTATION

Law reviews. For article, "Review of New Legislation Relating to Criminal Law", see 11 Colo. Law. 2148 (1982). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989). For article, "Permanency Planning in Dependency Cases", see 20 Colo. Law. 717 (1991). For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023).

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

The general assembly intended that this section apply to all children placed out of the home, not only to those placed into foster care. People ex rel. C.M., 116 P.3d 1278 (Colo. App. 2005).

Jurisdiction of court to determine placement. It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent. State Dept. of Soc. Servs. v. Arapahoe County Dept. of Soc. Servs., 642 P.2d 16 (Colo. App. 1981).

Section 19-1-109 (2)(c) is not meant to delay permanent placement decisions while appeals of dependency and neglect orders are litigated. Section 19-1-109 (2)(c) provides the trial court with continuing jurisdiction to enter further permanent custody orders under this section if it furthers the child's best interests, even if those orders are entered after the order adjudicating the child dependent or neglected is appealed. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

Once a petition for custody under § 14-10-123 is certified to be determined in a

hearing under this section, dissolution-of-marriage statutes cease to apply. Instead, provisions of the Colorado Children's Code govern, in view of the differing policies behind the respective statutes. People in Interest of D.C., 851 P.2d 291 (Colo. App. 1993).

Permanency order under this section held not final and appealable. People in Interest of H.R., 883 P.2d 619 (Colo. App. 1994).

Failure to hold permanency planning hearing within 18 months after out-of-home placement is not jurisdictional. People in Interest of R.W. and T.W., 989 P.2d 240 (Colo. App. 1999), aff'd sub nom. L.L. v. People, 10 P.3d 1271 (Colo. 2000).

In determining whether to return the child to the home, the court must consider whether the parent can provide reasonable parental care. Reasonable parental care means, at a minimum, providing nurturing and protection adequate to meet the child's physical, emotional, and mental health needs. People ex rel. A.W.R., 17 P.3d 192 (Colo. App. 2000).

A finding of unfitness not required in order to decline to award a parent permanent legal custody. Under this section, an award of permanent custody to a nonparent may be made even if a parent is not found to be unfit. People ex rel. C.M., 116 P.3d 1278 (Colo. App. 2005).

A finding that a parent is unfit is not required to award permanent custody to a nonparent to avoid violating a parent's due process rights, though subsection (4) requires the department to establish a compelling reason why it is not in a child's best interests to return home, and unfitness could be a compelling reason. People in Interest of M.D., 2014 COA 121, 338 P.3d 1120.

Mother's due process rights were not violated when the court changed the permanency plan and transferred the case to the district court for a termination hearing without first conducting a permanency hearing, but the mother was given a full and fair opportunity to address any issues regarding the change in the permanency plan at the termination hearing. People ex rel. M.B., 70 P.3d 618 (Colo. App. 2003).

Failure of a court to make express determinations as required by subsections (3.5)(a) and (3.5)(b) alone does not establish a failure by the court to observe procedural safeguards to protect a parent's rights or to ensure that reasonable efforts were undertaken to finalize a permanency plan. People in Interest of M.D., 2014 COA 121, 338 P.3d 1120.

Because subsection (5) uses the permissive "may", a court is not required to make findings about the impact of removing a child from a foster home. People in Interest of M.D., 2014 COA 121, 338 P.3d 1120.

Court not required to make a finding under subsection (5)(b) that a child's removal from a foster home would be seriously detrimental to the child's emotional well-being after a court finds there are compelling reasons that it would not be in a child's best interests to return to a parent's

home. People in Interest of M.D., 2014 COA 121, 338 P.3d 1120.

19-3-702.5. Periodic reviews.

(1) The court shall conduct a periodic review at least every six months and, at the periodic review, shall determine the following:

(a) Whether the child's or youth's safety is protected in the placement;

(b) Whether reasonable efforts have been made to find safe and permanent placement for the child or youth;

(c) The continuing necessity for and the appropriateness of the child's or youth's placement;

(d) The extent of compliance with the individual case plan pursuant to section 19-3-209, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement out of the home;

(e) A likely time frame in which the child or youth will be returned to a parent or legal guardian or be in a safe and permanent home; and

(f) If the child or youth is not likely to be returned to a parent or legal guardian within six months, a finding about whether the child or youth is in a potential permanent placement and if not, a likely time frame when he or she will be in a safe and permanent home.

Source: L. 2019: Entire section added, (HB 19-1219), ch. 237, p. 2354, § 2, effective August 2.

19-3-703. Permanent home. (Repealed)

Source: L. 94: Entire section added, p. 2058, § 10, effective July 1. **L. 98:** Entire section amended, p. 822, § 28, effective August 5. **L. 2001:** Entire section amended, p. 851, § 12, effective June 1. **L. 2019:** Entire section repealed, (HB 19-1219), ch. 237, p. 2355, § 3, effective August 2.

Cross references: For the legislative declaration contained in the 2001 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2001.

ANNOTATION

Law reviews. For article, "Report-Writing Tips for Guardians ad Litem in Dependency and Neglect Cases", see 31 Colo. Law. 87 (Oct. 2002).

Child in foster home with potential adoptive parents was in a "permanent home" for purposes of § 19-3-703 and removal from presumptively permanent home delayed placement. Therefore, department was required to show by clear and convincing evidence that (1) it was making reasonable efforts to find child an appropriate home, and (2) concerns about foster mother rendered that foster home "not currently available" pursuant to the statute. People ex rel. A.C., 304 P.3d 589 (Colo. App. 2011), aff'd sub nom. M.S. v. People, 2013 CO 35, 303 P.3d 102.

19-3-704. Youth with disabilities - incapacitated persons.

(1) A party may request the court to determine whether a youth is an incapacitated person, as defined in section 15-14-102. The motion must be filed with the court prior to the youth's eighteenth birthday.

(2) If there has been a determination, or if a determination is pending, that a youth is an incapacitated person, as defined in section 15-14-102, then jurisdiction continues as provided in section 19-3-205.

Source: L. 2021: Entire section added, (HB 21-1094), ch. 340, p. 2217, § 7, effective June 25.

19-3-705. Transition hearing.

(1) When a youth turns eighteen years of age while the youth is a named child or is a youth in a dependency and neglect case open through this article 3, the court shall hold a transition hearing within thirty-five days after the youth's eighteenth birthday. The purpose of the transition hearing is to determine whether the youth will opt into the foster youth in transition program, established in section 19-7-303, or, alternatively, choose to emancipate.

(2) At least seven days prior to a transition hearing, a county department shall file a report with the court that includes:

(a) A description of the county department's reasonable efforts toward achieving the youth's permanency goals and a successful transition to adulthood;

(b) An affirmation that the county department has provided the youth with all necessary records and documents, including copies of all documents listed in section 19-3-702 (4)(d),

health records, education records, and written information concerning the youth's family history and contact information for siblings, if available and appropriate;

(c) An affirmation that the county department has informed the youth, in a developmentally appropriate manner, of the benefits and options available to the youth by participating in the foster youth in transition program created in section 19-7-303 and the voluntary nature of that program; and

(d) A statement of whether the youth has made a preliminary decision whether to emancipate or to enter the foster youth in transition program created in section 19-7-303 and either or both of the following:

(I) If it is anticipated that the youth will choose to emancipate, the report must include a copy of the youth's emancipation transition plan executed pursuant to section 19-7-310, finalized no more than ninety days prior to the youth's transition; or

(II) If it is anticipated that the youth will choose to enter the foster youth in transition program created in section 19-7-303, the county department shall file a petition pursuant to section 19-7-307.

(3) The court shall advise the youth that:

(a) Except as provided in section 19-3-704, the youth has the right to choose whether to emancipate or to voluntarily continue receiving services through the foster youth in transition program created in section 19-7-303;

(b) To participate in the foster youth in transition program created in section 19-7-303, the youth must enter into a voluntary services agreement with the county department. The transition program provides the youth with access to financial support with housing and other services, as outlined in section 19-7-305.

(c) Services provided through the foster youth in transition program created in section 19-7-303 are voluntary for the youth, and the youth may remain in the transition program until the last day of the month in which the youth turns twenty-one years of age, or such greater age of foster care eligibility as required by federal law, so long as the youth meets all other program eligibility requirements pursuant to section 19-7-304;

(d) If the youth chooses to emancipate but later decides support is needed, the youth has the right to begin receiving child welfare services again through the foster youth in transition program, created in section 19-7-303, until the youth's twenty-first birthday or such greater age of foster care eligibility as required by federal law; and

(e) The youth has the right to counsel, who shall represent the youth throughout the youth's participation in the foster youth transition program. The court shall advise the youth that the current emancipation transition hearing may be continued for up to one hundred nineteen days if

the youth would like additional time to make a decision or to prepare for emancipation. The court shall ask the youth whether the youth has had sufficient opportunity to consult with counsel and if the youth is ready to make a decision at the current time or, alternatively, if the youth would like to request a continuance of up to one hundred nineteen days.

(4) Prior to a youth emancipating, the court shall:

(a) Review the youth's emancipation transition plan executed pursuant to section 19-7-310 and consult with the youth on readiness for emancipation;

(b) Determine whether the county department has made reasonable efforts toward the youth's permanency goal and a successful transition to adulthood;

(c) Determine whether the youth has been provided with all necessary records and documents described in subsection (2)(b) of this section; and

(d) Determine whether the youth has been enrolled in medicaid and advise the youth on the youth's eligibility for former foster care medicaid up to twenty-six years of age pursuant to section 26-5-113 and of the necessity of keeping the youth's contact information up to date.

(5) With the youth's consent, the court may continue the emancipation transition hearing for up to one hundred nineteen days to allow time to improve the youth's emancipation transition plan, gather necessary documents and records, or for any other reason necessary to allow the youth a successful transition to adulthood.

(6) If a youth is opting into the foster youth in transition program created in section 19-7-303 and a petition has been filed pursuant to section 19-7-307, the court shall dismiss the case pursuant to this article 3 or dismiss the youth from the case brought pursuant to this article 3, leave the case open for remaining siblings, and open a new case brought pursuant to part 3 of article 7 of this title 19. Such an action must not result in an interruption in case management services, housing, medicaid coverage, or in foster care maintenance payments.

Source: L. 2021: Entire section added, (HB 21-1094), ch. 340, p. 2217, § 7, effective June 25. **L. 2022:** (1) and (5) amended, (HB 22-1245), ch. 88, p. 418, § 5, effective August 10; (3)(e) amended, (HB 22-1038), ch. 92, p. 442, § 27, effective January 9, 2023.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

PART 8

TASK FORCE ON THE COLLECTION AND SECURITY OF DIGITAL IMAGES OF CHILD ABUSE OR NEGLECT

19-3-801 to 19-3-805. (Repealed)

Editor's note: (1) This part 8 was added in 2016 and was not amended prior to its repeal in 2019. For the text of this part 8 prior to its repeal in 2019, consult the 2018 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 19-3-805 provided for the repeal of this part 8, effective July 1, 2019. (See L. 2016, p. 1043.)

PART 9

TASK FORCE ON HIGH-QUALITY PARENTING TIME

Editor's note: (1) This part 9 was added in 2021. For amendments to this part 9 prior to its repeal in 2025, consult the 2024 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 19-3-905 provided for the repeal of this part 9, effective July 1, 2025. (See L. 2023, p. 1685.)

19-3-901 to 19-3-905. (Repealed)

ARTICLE 3.1

Dependency Proceedings for Unaccompanied Children or Youth in Federal Custody

19-3.1-101. Petition for dependency order for unaccompanied children or youth in federal custody - definition.

19-3.1-101. Petition for dependency order for unaccompanied children or youth in federal custody - definition.

(1) When an unaccompanied child in the custody of the federal office of refugee resettlement housed in a facility in Colorado has been subjected to parental abuse or neglect as defined in section 19-1-103 (1)(a) or subjected to the parental actions and omissions listed in section 19-3-102, that child may file a petition for a dependency order pursuant to this section with the juvenile court in the judicial district where the child is housed.

(2) (a) The petition must:

(I) Set forth the facts that bring the child under the court's jurisdiction pursuant to subsection (1) of this section;

(II) State the child's name, age, and country of birth; and

(III) Identify the facility in Colorado where the child is housed in the custody of the federal office of refugee resettlement.

(b) The statements in the petition may be made upon information and belief.

(c) The petition must not name the child's parent as a respondent. The petition must state clearly that parental rights may not be terminated through proceedings under this section.

(3) (a) The court shall schedule a hearing within thirty-five days after the petition is filed, unless a motion is made for a forthwith hearing because the child is approaching eighteen years of age or other emergent circumstances, in which case the court shall schedule the hearing within seven days. If the court finds the statements in the petition are supported by a preponderance of the evidence, the court shall declare the child dependent on the court. A child declared dependent pursuant to this section may be eligible for oversight and services by the office of the child protection ombudsman as described in section 19-3.3-103 (1)(b). Upon request, the court may also issue an order establishing the child's eligibility for classification as a special immigrant juvenile under federal law, including:

(I) Declaring the child dependent;

(II) Determining that reunification of the child with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found pursuant to state law. For purposes of this subsection (3)(a)(II), "abandonment" includes, but is not limited to, the death of one or both parents.

(III) Determining that it is not in the best interests of the child to be returned to the child's or parents' previous country of nationality or country of last habitual residence.

(b) The order may be entered at any time following the filing of the petition or at the hearing.

(4) The court shall not alter the child's custody status or placement unless the federal department of health and human services provides specific consent.

(5) The court may retain jurisdiction over the child until the child reaches eighteen years of age or until further order of the court.

(6) For purposes of this section, "dependent on the court" means a youth is under the juvenile court's jurisdiction; the youth was at any time adjudicated dependent or neglected, as described in section 19-3-102, or that the court has found sufficient evidence that the youth has been subjected to child abuse or neglect, as defined in section 19-1-103 (1)(a); and the youth is in need of oversight and supportive services as determined by the court.

Source: L. 2022: Entire article added, (HB 22-1319), ch. 391, p. 2770, § 1, effective June 7. **L. 2024:** (3) amended, (SB 24-119), ch. 33, p. 103, § 5, effective August 7. **L. 2025:** IP(3)(a) amended, (HB 25-1200), ch. 270, p. 1396, § 7, effective August 6.

ARTICLE 3.3

Office of the Child Protection Ombudsman

19-3.3-101. Legislative declaration.

19-3.3-101.5. Definitions.

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19-3.3-112. Systems and tools to prevent children or youth from running away - residential child care facility - report - definitions.

19-3.3-113. Office of the child protection ombudsman - access to state-licensed residential child care facilities and facilities - education of children and youth in state-licensed residential child care facilities and facilities.

19-3.3-101. Legislative declaration.

(1) The general assembly finds and declares that:

(a) Child abuse and neglect is a serious and reprehensible problem in society;

(b) The protection of children from abuse and neglect by applying prevention measures and observing best practices in treating children who are abused and neglected must be one of Colorado's highest public policy priorities;

(c) The child protection system must protect and serve Colorado's children in a manner that keeps them safe and healthy and promotes their well-being;

(d) The children and families served by the child protection system, as well as the public, must have a high level of confidence that the system will act in a child's best interests and will respond to the child's needs in a timely and professional manner;

(e) To engender this high level of confidence in the child protection system, it is important that children and families who become involved in the system, mandatory reporters, and the general public have a well-publicized, easily accessible, and transparent grievance process for voicing concerns regarding the child protection system along with the expectation that those concerns, once voiced, will be heard and addressed in a timely and appropriate manner; and

(f) To improve child protection outcomes and to foster best practices, there must be effective accountability mechanisms, including the review and evaluation of concerns voiced by children and families, mandatory reporters, persons involved in the child protection system, and members of the general public, that provide policymakers with the information necessary to formulate systemic changes, where appropriate.

(2) The general assembly further finds and declares that the establishment of the office of the child protection ombudsman will:

(a) Improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system; and

(b) Allow families, concerned citizens, mandatory reporters, employees of the state department and county departments, and other professionals who work with children and families to voice their concerns, without fear of reprisal, about the response by the child protection system to children experiencing, or at risk of experiencing, child maltreatment.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 974, § 1, effective May 14. **L. 2015:** IP(2) amended, (SB 15-204), ch. 264, p. 1031, § 14, effective June 2.

19-3.3-101.5. Definitions.

As used in this article 3.3, unless the context otherwise requires:

(1) "Board" means the child protection ombudsman board established pursuant to section 19-3.3-102 (2)(a).

(2) "Complaint" means a report or complaint relating to an action, inaction, or decision of a public agency or a provider that receives public money that may adversely affect the safety, permanency, or well-being of a child or youth.

(3) "Facility" means a facility established and operated by the state department pursuant to section 19-2.5-1502.

(4) "Office" means the office of the child protection ombudsman established pursuant to section 19-3.3-102 (1)(a).

(5) "Ombudsman" means the child protection ombudsman and director of the office appointed pursuant to section 19-3.3-102 (3)(a)(I).

(6) "Personnel files" has the same meaning as set forth in section 24-72-202.

(7) "State-licensed residential child care facility" has the same meaning as set forth in section 26-6-903.

(8) "Work product" has the same meaning as set forth in section 24-72-202.

Source: L. 2025: Entire section added, (SB 25-275), ch. 377, p. 2046, § 78, effective August 6; entire section added, (HB 25-1200), ch. 270, p. 1386, § 1, effective August 6.

Editor's note: This section added by SB 25-275 and HB 25-1200 was harmonized, resulting in the renumbering of subsections (2) and (3) in SB 25-275 to subsections (4) and (5), respectively.

19-3.3-102. Office of the child protection ombudsman established - child protection ombudsman advisory board - qualifications of ombudsman - duties.

(1) (a) The independent office of the child protection ombudsman is established in the judicial department as an independent agency for the purpose of ensuring the greatest protections for the children of Colorado.

(a.5) The office and the judicial department shall operate pursuant to a memorandum of understanding between the two entities. The memorandum of understanding contains, at a minimum:

(I) A requirement that the office has its own personnel rules;

(II) A requirement that the ombudsman has independent hiring and termination authority over office employees;

(III) A requirement that the office must follow judicial fiscal rules;

(IV) A requirement that the office of the state court administrator shall offer the office of the child protection ombudsman limited support with respect to:

(A) to (F) Repealed.

(G) Office space, facilities, and technical support limited to the building that houses the office of the state court administrator; and

(V) Any other provisions regarding administrative support that will help maintain the independence of the office.

(VI) Repealed.

(b) The office and the related child protection ombudsman board, established in subsection (2) of this section, shall operate with full independence. The board and office have complete autonomy, control, and authority over operations, budget, and personnel decisions related to the office, board, and ombudsman.

(c) The office shall work cooperatively with the child protection ombudsman board established in subsection (2) of this section, the department of human services and other child welfare organizations, as appropriate, to form a partnership between those entities and persons,

parents, and the state for the purpose of ensuring the greatest protections for the children of Colorado.

(2) (a) There is established an independent, nonpartisan child protection ombudsman board. The board consists of twelve members and, to the extent practicable, must include persons from throughout the state and persons with disabilities and must reflect the ethnic diversity of the state. All members must have child welfare policy or system expertise or experience.

(b) The board members must be appointed as follows:

(I) The chief justice of the Colorado supreme court shall appoint:

(A) An individual with experience as a respondent parents' counsel;

(B) An individual with experience defending juveniles in court proceedings;

(C) An individual with legal experience in dependency and neglect cases; and

(D) An individual with experience in criminal justice involving children and youth.

(II) The governor shall appoint:

(A) An individual with previous professional experience with a rural county human or social services agency or a rural private child welfare advocacy agency;

(B) An individual with previous professional experience with the department of human services;

(C) An individual with previous professional experience with an urban human or social services agency or an urban private child welfare agency; and

(D) An individual with experience in primary or secondary education.

(III) The president and minority leader of the senate shall appoint:

(A) An individual who was formerly a child in the foster care system; and

(B) An individual with professional experience as a county and community child protection advocate; and

(IV) The speaker and the minority leader of the house of representatives shall appoint:

(A) A current or former foster parent; and

(B) A health-care professional with previous experience with child abuse and neglect cases.

(c) Board members shall serve for terms of four years; except that the terms shall be staggered so that no more than six members' terms expire in the same year. The appointing officials shall fill any vacancies on the board for the remainder of any unexpired term.

(d) The board shall meet a minimum of two times per year and additionally as needed. At least one meeting per year must be held outside of the Denver metropolitan area.

(e) Board members shall serve without compensation but may be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(f) Expenses incurred for the board must be paid from the general operating budget of the office of the child protection ombudsman.

(3) The board has the following duties and responsibilities:

(a) To oversee the following personnel decisions related to the ombudsman:

(I) To appoint a person to serve as the child protection ombudsman and director of the office. The board may also discharge an acting ombudsman for cause. A two-thirds majority vote is required to hire or discharge the ombudsman. The general assembly shall set the ombudsman's compensation, and such compensation may not be reduced during the term of the ombudsman's appointment.

(II) Filling a vacancy in the ombudsman position;

(III) Evaluating the ombudsman's performance as determined necessary based on feedback received related to the ombudsman; and

(IV) Developing a public complaint process related to the ombudsman's performance;

(b) To oversee and advise the ombudsman on the strategic direction of the office and its mission and to help promote the use, engagement, and access to the office;

(c) To work cooperatively with the ombudsman to provide fiscal oversight of the general operating budget of the office and ensure that the office operates in compliance with the provisions of this article, the memorandum of understanding, and state and federal laws relating to the child welfare system;

(d) to (g) (Deleted by amendment, L. 2016.)

(h) To promote the mission of the office to the public; and

(i) To provide assistance, as practicable and as requested by the ombudsman, to facilitate the statutory intent of this article.

(4) Meetings of the board are subject to the provisions of section 24-6-402, C.R.S., except for executive personnel actions or meetings requiring the protection of confidentiality for children's or parents' personal data pursuant to the federal "Child Abuse Prevention and Treatment Act", Pub.L. 93-247, and state privacy laws.

(5) The records of the board and the office are subject to the provisions of part 2 of article 72 of title 24, C.R.S.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 975, § 1, effective May 14. **L. 2014:** (2)(a) amended, (SB 14-201), ch. 280, p. 1137, § 2, effective May 29. **L. 2015:** Entire section R&RE, (SB 15-204), ch. 264, p. 1022, § 1, effective June 2. **L. 2016:** (3) amended and (1)(a.5) added, (SB 16-013), ch. 102, p. 292, § 1, effective April 15. **L. 2022:** (1)(a), (2)(a), IP(2)(b), (2)(c), and (3)(a)(I) amended, (SB 22-013), ch. 2, p. 26, § 32, effective February 25. **L. 2023:** (1)(a.5)(VI) added, (SB 23-228), ch. 96, p. 362, § 4, effective April 20. **L. 2025:** (1)(a), (2)(a), and (3)(a)(I) amended, (SB 25-275), ch. 377, p. 2046, § 79, effective August 6; (1)(a), (2)(a), and (3)(a)(I) amended, (HB 25-1200), ch. 270, p. 1387, § 2, effective August 6.

Editor's note: Subsection (1)(a.5)(VI) provided for the repeal of subsections (1)(a.5)(IV)(A) to (1)(a.5)(IV)(F) and (1)(a.5)(VI), effective July 1, 2024. (See L. 2023, p. 362.)

19-3.3-103. Office of the child protection ombudsman - duties - access to information - confidentiality - testimony - judicial review - definitions.

(1) The ombudsman has the following duties, at a minimum:

(a) To receive and conduct an independent and impartial investigation of complaints concerning child protection services, including:

(I) Complaints made by or on behalf of a child;

(II) Complaints made by or on behalf of a child's or youth's family, caregiver, or other concerned individual;

(III) Complaints made by or on behalf of a child or youth pursuant to sections 19-2.5- 1502.5 (4)(c), 19-3-211 (5)(a), and 19-7-101 (2)(c)(II);

(IV) Complaints about an incident of egregious abuse or neglect; near fatality, as described in section 26-1-139; or a fatality of a child, as described in part 20.5 of title 25 and section 26-1-139;

(V) Complaints concerning systemic issues, including, but not limited to, statutory, budgetary, regulatory, and administrative issues affecting the safety of and outcomes for children, youth, and families receiving child protection services in Colorado; and

(VI) Complaints raised by members of the community relating to child protection policies or procedures.

(b) (I) Notwithstanding any provision of this section to the contrary, the ombudsman may self-initiate an independent and impartial investigation and ongoing review of the safety and

well-being of an unaccompanied immigrant child who lives in a state-licensed residential child care facility, as defined in section 26-6-903, and who is in the custody of the office of refugee resettlement of the federal department of health and human services as set forth in 8 U.S.C. sec. 1232 et seq. The ombudsman may seek resolution of such investigation and ongoing review, which may include, but need not be limited to, referring an investigation and ongoing review to the state department or appropriate agency or entity and making a recommendation for action relating to an investigation and ongoing review.

(II) (A) In self-initiating an investigation and ongoing review of the safety and well-being of an unaccompanied immigrant child who lives in a state-licensed residential child care facility, the ombudsman has the authority to request, review, and receive copies of any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent investigation and ongoing review as described in subsection (1)(b)(I) of this section, without cost to the ombudsman.

(B) A state-licensed residential child care facility shall notify the ombudsman and the state department within three days after the arrival of each unaccompanied immigrant child.

(C) The ombudsman may create and distribute outreach materials to a state-licensed residential child care facility and to individuals who may have regular contact with an unaccompanied immigrant child.

(III) As used in this subsection (1)(b), "unaccompanied immigrant child" means a child under the age of eighteen years, without lawful immigration status in the United States, who has been designated an unaccompanied child and transferred to the custody of the office of refugee resettlement of the federal department of health and human services pursuant to federal law.

(2) (a) In investigating a complaint described in subsection (1)(a) of this section, the ombudsman shall:

(I) Request, access, and review any information, documents, or records, including records of third parties, the ombudsman deems necessary to conduct an independent and impartial investigation of complaints pursuant to section 19-3.3-103.4;

(II) Seek resolution of a complaint, which may include, but is not limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint; and

(III) Refer any complaints relating to the judicial department and judicial proceedings, including, but not limited to, complaints concerning the conduct of judicial officers or attorneys of record, judicial determinations, and court processes and procedures, to the appropriate agency or entity. Nothing in this section grants the office the authority to access information, records, or documents to investigate a complaint made in regard to the provision of legal services by an independent judicial agency or its contractors.

(b) (I) Notwithstanding subsection (2)(a)(I) of this section to the contrary, the ombudsman shall not have access to:

(A) Personnel files;

(B) Work product;

(C) Information, documents, or records that may be protected by an agency's or entity's attorney-client privilege; or

(D) Information, documents, or records that may be protected by an agency's deliberative process privilege.

(II) If an agency or entity withholds information, documents, or records described in subsection (2)(b)(I) of this section from the ombudsman, the agency or entity shall communicate to the ombudsman that the information, documents, or records were withheld and the reasons for withholding the information, documents, or records.

(c) The ombudsman may decline to investigate a complaint or continue an investigation. If the ombudsman declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the decision and the reason for the ombudsman's actions.

(3) In addition to the duties described in subsection (1)(a) of this section, the ombudsman has the following duties:

(a) To report, as required by section 19-3.3-108, concerning the actions of the ombudsman related to the goals and duties of the office;

(b) To review the memorandum of understanding between the office and the judicial department and renegotiate such memorandum of understanding at any time as the office and the judicial department mutually deem appropriate;

(c) To act on behalf of the office and serve as signator for the office;

(d) To ensure accountability and consistency in the operating policies and procedures, including reasonable rules to administer the provisions of this article 3.3 and any other standards of conduct and reporting requirements as provided by law;

(e) To serve or designate a person to serve on the youth restraint and seclusion working group pursuant to section 26-20-110 (1)(i);

(f) To review and evaluate the effectiveness and efficiency of any existing grievance resolution mechanisms and to make recommendations to the general assembly, executive director, and any appropriate agency or entity for the improvement of the grievance resolution mechanisms;

(g) To help educate the public concerning issues and recommendations the ombudsman identifies, including on child maltreatment and the role of the community in strengthening families and keeping children safe;

(h) To promote best practices and effective programs relating to a publicly funded child protection system and to work collaboratively with county departments, when appropriate, regarding improvement of processes; and

(i) To recommend to the general assembly, the executive director, and any appropriate agency or entity statutory, budgetary, regulatory, and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado. Recommendations may address issues the ombudsman identifies during the course of an investigation of complaints, as described in subsection (1)(a) of this section. The ombudsman's recommendations are subject to public disclosure pursuant to article 72 of title 24.

(4) Nothing in this article 3.3 directs or authorizes the ombudsman to intervene in any criminal or civil judicial proceeding or to interfere in a criminal investigation.

(5) In the performance of the ombudsman's duties, the ombudsman shall act independently of any public agency or provider that receives public money and that may adversely affect the safety, permanency, or well-being of a child or youth, including the division within the department of early childhood that is responsible for child care, the divisions within the state department that are responsible for child welfare or youth services, the county departments of human or social services, and all judicial and independent agencies. Any recommendations made by the ombudsman or positions taken by the ombudsman do not reflect those of any public agency, including the department of early childhood, state department, judicial department and independent agencies, or county departments of human or social services.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 976, § 1, effective May 14. **L. 2014:** IP(1) and IP(2) amended, (SB 14-201), ch. 280, p. 1137, § 3, effective May 29. **L. 2015:** (1)(a)(I)(A), (1)(a)(II)(B), (1)(c), (2)(b), (2)(e), (3), and (5) amended, (SB 15-204), ch. 264, pp. 1026, 1031, §§ 2, 15, effective June 2. **L. 2016:** (1)(b) and (1)(c) amended and (1)(d), (1)(e), and (1)(f) added, (SB 16-013), ch. 102, p. 294, § 2, effective April 15. **L. 2017:** (5) amended, (HB 17-1329), ch. 381, p. 1978, § 43, effective June 6. **L. 2018:** (1)(e) and (1)(f) amended and (1)(g) added, (HB 18-1010), ch. 25, p. 283, § 4, effective March 7. **L. 2021:** (1)(a)(I), (1)(a)(II), (2)(d), and (2)(e) amended and (2)(f) added, (HB 21-1272), ch. 324, p. 1984, § 1, effective June 24; (1)(a.5) added, (HB 21-1313), ch. 416, p. 2768, § 1, effective July 2. **L. 2022:** (1)(a)(II)(D), (1)(a.5)(I), (3), and (5) amended, (HB 22-1295), ch. 123, p. 836, § 42, effective July 1. **L. 2025:** Entire section amended, (HB 25-1200), ch. 270, p. 1387, § 3, effective August 6.

ANNOTATION

Ombudsman does not have statutory authority to access information for an investigation by filing motions in cases in which it is not a party but rather must proceed in accordance with the Colorado Open Records Act. People in Interest of C.J.T., 2023 CO 60, 546 P.3d 1150.

19-3.3-103.4. Office of the child protection ombudsman - access to information.

(1) (a) (I) In investigating a complaint, the office has the authority to request, access, and review any information, records, or documents, including records of third parties, that the office deems necessary to conduct a thorough and independent review of a complaint or event described in section 19-3.3-103 (1)(a). In the investigation of a complaint or event described in section 19-3.3-103 (1)(a) that occurs in the state, the office must have access to information, records, or documents that either the state department, the department of early childhood, or a county department would be entitled to access or receive.

(II) The ombudsman shall not have access to information, documents, or records described in section 19-3.3-103 (2)(b)(I).

(b) (I) The office must have access to all information, records, or documents that the office deems necessary to conduct a thorough and independent review of a complaint or event described in section 19-3.3-103 (1)(a) occurring in the state from any entity, including, but not limited to, a coroner's office, law enforcement agency, hospital, court, the office of state registrar of vital statistics described in section 25-2-103, and a state-licensed out-of-home placement provider, as defined in section 26-5-104.

(II) The ombudsman shall not have access to information, documents, or records described in section 19-3.3-103 (2)(b)(I).

(c) (I) In the course of investigating a complaint described in section 19-3.3-103 (1)(a) that is related to a child fatality, near fatality, or incident of egregious abuse or neglect against a child, as defined in section 26-1-139 (2), upon request, the state department of human services' child fatality review team, pursuant to section 26-1-139 (5)(e), shall provide the office the final confidential, case-specific review report.

(II) In the course of investigating a complaint described in section 19-3.3-103 (1)(a) that is related to a child fatality, upon request, the department of public health and environment's child fatality prevention review team, pursuant to section 25-20.5-405, shall provide the office with the nonidentifying case review findings and recommendations.

(2) (a) The state department shall ensure the office has unrestricted access to TRAILS, as defined in section 26-5-118.

(b) For educational purposes, the state department shall ensure office employees are permitted to attend the child welfare training academy established in section 26-5-109.

(3) The office shall request, review, and receive copies of records as described in subsection (1) of this section without cost if electronic records are not available.

(4) Nothing in this section grants subpoena power to the ombudsman, employees of the office, and any other person acting on behalf of the office for purposes of investigating a complaint described in section 19-3.3-103 (1)(a).

Source: L. 2025: Entire section added, (HB 25-1200), ch. 270, p. 1392, § 4, effective August 6.

Editor's note: Several provisions of this section are similar to former § 19-3.3-103 (1)(a)(II) as it existed prior to 2025. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Ombudsman does not have statutory authority to access information for an investigation by filing motions in cases in which it is not a party but rather must proceed in accordance with the Colorado Open Records Act. People in Interest of C.J.T., 2023 CO 60, 546 P.3d 1150 (decided prior to 2025 amendment relocating former § 19-3.3-103 (1)(a)(II) to this section).

19-3.3-103.5. Office of the child protection ombudsman - confidentiality.

(1) The ombudsman, employees of the office, and any person acting on behalf of the office shall comply with all state and federal confidentiality laws that govern the department of early childhood, the state department, or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records.

(2) (a) The office shall treat all complaints received pursuant to section 19-3.3-103 (1)(a) as confidential, including the identities of complainants and individuals from whom information is acquired; except that disclosures may be permitted if the ombudsman deems it necessary to enable the ombudsman to perform the ombudsman's duties and to support any recommendations resulting from an investigation.

(b) Records relating to complaints received by the office and the investigation of complaints are exempt from public disclosure pursuant to article 72 of title 24.

(c) The ombudsman and any employee or person acting on behalf of the ombudsman shall not be compelled to provide oral and written testimony in a civil or criminal proceeding in which the ombudsman is not a legal party. Information, records, or documents requested and reviewed by the ombudsman pursuant to this section are not subject to a subpoena issued to the ombudsman, discovery from the ombudsman, or introduction into evidence through the ombudsman in a civil or criminal proceeding in which the ombudsman is not a legal party. Nothing in this subsection (2)(a) restricts or limits the right to discover or use in a civil or criminal action evidence that is discoverable independent of the proceedings of the ombudsman.

Source: L. 2025: Entire section added, (HB 25-1200), ch. 270, p. 1392, § 4, effective August 6.

Editor's note: Subsections (2)(a) and (2)(c) are similar to former § 19-3.3-103 (1)(a)(I)(B) and (1)(a)(I)(C), respectively, as they existed prior to 2025.

ANNOTATION

Ombudsman does not have statutory authority to access information for an investigation by filing motions in cases in which it is not a party but rather must proceed in accordance with the Colorado Open Records Act. People in Interest of C.J.T., 2023 CO 60, 546 P.3d 1150 (decided prior to 2025 amendment relocating former § 19-3.3-103 (1)(a)(I)(B) and (1)(a)(I)(C) to this section).

19-3.3-104. Qualified immunity.

The ombudsman and employees or persons acting on behalf of the office are immune from suit and liability, either personally or in their official capacities, for any claim for damage to or loss of property, or for personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred within the scope of employment, duties, or responsibilities pertaining to the office, including but not limited to issuing reports or recommendations; except that nothing in this section shall be construed to protect such persons from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 978, § 1, effective May 14. **L. 2015:** Entire section amended, (SB 15-204), ch. 264, p. 1032, § 16, effective June 2.

19-3.3-105. Advisory work group - development of plan for autonomy and accountability - repeal. (Repealed)

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 978, § 1, effective May 14. **L. 2014:** Entire section R&RE, (SB 14-201), ch. 280, p. 1135, § 1, effective May 29.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2016. (See L. 2014, p. 1135.)

19-3.3-106. Award of contract - extension - repeal. (Repealed)

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 979, § 1, effective May 14. **L. 2014:** (1)(a) amended, (SB 14-201), ch. 280, p. 1137, § 4, effective May 29. **L. 2015:** Entire section amended, (SB 15-204), ch. 264, p. 1027, § 3, effective June 2.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2016. (See L. 2015, p. 1027.)

19-3.3-107. Child protection ombudsman program fund - created - repeal. (Repealed)

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 980, § 1, effective May 14. **L. 2015:** (4) amended and (5) added, (SB 15-204), ch. 264, p. 1027, § 4, effective June 2.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2016. (See L. 2015, p. 1027.)

19-3.3-108. Office of the child protection ombudsman - annual report.

(1) On or before September 1 of each year, commencing with the September 1 following the first fiscal year in which the office was established, the ombudsman shall prepare a written report

that must include, but need not be limited to, information from the preceding fiscal year and any recommendations concerning the following:

(a) Actions taken by the ombudsman relating to the duties of the office set forth in section 19-3.3-103;

(b) Statutory, regulatory, budgetary, or administrative changes relating to child protection, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child welfare services in Colorado;

(c) Results of the ombudsman's self-initiated investigation and ongoing review of the safety and well-being of an unaccompanied immigrant child who is housed in a state-licensed residential child care facility, as described in section 19-3.3-103.

(d) Updates on outreach efforts to state-licensed residential child care facilities and facilities established and operated by the department of human services as described in section 19-3.3-113 (2)(c).

(2) Notwithstanding section 24-1-136 (11)(a)(I), the ombudsman shall distribute the written report to the governor, the chief justice, the board, and the general assembly. The ombudsman shall present the report to the health and human services committees of the house of representatives and of the senate, or any successor committees.

(3) The ombudsman shall post the annual report on the office of the child protection ombudsman's website and the general assembly's website.

(4) The ombudsman shall present or communicate quarterly updates to the board on the activities of the office.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 980, § 1, effective May 14. **L. 2015:** IP(1), (1)(a), (2), and (3) amended, (SB 15-204), ch. 264, pp. 1028, 1027, §§ 7, 5, effective June 2. **L. 2016:** (2) amended and (4) added, (SB 16-013), ch. 102, p. 295, § 3, effective April 15. **L. 2017:** (2) amended, (SB 17-234), ch. 154, p. 521, § 6, effective August 9. **L. 2021:** IP(1) amended and (1)(c) added, (HB 21-1313), ch. 416, p. 2769, § 2, effective July 2. **L. 2025:** (1)(d) added, (HB 25-1200), ch. 270, p. 1396, § 6, effective August 6.

19-3.3-109. Review by the state auditor's office.

At the discretion of the legislative audit committee, the state auditor shall conduct or cause to be conducted a performance and fiscal audit of the office.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 981, § 1, effective May 14. **L. 2014:** Entire section amended, (SB 14-201), ch. 280, p. 1138, § 5, effective May 29. **L. 2015:** Entire section amended, (SB 15-204), ch. 264, p. 1028, § 8, effective June 2. **L. 2016:** Entire section amended, (SB 16-013), ch. 102, p. 295, § 4, effective April 15.

19-3.3-110. Funding recommendations.

The ombudsman shall make funding recommendations to the joint budget committee of the general assembly for the operation of the office of the child protection ombudsman. The general assembly shall make annual appropriations, in such amount and form as the general assembly determines appropriate, for the operation of the office.

Source: L. 2015: Entire section added, (SB 15-204), ch. 264, p. 1028, § 6, effective June 2.

19-3.3-111. Task force to prevent youth from running from out-of-home placement - creation - membership - duties - report - definitions - repeal. (Repealed)

Source: L. 2022: Entire section added, (HB 22-1375), ch. 384, p. 2742, § 1, effective June 7. **L. 2023:** (1)(d) and (3)(a)(VII)(F) amended, (HB 23-1301), ch. 303, p. 1822, § 24, effective August 7.

Editor's note: Subsection (8) provided for the repeal of this section, effective June 30, 2025. (See L. 2022, p. 2742.)

19-3.3-112. Systems and tools to prevent children or youth from running away - residential child care facility - report - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Child or youth who has run away" means a child or youth who has left and remains away from a residential child care facility without permission.

(b) "Residential child care facility" has the same meaning as set forth in section 26-6-903.

(2) (a) The office shall conduct a statewide inventory survey of the physical infrastructure of residential child care facilities to address, at a minimum:

(I) The physical infrastructure currently in place to deter children and youth from running away; and

(II) The physical infrastructure needed to deter children and youth from running away.

(b) The office shall consult with the state department to develop the inventory survey. Physical infrastructure needs may include, but are not limited to, the use of delayed egress locks, alarms, fencing, signs, and lighting.

(3) On or before July 1, 2026, the office shall submit a report to the health and human services committees of the house of representatives and the senate, or their successor committees, that summarizes the results of the physical infrastructure survey of residential child care facilities conducted pursuant to subsection (2)(a) of this section.

Source: L. 2025: Entire section added, (SB 25-151), ch. 70, p. 305, § 2, effective April 10.

Cross references: For the legislative declaration in SB 25-151, see section 1 of chapter 70, Session Laws of Colorado 2025.

19-3.3-113. Office of the child protection ombudsman - access to state-licensed residential child care facilities and facilities - education of children and youth in state-licensed residential child care facilities and facilities.

(1) (a) A state-licensed residential child care facility and a facility shall provide physical access to their facilities pursuant to this subsection (1)(a). The office may only access a state-licensed residential child care facility or a facility in coordination with the facility directors:

(I) In response to a request from a child or youth residing in the state-licensed residential child care facility or facility;

(II) In response to a request from a child's or youth's family member, caregiver, or other concerned individual; or

(III) To distribute materials pursuant to subsection (2)(a) of this section.

(b) A state-licensed residential child care facility or facility shall not deny the office access to the state-licensed residential child care facility or facility to carry out the office's duties as described in this section or section 19-3.3-103.

(c) Dependent upon available resources and at the discretion of the ombudsman, the office may meet with the child or youth via a confidential, virtual meeting.

(d) Upon a child's or youth's request, the state-licensed residential child care facility or facility shall provide a private and confidential space for the child or youth to meet with the ombudsman, an office employee, or a person acting on behalf of the ombudsman.

(e) The ombudsman, an employee of the office, or a person acting on behalf of the ombudsman is subject to the protocol and policies of each state-licensed residential child care facility and facility.

(2) (a) The office shall create and distribute outreach materials to state-licensed residential child care facilities and facilities. The materials must contain information on how to access the office, the office's services, and how to file a complaint with the office.

(b) Each state-licensed residential child care facility and facility shall display the materials described in subsection (2)(a) of this section in a location visible to children or youth receiving services from the residential child care facility or facility.

(c) The office shall supply the materials described in subsection (2)(a) of this section at the office's expense. The office shall provide updates on outreach efforts in its annual report described in section 19-3.3-108.

(d) The office shall coordinate with each state-licensed residential child care facility and facility to provide in-person educational courses to children and youth residing in the facilities on how to access the office, the office's services, and how to file a complaint with the office.

(3) The office and each state-licensed residential child care facility or facility shall operate pursuant to a memorandum of understanding between the office and each residential child care facility or facility. The memorandum of understanding must, at a minimum, require that:

(a) The office provides each state-licensed residential child care facility or facility with notice of a child's or youth's request to visit with the ombudsman within forty-eight business hours after receiving the request;

(b) The state-licensed residential child care facility or facility provides the ombudsman access to a facility and a private, confidential space to meet with a child or youth within five business days after the office receives the child's or youth's request to meet;

(c) The office provides the state-licensed residential child care facility or facility with notice at least five business days before the office would like to enter the state-licensed residential child care facility or facility to distribute materials pursuant to subsection (2)(a) of this section;

(d) The state-licensed residential child care facility or facility provides the office with proof that the materials described in subsection (2)(a) of this section are displayed in a location visible to children or youth as required pursuant to this section; and

(e) Certain processes occur to provide a child or youth a confidential, virtual meeting to meet with the ombudsman, an employee of the office, or a person acting on behalf of the office.

(4) This section does not grant the office authority to conduct activities described in part 9 of article 6 of title 26.

Source: L. 2025: Entire section added, (HB 25-1200), ch. 270, p. 1394, § 5, effective August 6.

ARTICLE 3.5

Colorado Child Abuse Prevention Trust Fund Act

19-3.5-101 to 19-3.5-107. (Repealed)

Source: L. 2022: Entire article repealed, (HB 22-1295), ch. 123, p. 870, § 135, effective July 1.

Editor's note: (1) This article 3.5 was added in 1989. For amendments to this article 3.5 prior to its repeal in 2022, consult the 2021 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article 3.5 was relocated to part 2 of article 3 of title 26.5. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 3.5, see the comparative tables located in the back of the index.

(2) Section 19-3.5-103 (1) was amended in SB 22-162. Those amendments were superseded by the repeal of this article 3.5 in HB 22-1295.

ARTICLE 4

Uniform Parentage Act

19-4-101. Short title.
19-4-102. Parent and child relationship defined.
19-4-102.5. Terms defined.
19-4-103. Relationship not dependent on marriage.
19-4-104. How parent and child relationship established.
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19-4-105.6. Amendment of proceedings - adding children.

19-4-105.7. Stay of paternity proceedings - criminal charges of allegations of sexual assault. (Repealed)

19-4-106. Assisted reproductive procedures.

19-4-107. Determination of father and child relationship - who may bring action - when action may be brought.

19-4-107.3. When determination of parentage is final - modifications - exceptions.

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19-4-108. Statute of limitations.

19-4-109. Jurisdiction - venue.

19-4-110. Parties.

19-4-111. Pretrial proceedings.

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19-4-113. Evidence relating to paternity.

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19-4-115. Civil action.

19-4-116. Judgment or order - birth-related costs - evidence.

19-4-117. Costs.

19-4-118. Enforcement of judgment or order.

19-4-119. Modification of judgment or order.

19-4-120. Represented by counsel.

19-4-121. Hearings and records - confidentiality. (Repealed)

19-4-122. Action to declare mother and child relationship.

19-4-123. Promise to render support.

19-4-124. Birth records.

19-4-125. "Father" defined.

19-4-126. Uniformity of application and construction.

19-4-127. Severability.

19-4-128. Right to trial to court.

19-4-129. Child support - guidelines - schedule of basic support obligations.

19-4-130. Temporary orders for allocation of parental responsibilities.

19-4-101. Short title.

This article shall be known and may be cited as the "Uniform Parentage Act".

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R.McG. v. J.W.", see 59 Den. L.J. 157 (1981).

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

One basic purpose of this article is the establishment of the parent-child relationship, and another is the protection of that relationship. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

No provision for father not married to married natural mother to establish paternity. This article makes no provision for a male claiming to be the natural father of a child to bring an action to establish his paternity under circumstances where he was not married to the natural mother and the child was born to the natural mother during her marriage to another. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

And denial of standing unconstitutional. The juvenile court's construction of this article denying a claiming natural father not married to the natural mother statutory capacity or standing to commence a paternity action in connection with a child born to the natural mother during her marriage to another in order to establish that he was the natural father of the child violated equal protection of the laws under the fourteenth amendment to the United States constitution, § 25 of art. II, Colo. Const., and the equal rights amendment to the Colorado constitution, § 29 of art. II, Colo. Const. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Test for in personam jurisdiction over child. The test to be applied in determining whether a court has in personam jurisdiction over a child in a paternity action is whether the child has certain minimum contacts so that "the maintenance of the suit does not offend traditional notions of fair play and substantial justice". Smith v. Casey, 198 Colo. 433, 601 P.2d 632 (1979).

19-4-102. Parent and child relationship defined.

As used in this article, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. "Parent and child relationship" includes the mother and child relationship and the father and child relationship.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981). For comment, "The Unwed Father's Parental Rights and Obligations After S.P.B.: A Retreat in Constitutional Protection", see 60 Den. L.J. 659 (1983).

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

One basic purpose of this article is the establishment of the parent-child relationship, and another is the protection of that relationship. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

The definition of a "parent and child relationship" applies to a parent and child relationship once it has been declared and clarifies that it is the legal equivalent of the traditional relationships recognized between children and their adoptive or natural parents. A presumed father's admission that he is not the biological parent does not necessarily rebut the presumption of fatherhood that arises by receiving the child into his home and openly holding that child out as his natural child when no judgment has been entered that establishes the paternity of another man. In re A.D., 240 P.3d 488 (Colo. App. 2010).

Applied in People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

19-4-102.5. Terms defined.

(1) Any reference in the statutes, administrative rules, court rules, government policies, common law, and any other provision or source of law in this state to an "acknowledgment of paternity" means an "acknowledgment of parentage", as described in this section.

(2) Unless the context otherwise requires, any reference in this title 19 to "father" includes a parent of any gender, any reference to "mother" includes a parent of any gender, and any reference to "paternity" is equally applicable to "parentage".

(3) Unless the context otherwise requires, as used in this title 19, "natural parent" means a nonadoptive parent established pursuant to this article 4, whether or not biologically related to the child.

(4) Any reference in the statutes, administrative rules, court rules, government policies, common law, and any other provision or source of law in this state to "spouse", "husband", or "wife", or to the plurals of such terms, are equally applicable to a civil union partner. Any reference to "marriage", "marital union", "marital status", "married", "unmarried", "wedlock", or any similar term is equally applicable to the status of being in a civil union or not in a civil union.

Source: L. 2022: Entire section added, (HB 22-1153), ch. 210, p. 1389, § 3, effective August 10.

ANNOTATION

Psychological mother's actions were not sufficient to put the juvenile court on notice that she sought to be recognized as the child's "natural parent" because the psychological mother did not object to statements made in the juvenile court proceedings that alluded to the biological mother as being the child's natural mother; did not object to the department's amended petition, which recognized the biological mother as the child's parent and the psychological mother as the child's custodian; and did not raise a question of maternity until her motion to reconsider the juvenile court's dismissal order. People in Interest of C.D.P., 2023 COA 90, 541 P.3d 43.

19-4-103. Relationship not dependent on marriage.

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981). For comment, "The Unwed Father's Parental Rights and Obligations After S.P.B.: A Retreat in Constitutional Protection", see 60 Den. L.J. 659 (1983).

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

One basic purpose of this article is the establishment of the parent-child relationship, and another is the protection of that relationship. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Applied in People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

19-4-104. How parent and child relationship established.

The parent and child relationship may be established between a child and the natural mother by proof of her having given birth to the child or by any other proof specified in this article, between a child and the natural father pursuant to the provisions of this article, or between a child and an adoptive parent by proof of adoption.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

One basic purpose of this article is the establishment of the parent-child relationship, and another is the protection of that relationship. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Section authorizes establishment of paternal relationship between a child and its natural father and recognizes the right of putative fathers to bring an action to establish paternity under the applicable provisions of this article. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

No provision for father not married to married natural mother to establish paternity. This article makes no provision for a male claiming to be the natural father of a child to bring an action to establish his paternity under circumstances where he was not married to the natural mother and the child was born to the natural mother during her marriage to another. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

19-4-105. Presumption of paternity.

(1) A person is presumed to be the natural parent of a child if:

(a) The person and the parent who gave birth to the child are or have been married to each other or are in a civil union pursuant to article 15 of title 14, and the child is born during the marriage or civil union, within three hundred days after the marriage or civil union is terminated by death, annulment, declaration of invalidity of marriage or civil union, dissolution of marriage or civil union, or divorce, or after a decree of legal separation is entered by a court;

(b) Before the child's birth, the person and the parent who gave birth to the child have attempted to marry each other by a marriage solemnized in apparent compliance with law or attempted to enter into a civil union in apparent compliance with law, although the attempted marriage or civil union is or could be declared invalid, and:

(I) If the attempted marriage or civil union could be declared invalid only by a court, the child is born during the attempted marriage or civil union or within three hundred days after its termination by death, annulment, declaration of invalidity of marriage or civil union, dissolution of marriage or civil union, or divorce; or

(II) If the attempted marriage or civil union is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;

(c) After the child's birth, the person and the parent who gave birth to the child have married or entered into a civil union, or attempted to marry each other by a marriage solemnized in apparent compliance with law or enter into a civil union in apparent compliance with law, although the attempted marriage or civil union is or could be declared invalid, and:

(I) The person has asserted parentage of the child in writing filed with the court or registrar of vital statistics, if such acknowledgment has not previously become a legal finding pursuant to subsection (2)(a.5) of this section;

(II) With the person's consent, the person is named as the child's parent on the child's birth certificate; or

(III) The person is obligated to support the child under a written voluntary promise or by court order or by an administrative order issued pursuant to section 26-13.5-110;

(d) While the child is under the age of majority, the person receives the child into the person's home and openly holds out the child as the person's natural child;

(e) (Deleted by amendment, L. 2022.)

(f) The genetic tests or other tests of inherited characteristics have been administered pursuant to section 13-25-126, and the results show that the alleged genetic parent is not excluded as the probable genetic parent and that the probability of the person's genetic parentage is ninety-seven percent or higher. This subsection (1)(f) does not apply to a donor as defined in section 19-1-103.

(2) (a) A presumption of parentage pursuant to subsection (1) of this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more conflicting presumptions arise, 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 parentage of the child by another person other than the parent who gave birth. In determining which of two or more conflicting presumptions controls, 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:

(I) The length of time between the proceeding to determine parentage and the time that the presumed parent was placed on notice that the presumed parent might not be the genetic parent, unless the child was conceived through an assisted reproductive procedure;

(II) The length of time during which the presumed parent has assumed the role of the child's parent;

(III) The facts surrounding the presumed parent's discovery of the possibility that the presumed parent was not a genetic parent, unless the child was conceived through an assisted reproductive procedure;

(IV) The nature of the existing parent-child relationship;

(V) The child's age;

(VI) The child's relationship to any presumed parent or parents;

(VII) The extent to which the passage of time reduces the chances of establishing another person's parentage and a child support obligation in favor of the child; and

(VIII) Any other factors that may affect the equities arising from the disruption of the parent-child relationship between the child and the presumed parent or parents or the chance of other harm to the child.

(a.5) (I) A person and the parent who gave birth to the child may sign a voluntary acknowledgment of parentage to establish the parentage of the child. A voluntary acknowledgment of parentage may be signed by a parent who gave birth to the child and either:

(A) Another person who is or believes themselves to be a genetic parent; or

(B) Another person who is an intended parent of a child conceived through an assisted reproductive procedure.

(II) A married person or person in a civil union who gives birth to a child may only sign a voluntary acknowledgment of parentage with a person who is not the married person's spouse or civil union partner if the spouse or civil union partner signs a denial of parentage.

(b) A duly executed voluntary acknowledgment of parentage takes effect upon the filing of the document with the state registrar of vital statistics and may be rescinded within the earlier of:

(I) Sixty days after execution of such acknowledgment; or

(II) On the date of any administrative or judicial proceeding pursuant to this article or any administrative or judicial proceeding concerning the support of a child to which the signatory is a party.

(c) An acknowledgment of parentage 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 parentage, including child support obligations, continue during any challenge to the finding of parentage, except for good cause shown.

(d) Except as otherwise provided in subsections (2)(b) and (2)(c) of this section, a voluntary acknowledgment of parentage that complies with this section and section 25-2-112, and is filed with the state registrar of vital statistics, is equivalent to an adjudication of parentage of the child and confers on the acknowledged parent all rights and duties of a parent. The court shall give full faith and credit to a voluntary acknowledgment of parentage that is effective in another state, including a federally recognized Indian tribe, if the acknowledgment was in a signed record and otherwise complies with the laws of the other state or federally recognized Indian tribe.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1. **L. 89:** (1)(c)(III) amended, p. 1247, § 3, effective April 1. **L. 91:** (1)(f) amended, p. 253, § 10, effective July 1. **L. 97:** (1)(c)(I), (1)(e), and (2) amended, p. 1274, § 13, effective July 1. **L. 2003:** (2)(a) amended, p. 1268, § 59, effective July 1. **L. 2008:** (2)(c) amended, p. 1656, § 2, effective August 15. **L. 2022:** Entire section amended, (HB 22-1153), ch. 210, p. 1389, § 4, effective August 10. **L. 2023:** IP(2)(b) amended, (SB 23-173), ch. 330, p. 1982, § 22, effective June 2. **L. 2024:** (1)(f) amended, (HB 24-1450), ch. 490, p. 3412, § 28, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-6-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1997 act amending subsections (1)(c)(I), (1)(e), and (2), see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983). For article, "Legal Protection of Children in Nontraditional Families", see 29 Colo. Law. 79 (Nov. 2000). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (Oct. 2008). For article, "Colorado Civil Union Act", see 42 Colo. Law. 91 (July 2013).

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

Section 19-6-104 authorizes establishment of paternal relationship between child and its natural father and recognizes the right of putative fathers to bring an action to establish paternity under the applicable provisions of this article. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

No provision for father not married to married natural mother to establish paternity. This article makes no provision for a male claiming to be the natural father of a child to bring an action to establish his paternity under circumstances where he was not married to the natural mother and the child was born to the natural mother during her marriage to another. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

And denial of standing unconstitutional. The juvenile court's construction of this article denying a claiming natural father not married to the natural mother statutory capacity or standing to commence a paternity action in connection with a child born to the natural mother during her marriage to another in order to establish that he was the natural father of the child violated equal protection of the laws under the fourteenth amendment to the United States constitution, § 25 of art. II, Colo. Const., and the equal rights amendment to the Colorado constitution, § 29 of art. II, Colo. Const. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Presumed father under subsection (1)(d). When man received child into his home and openly held out the child as his natural child, he is presumed to be the father, and it is an error for court to dismiss in summary judgment proceedings. D.S.P. v. R.L.K., 677 P.2d 959 (Colo. App. 1983).

A juvenile court has subject matter jurisdiction to enter a judgment of paternity in a dependency or neglect case. The court has exclusive original jurisdiction in both dependency or neglect proceedings and proceedings to determine the parentage of a child. People in Interest of N.S., 2017 COA 8, 413 P.3d 172; People in Interest of D.C.C., 2018 COA 98, 486 P.3d 1183.

When a paternity issue arises, the juvenile court must follow the procedures outlined in the state's version of the Uniform Parentage Act. People in Interest of N.S., 2017 COA 8, 413 P.3d 172.

The Uniform Parentage Act requires the juvenile court to determine which parentage presumption should control and therefore does not allow a court to recognize more than two legal parents for a child. People in Interest of K.L.W., 2021 COA 56, 492 P.3d 392.

Court properly considered the children's best interests in making its determination that the biological father be named as the legal parent. People in Interest of K.L.W., 2021 COA 56, 492 P.3d 392.

Nothing in the statutory provisions, whether read separately or together, provides that an admission by a man seeking parental rights that he is not the child's biological father conclusively rebuts the presumption under this section. A presumed father's admission that he is not the biological parent does not necessarily rebut the presumption of fatherhood that arises by receiving the child into his home and openly holding that child out as his natural child when no judgment has been entered that establishes the paternity of another man. In re A.D., 240 P.3d 488 (Colo. App. 2010).

Nor does a presumed father's admission that he is not the child's biological father rebut the presumption of fatherhood arising out of his identification as the child's father on a birth certificate. People in Interest of J.G.C., 2013 COA 171, 318 P.3d 576.

Presumption is procedural, and retroactive application is proper where action commenced prior to enactment of this section. People in Interest of R.F.A., 744 P.2d 1202 (Colo. App. 1987).

Any presumption of paternity established under this section may be rebutted in an appropriate action by clear and convincing evidence or by a court decree establishing paternity of the child by another man. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

When presumptions of paternity arise in more than one potential father, trial courts must take the best interests of the child into account as part of policy and logic in resolving competing presumptions. N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000); In re Ohr, 97 P.3d 354 (Colo. App. 2004).

The court should consider all the facts and circumstances of the case that bear directly on the child's best interests when competing presumptions of paternity arise. N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000); People in Interest of K.L.W., 2021 COA 56, 492 P.3d 392.

The evidentiary standard for determining the weightier considerations of policy and logic is preponderance of the evidence. Once competing presumptions of fatherhood have been established that have not been rebutted by clear and convincing evidence, the court must resolve the issue of paternity by considering the best interests of the child and determining the weightier issues of policy and logic by applying a preponderance of the evidence standard. People ex rel. C.L.S., 313 P.3d 662 (Colo. App. 2011).

Presumption not overcome when defendant in personal injury action failed to introduce any evidence that plaintiff's decedent was not plaintiff's father, other than the fact that plaintiff's mother was still legally married to someone else. Trial court, therefore, properly directed verdict in favor of plaintiff on the issue of paternity. Lawrence v. Taylor, 8 P.3d 607 (Colo. App. 2000).

It is clear from subsection (1)(a) of this section and § 19-4-107 (1)(b) that a man presumed to be a child's father by reason of his marriage to the child's mother at the time of conception is precluded from initiating an action to declare the nonexistence of the presumed father and child relationship after the child reaches the age of five. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

In cases in which paternity is disputed, whether in a proceeding under this article or article 6, paternity must be determined according to the procedures outlined under this article before the legal obligation for support can be imposed. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

An interpretation of § 19-4-107 (1)(b) that would deny the right of a presumptive father to defend against a child support action by asserting the nonexistence of a father and child relationship runs counter to principles of statutory construction and would produce results not consistent with the welfare of the affected children and the best interests of society. In a child support action under article 6 of this title, the defense of nonpaternity may be asserted by a man presumed to be the father pursuant to subsection (1)(a) of this section notwithstanding that the man would have

been precluded by § 19-4-107 (1)(b) from bringing an action under this article to declare the nonexistence of the father and child relationship because of the passage of time. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

Applicability of doctrine of res judicata. Failure to raise the defense of nonpaternity during dissolution proceedings bars a presumed father from collaterally attacking the determination of paternity implicitly supporting award of child support incident to such dissolution proceedings brought under URESA. State ex rel. Daniels v. Daniels, 817 P.2d 632 (Colo. App. 1991).

A challenge to a paternity judgment on the basis of mistake of material fact, pursuant to subsection (2)(c), must be brought within the six-month time limit of C.R.C.P. 60(b). People ex rel. J.A.U. v. R.L.C., 47 P.3d 327 (Colo. 2002).

For evidence sufficient to show nonaccess, see M.W. and A.W. v. D.G., 710 P.2d 1174 (Colo. App. 1985).

Provisions of section extended to maternity determinations when read together with §§ 19-4-122 and 19-4-125. In re S.N.V., 284 P.3d 147 (Colo. App. 2011).

Woman may gain the status of a child's natural mother even if she has no biological tie to the child just as a father may establish such status through other proof. Therefore trial court erred in concluding that birth mother's claim automatically prevailed over that of father's wife. In re S.N.V., 284 P.3d 147 (Colo. App. 2011).

Under the "holding out" provision and in the context of a same-sex relationship, a child may have two legal mothers. A woman may assert a maternity claim under this section as the child's presumptive mother even if the child has a legal biological mother. In re Parental Responsibilities of A.R.L., 2013 COA 170, 318 P.3d 581.

Applied in Jefferson County Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980); K.H.R. by and through D.S.J. v. R.L.S., 807 P.2d 1201 (Colo. App. 1990).

19-4-105.5. Commencement of proceedings - summons - automatic temporary injunction - enforcement.

(1) All proceedings under this article shall be commenced in the manner provided by the Colorado rules of civil procedure or as otherwise provided in this section or section 26-13.5-104, C.R.S.

(2) Upon commencement of a proceeding under this article by one of the parties, the other parties shall be served in the manner set forth in section 19-4-109 (2), the Colorado rules of civil procedure, or as otherwise provided in section 26-13.5-104, C.R.S.

(2.5) Upon the commencement of a proceeding under this article, each party shall provide to the court, in the manner prescribed by the court, his or her social security number and the social security number of each child who is the subject of the proceeding under this article.

(3) Proceedings under this article may be commenced prior to the birth of a child.

(4) If a petition is filed by an alleged father or possible father pursuant to the requirements of section 19-5-103.7, the licensed child placement agency involved shall receive notice of the action in the same manner as a party to the action.

(5) A summons issued upon commencement of a proceeding under this article shall contain the following advisements and notice:

(a) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S.;

(b) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date; and

(c) (I) That, except in proceedings initiated pursuant to section 14-10-124.4 or in proceedings initiated by a delegate child support enforcement unit, as defined in section 26-13-102.5 (1), pursuant to article 13 or 13.5 of title 26, or article 5 of title 14, upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent, a temporary injunction shall be in effect against both parties:

(A) Enjoining each party from molesting or disturbing the peace of the other party;

(B) Restraining each party from removing a minor child who is the subject of a proceeding under this article from the state without the consent of all other parties or an order of the court modifying the injunction; and

(C) Restraining each party, without at least fourteen days' advance notification and the written consent of all other parties or an order of the court modifying the injunction, from canceling, modifying, terminating, or allowing to lapse for nonpayment of premiums, a policy of health insurance or life insurance that provides coverage to a minor child who is the subject of the proceeding or that names the minor child as a beneficiary of a policy.

(II) The temporary injunction shall be in effect upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent and shall remain in effect for one hundred twenty days after its effective date unless all parties consent to a modification of the temporary injunction. The court may, upon the motion of a party or upon its own motion, modify the length of time the temporary injunction is in effect to a shorter or longer period of time as the court deems appropriate.

(6) The provisions of the temporary injunction described in subsection (5) of this section shall be printed on the summons and the petition. A party may apply to the court for further temporary orders, an expanded temporary injunction, or modification or revocation of the temporary injunction.

(7) For purposes of enforcing the automatic temporary injunction described in paragraph (c) of subsection (5) of this section, if a respondent shows a duly authorized peace officer, as described in section 16-2.5-101, C.R.S., a copy of the petition and summons filed and issued pursuant to this section, or if a petitioner shows the peace officer a copy of the petition and summons filed and issued pursuant to this section together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and the peace officer has cause to believe that a violation of the part of the automatic temporary injunction that enjoins a party from molesting or disturbing the peace of the other party has occurred, the peace officer shall use every reasonable means to enforce that part of the injunction against the petitioner or respondent, as applicable. A peace officer shall not be held civilly or criminally liable for his or her actions pursuant to this subsection (7) if the peace officer acts in good faith and without malice.

Source: L. 94: Entire section added, p. 1541, § 13, effective May 31. **L. 96:** Entire section amended, p. 612, § 13, effective July 1. **L. 2005:** (3) and (4) added, p. 102, § 3, effective July 1; (5) added, p. 378, § 3, effective January 1, 2006. **L. 2006:** (5)(b) amended, p. 516, § 2, effective August 7. **L. 2010:** (5) amended and (6) and (7) added, (HB 10-1097), ch. 39, p. 158, § 1, effective August 15. **L. 2011:** (2.5) added, (SB 11-123), ch. 46, p. 119, § 5, effective August 10. **L. 2023:** IP(5)(c)(I) amended, (HB 23-1026), ch. 243, p. 1307, § 7, effective August 7.

Cross references: For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of Colorado 2023.

ANNOTATION

Although a paternity case may be commenced prior to a child's birth pursuant to this act, the act has no provisions authorizing a court to make a custody determination or an allocation of parental responsibilities concerning an unborn child. The necessary home state determination must be made after the child's birth. People in Interest of G.C.M.M., 2020 COA 152, 477 P.3d 792.

Provision in subsection (5)(c)(I)(B) restraining the removal of a child from the state does not apply to an unborn child. There is no provision in the Colorado Children's Code restricting movement of a

pregnant woman. People in Interest of G.C.M.M., 2020 COA 152, 477 P.3d 792.

19-4-105.6. Amendment of proceedings - adding children.

(1) In any existing case commenced under this article, if it is alleged that another child has been conceived of the parents named in the existing case, that child shall be added to the existing case if at least one of the presumptions of paternity specified in section 19-4-105 applies for the purpose of establishing paternity and child support. The caption shall be amended to include the added child.

(2) The party amending the petition pursuant to subsection (1) of this section shall serve the amended petition with the new caption upon the other parties in the manner set forth in section 19-4-109 (2), the Colorado rules of civil procedure, or as otherwise provided in section 26-13.5-104, C.R.S.

(2.5) The party amending the petition pursuant to subsection (1) of this section shall provide to the court, in the manner prescribed by the court, the social security number of the added child.

(3) Proceedings under this article may be amended prior to the birth of the child to be added to the proceedings.

(4) If a petition is amended pursuant to the requirements of section 19-5-103.7, the licensed child placement agency involved shall receive notice of the action in the same manner as a party to the action.

(5) A summons issued upon the amendment of a proceeding under this article shall contain the advisements set forth in section 19-4-105.5 (5).

(6) Notwithstanding the provisions of subsection (1) of this section, in any case where there exists more than one alleged or presumed father for a child pursuant to section 19-4-105, a new case shall be commenced for that child to determine the child's paternity, establish child support, and address any other related issues. If it is determined that the child is the child of parents named in an existing case, the cases shall be consolidated into the initial action pursuant to rule 42 of the Colorado rules of civil procedure.

Source: L. 2008: Entire section added, p. 1348, § 3, effective January 1, 2009. **L. 2011:** (2.5) added, (SB 11-123), ch. 46, p. 120, § 6, effective August 10.

19-4-105.7. Stay of paternity proceedings - criminal charges of allegations of sexual assault. (Repealed)

Source: L. 2013: Entire section added, (SB 13-227), ch. 353, p. 2060, § 5, effective July 1. **L. 2014:** Entire section repealed, (HB 14-1162), ch. 167, p. 587, § 3, effective July 1.

19-4-106. Assisted reproductive procedures.

(1) If, with the consent of another intended parent, an intended parent consents to become pregnant through an assisted reproductive procedure, the intended parent who does not give birth is treated in law as the natural parent of the child conceived. The consent of both the intended parent who will give birth and the other intended parent must be in writing and signed by each such party, except as provided in subsection (5) of this section. This subsection (1) does not apply to a child conceived pursuant to a surrogacy agreement pursuant to article 4.5 of this title 19.

(2) A donor is not a parent of a child conceived by means of an assisted reproductive procedure.

(3) and (4) (Deleted by amendment, L. 2022.)

(5) Failure of the intended parent to sign a consent required by subsection (1) of this section before or after the birth of the child does not preclude a finding that the intended parent is the parent if the court finds by clear and convincing evidence that, prior to the conception of the child, the parent who gave birth and the intended parent had an oral agreement that both would be parents of the child and that the child was conceived through an assisted reproductive procedure.

(6) (Deleted by amendment, L. 2022.)

(6.5) Notwithstanding any other provision of law to the contrary, genetic tests may not be ordered and are not admissible to establish a donor as a parent, to challenge the recognition of an intended parent who consented to the assisted reproductive procedure as a parent, or to challenge a voluntary acknowledgment of parentage that complies with section 19-4-105 where the child was conceived through an assisted reproductive procedure, except to resolve a dispute regarding whether the child was conceived through an assisted reproductive procedure.

(7) (a) If a marriage or civil union is dissolved before placement of eggs, sperm, or embryos, the former spouse or civil union partner is not a parent of the resulting child unless the former spouse or civil union partner consented in a record that if the assisted reproductive procedure were to occur after a dissolution of marriage or civil union, the former spouse or civil union partner would be a parent of the child.

(b) The consent of a former spouse or civil union partner to assisted reproduction may be withdrawn by that individual in a record given to the parent who agreed to give birth to a child conceived by an assisted reproductive procedure at any time before placement of eggs, sperm, or embryos.

(8) If a spouse or civil union partner dies before placement of eggs, sperm, or embryos, the deceased spouse or civil union partner is not a parent of the resulting child unless the deceased spouse or civil union partner consented in a record that if assisted reproduction were to occur after death, the deceased spouse or civil union partner would be a parent of the child.

(9) This section does not apply to the birth of a child conceived by means of sexual intercourse.

(10) For purposes of this section, "donor" is defined in section 19-1-103.

Source: L. 87: Entire title R&RE, p. 794, § 1, effective October 1. **L. 94:** (1) amended, p. 2737, § 366, effective July 1. **L. 2003:** Entire section amended, p. 1269, § 60, effective July 1. **L. 2008:** (1) amended, p. 128, § 9, effective January 1, 2009. **L. 2021:** (10) amended, (SB 21-059), ch. 136, p. 734, § 82, effective October 1. **L. 2022:** Entire section amended, (HB 22-1153), ch. 210, p. 1392, § 5, effective August 10. **L. 2024:** (2) amended, (HB 24-1450), ch. 490, p. 3412, § 29, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-6-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "In the Interest of R.C., Minor Child: The Colorado Artificial Insemination by Donor Statute and the Non-Traditional Family", see 67 Den. U. L. Rev. 79 (1990). For article, "Assisted Reproduction in Colorado: Legal Aspects and Recent Legislation", see 33 Colo. Law. 77 (June 2004). For article, "Assisted Reproduction and Colorado Law: Unanswered Questions and Future Challenges", see 35 Colo. Law. 39 (Nov. 2006). For article, "Frozen in Time: Planning for the Posthumously Conceived Child", see 37 Colo. Law. 45 (June 2008). For article, "Disposition of Pre-Embryos upon Dissolution of Marriage in Colorado", see 50 Colo. Law. 40 (Feb. 2021).

In cases in which paternity is disputed, whether in a proceeding under this article or article 6, paternity must be determined according to the procedures outlined under this article before the legal obligation for

support can be imposed. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

An interpretation of § 19-4-107 (1)(b) that would deny the right of a presumptive father to defend against a child support action by asserting the nonexistence of a father and child relationship runs counter to principles of statutory construction and would produce results not consistent with the welfare of the affected children and the best interests of society. In a child support action under article 6 of this title, the defense of nonpaternity may be asserted by a man presumed to be the father pursuant to subsection (1)(a) of this section notwithstanding that the man would have been precluded by § 19-4-107 (1)(b) from bringing an action under this article to declare the nonexistence of the father and child relationship because of the passage of time. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

The primary purpose of this section is to provide a legal mechanism for married and unmarried women to obtain a supply of semen for use in artificial insemination and, in the case of married recipients, to make clear that legal rights and duties of fatherhood are borne by the recipient's husband rather than by the donor. In the Interest of R.C., 775 P.2d 27 (Colo. 1989).

The provisions of this section do not apply when the known semen donor and the unmarried recipient agree that the known donor would have parental rights and expressly agree at the time of insemination that the donor would be treated as the natural father of any child so conceived. In the Interest of R.C., 775 P.2d 27 (Colo. 1989).

Where issue of consent to artificial insemination was adjudicated and conclusively determined in dissolution of marriage action, doctrine of collateral estoppel bars relitigation of consent issue in subsequent suit against physician who performed procedure without plaintiff's written consent. Hill v. Hulet, 881 P.2d 460 (Colo. App. 1994).

The consent referred to in subsection (7)(b) refers to a former spouse's consent to legal parenthood, not to their consent to placement of a pre-embryo. In re Rooks, 2018 CO 85, 429 P.3d 579.

19-4-107. Determination of father and child relationship - who may bring action - when action may be brought.

(1) A child, his or her natural mother, or a man presumed to be his or her father pursuant to section 19-4-105 (1)(a), (1)(b), or (1)(c) or the state, the state department of human services, or a county department of human or social services, pursuant to article 13 or 13.5 of title 26 or article 5 of title 14 may bring an action:

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

(b) For the purpose of declaring the nonexistence of the father and child relationship presumed under section 19-4-105 (1)(a), (1)(b), or (1)(c) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts but in no event later than five years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) Any interested party, including the state, the state department of human services, or a county department of human or social services, pursuant to article 13 or 13.5 of title 26 or article 5 of title 14 may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to section 19-4-105 (1)(d), (1)(e), or (1)(f).

(3) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father pursuant to section 19-4-105 may be brought by the state, the state department of human services, a county department of human or social services, the child, the mother or personal representative of the child, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(4) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 19-4-114 (2), between an alleged or presumed father and the mother or child does not bar an action under this section.

Source: L. 87: Entire title R&RE, p. 794, § 1, effective October 1. **L. 89:** IP(1) and (2) amended, p. 1247, § 4, effective April 1. **L. 94:** IP(1), (2), and (3) amended, p. 2687, § 209, effective July 1. **L. 2018:** IP(1), (2), and (3) amended, (SB 18-092), ch. 38, p. 424, § 64, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "A Lawyer's Advice to the Unmarried Mother", see 31 Dicta 112 (1954). For article, "One Year Review of Domestic Relations", see 41 Den. L. Ctr. J. 97 (1964). For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981).

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

Purpose of article. The purpose of the paternity article of the Colorado Children's Code is to provide a means to establish accurately the identity of the father of the child so that the responsibility for support of the child can be determined and support ordered. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969); People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972).

Different limitation periods for support and paternity not violative of equal protection. When a former statute provided that no proceeding to establish paternity or furnish support should be initiated after a child was five years old unless the father had acknowledged paternity in writing or by furnishing support, whereas proceedings to compel fathers of illegitimate children or other legally responsible persons to support a child might be filed any time before the child's eighteenth birthday, there was no violation of the equal protection clause. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972).

Term "child" construed. To construe "child" so as to exclude an unborn child would permit the father of an unborn child to evade his responsibility for support by leaving the state at any time prior to the birth of the child. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

There was no ambiguity in the wording of articles 6 and 7 of the Colorado Children's Code. It was quite clear that paternity and support issues were to be determined under article 6 and article 7 was to be used only for the determination of support where paternity was not in dispute. It was error for the court to have conducted a paternity proceeding under the petition for support proceedings of article 7. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

The fact that a proceeding to determine paternity was not brought within the time permitted by former § 19-6-101(2), does not bar proceeding for support with respect to children born in wedlock. In such a case, the presumed father must be permitted to deny an obligation to support the child by denying paternity, and that issue must be resolved in the support proceeding. B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980); People in Interest of R.T.L., 756 P.2d 383 (Colo. App. 1987), aff'd, 780 P.2d 508 (Colo. 1989).

This article is the exclusive means of adjudicating contested paternity. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

The issue of paternity may not be adjudicated as an adjunct of support proceedings. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972).

Section 19-6-104 authorizes establishment of paternal relationship between child and its natural father and recognizes the right of putative fathers to bring an action to establish paternity under the applicable provisions of this article. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Right to paternity declaration not conditioned upon marriage to presumed father. Subsection (1)(b) does not condition the natural mother's right to seek a declaration of paternity in a nonspousal father upon the failure of her existing marriage to the presumed father, or the presumed father's desertion or nonsupport; it requires only that the natural mother's action be commenced within five years after the child's birth. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Paternity determination precedes support obligation. Before a duty to support can be imposed, it must first be established that the person upon whom the support obligation is to be imposed is, in truth, the father of the child. In re People in Interest of D.R.B., 30 Colo. App. 603, 498 P.2d 1166 (1972), aff'd, 180 Colo. 439, 507 P.2d 468 (1973).

Presumption of legitimacy in seeking support. A child born in wedlock who has the benefit of the strong presumption of legitimacy should reasonably be able to rely on that presumption in seeking support absent a judicial action by the presumed father, challenging paternity. B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

A showing of the child's neglect or dependency is not a condition precedent to a determination of paternity. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

People had standing to bring action. Evidence showing that mother was receiving assistance from county department of public welfare for benefit of child was sufficient to allow the people to have standing to bring action to establish paternity. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

A man claiming to be a child's biological father may commence an action under the Uniform Parentage Act without first having obtained genetic testing. In re S.R.H., 981 P.2d 199 (Colo. App. 1998), rev'd on other grounds sub nom. N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000).

No provision for father not married to married natural mother to establish paternity. This article makes no provision for a male claiming to be the natural father of a child to bring an action to establish his paternity under circumstances where claimant was not married to the natural mother and the child was born to the natural mother during her marriage to another. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

And denial of standing unconstitutional. The juvenile court's construction of this article denying a claiming natural father not married to the

natural mother statutory capacity or standing to commence a paternity action in connection with a child born to the natural mother during her marriage to another in order to establish that he was the natural father of the child violated equal protection of the laws under the fourteenth amendment to the United States constitution, § 25 of art. II, Colo. Const., and the equal rights amendment to the Colorado constitution, § 29 of art. II, Colo. Const. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

For case holding that under former law child was not party to paternity action, see People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

Burden of proof. Party bringing paternity action has burden of proving by a preponderance of the evidence that defendant is the child's father. Because sterility is a defense in the nature of evidence, the burden rests upon the proponent to establish it by a preponderance of the evidence. C.K.A. v. M.S., 695 P.2d 785 (Colo. App. 1984).

As to time limitation under former statute, see Martinez v. Lopez, 153 Colo. 425, 386 P.2d 595 (1963); Rios v. People in Interest of Martinez, 154 Colo. 88, 388 P.2d 402 (1964); In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972).

Where a paternity suit has not been maintained by or on behalf of the child as required by this section and § 19-6-110, the trial court's dismissal of the action as barred by the former statute of limitations, which was in effect at the time of the child's birth, is proper. Jefferson County Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980).

Limitation periods. Since plaintiff was presumed to be the natural father under § 19-6-105 (1)(d), he is an interested party and may bring suit pursuant to subsection (2) at any time for the purpose of determining the existence of the father and child relationship and is not limited by the five-year period in subsection (1)(b). D.S.P. v. R.L.K., 677 P.2d 959 (Colo. App. 1983).

Limitation of former statute not applicable to support proceeding. Although a paternity proceeding was barred because not brought in time, an action could still be maintained under another statute for failure to support the illegitimate child. Wamsley v. People, 64 Colo. 521, 173 P. 425 (1918); Dikeou v. People, 95 Colo. 537, 38 P.2d 772 (1934).

Statute requires commencement of paternity proceedings within five years of birth of child despite mother's acknowledgment that ex-husband was not father of child born during marriage. People in Interest of S.L.H., 736 P.2d 1226 (Colo. App. 1986).

This section does not require that one man's presumed paternity by marriage be negated before an action to assert a parent and child legal relationship by another man, based upon a different presumption, may be commenced. People ex rel. Orange County v. M.A.S., 962 P.2d 339 (Colo. App. 1998).

The statute does not limit the time within which a presumed father may assert as a defense the nonexistence of the father

and child relationship. Consequently, this case falls squarely within the general rule that a statute of limitations although barring the use of a claim for affirmative relief after the limitations period has run, is not a bar to asserting that claim as a defense. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989); People in Interest of L.J., 835 P.2d 1265 (Colo. App. 1992).

Although subsection (1)(a) states that an action 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) may be brought at any time, § 19-4-108 makes it clear that such an action initiated by the mother or father of a child or the "delegate child support enforcement agency" must be brought before the child's eighteenth birthday. If a child whose paternity has not been established initiates an action to declare the existence of the father and child relationship, the action may be brought at any time prior to the child's twenty-first birthday. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

The statute of limitations under § 19-4-108 governs actions brought under subsection (2) of this section. Although an action under subsection (2) can be brought "at any time", § 19-4-108 requires that the action be brought prior to the child's eighteenth birthday. In re Parental Responsibilities of I.M., 2013 COA 107, 410 P.3d 488.

It is clear from § 19-4-105 (1)(a) and subsection (1)(b) of this section that a man presumed to be a child's father by reason of his marriage to the child's mother at the time of conception is precluded from initiating an action to declare the nonexistence of the presumed father and child relationship after the child reaches the age of five. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

Because of the public policy favoring legitimacy, the court did not abuse its discretion in continuing the parent and child relationship between a child and husband of child's mother as being in the best interest of the child in spite of genetic testing establishing a competing presumption in favor of another man. W.C. in Interest of A.M.K., 907 P.2d 719 (Colo. App. 1995).

An interpretation of subsection (1)(b) of this section that would deny the right of a presumptive father to defend against a child support action by asserting the nonexistence of a father and child relationship runs counter to principles of statutory construction and would produce results not consistent with the welfare of the affected children and the best interests of society. In a child support action under article 6 of this title, the defense of nonpaternity may be asserted by a man presumed to be the father pursuant to § 19-4-105 (1)(a) notwithstanding that the man would have been precluded by subsection (1)(b) from bringing an action under this article to declare the nonexistence of the father and child relationship because of the passage of time. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989); People in Interest of L.J., 835 P.2d 1265 (Colo. App. 1992).

This section does not allow an ex-husband to avoid five-year limitation on

commencement of paternity proceedings as "an interested party". People in Interest of S.L.H., 736 P.2d 1226 (Colo. App. 1986).

Failure to name another man as possible father of child in petition filed pursuant to this section does not constitute grounds for dismissal. G.K.D. v. R.A.D., 759 P.2d 851 (Colo. App. 1988).

When a paternity issue is raised in conjunction with a determination of child support under the Uniform Dissolution of Marriage Act (UDMA), the court must determine whether the party to be charged owes a duty of support according to the procedures of the U.P.A. In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990).

Mother not precluded from bringing a paternity action under this section after conclusion of an action under the UDMA. Although the issue of paternity had been established in the UDMA action, the issue of whether the mother was entitled to birth-related costs was unresolved and could not have been resolved in prior action. In re G.E.R., 264 P.3d 637 (Colo. App. 2011).

Validity of determination of paternity. A trial court's determination of paternity in a dissolution of marriage action is invalid where, although requested to do so, it failed to follow any of the procedures outlined in the uniform act. In re Burkey, 689 P.2d 726 (Colo. App. 1984).

Applied in W.R.S. v. E.R., 41 Colo. App. 414, 588 P.2d 379 (1978); Figueroa v. Juvenile Court, 197 Colo. 510, 595 P.2d 223 (1979); Petition of G.D., 775 P.2d 90 (Colo. App. 1989); People v. Holleron, 797 P.2d 806 (Colo. App. 1990); M.R.D., by P.D. v. F.M., 805 P.2d 1200 (Colo. App. 1991); In re S.N.V., 284 P.3d 147 (Colo. App. 2011).

19-4-107.3. When determination of parentage is final - modifications - exceptions.

(1) (a) An order determining parentage pursuant to this article shall be modified or set aside, within the time frames specified in subsection (2) of this section, if genetic test results based on DNA testing, administered in accordance with section 13-25-126, C.R.S., establish the exclusion of the individual named as the father in the order as the biological parent of the child and the court determines that it is just and proper under the circumstances and in the best interests of the child.

(b) If the court modifies or sets aside an order determining parentage pursuant to paragraph (a) of this subsection (1), then the court shall modify the provisions of the order respecting child support for installments accruing subsequent to the filing of the motion pursuant to section 14-10-122 (6), C.R.S., and may vacate or deem as satisfied, in whole or in part, unpaid child support obligations arising from or based on the order determining parentage. The court shall not order restitution from the state for any sums paid to or collected by the state for the benefit of the child.

(2) (a) A motion to modify or set aside an order determining parentage pursuant to this section must be filed within two years from the date of the entry of the order.

(b) Repealed.

(3) Notwithstanding subsection (1) of this section, a determination of parentage or an order respecting child support must not be modified or set aside pursuant to this section if:

(a) The individual named in the order acknowledged paternity pursuant to section 19-4-105 (1)(c) or (2)(a.5) knowing that he was not the father of the child;

(b) The child was adopted by the individual named in the order; or

(c) The child was conceived by means of assisted reproduction.

(4) A motion filed pursuant to this section may be brought by the individual named as the father in the order and shall be served in the manner set forth in the Colorado rules of civil procedure upon all other parties. The court shall not modify or set aside a final order determining parentage pursuant to this section without a hearing.

(5) For purposes of this section, "DNA" means deoxyribonucleic acid.

Source: L. 2008: Entire section added, p. 1655, § 1, effective August 15. **L. 2025:** IP(3) and (3)(a) amended, (HB 25-1159), ch. 334, p. 1762, § 6, effective May 31.

Editor's note: Subsection (2)(b)(II) provided for the repeal of subsection (2)(b), effective July 1, 2011. (See L. 2008, p. 1655.)

19-4-107.5. Required notice of prior civil protection orders to prevent domestic abuse - determination of parent and child relationship.

When filing a proceeding under this article, the filing party shall have a duty to disclose to the court the existence of any prior temporary or permanent civil protection orders to prevent domestic abuse issued pursuant to article 14 of title 13, C.R.S., and any emergency protection orders issued pursuant to section 13-14-103, C.R.S., entered against either party by any court within ninety days prior to the filing of the proceeding to determine the parent and child relationship. The disclosure required pursuant to this section shall address the subject matter of the previous protection orders, including the case number and jurisdiction issuing such orders.

Source: L. 95: Entire section added, p. 84, § 2, effective July 1. **L. 99:** Entire section amended, p. 503, § 14, effective July 1. **L. 2004:** Entire section amended, p. 556, § 14, effective July 1. **L. 2005:** Entire section amended, p. 766, § 30, effective June 1.

19-4-108. Statute of limitations.

An action to determine the existence of the father and child relationship may be brought at any time prior to the child's eighteenth birthday by the mother or father of said child, by the child, or by the delegate child support enforcement agency. If, however, the statute of limitations in effect at the time of the child's birth was less than eighteen years, the delegate child support enforcement agency may bring an action on behalf of the said child at any time prior to the child's twenty-first birthday. An action brought by a child whose paternity has not been determined may be brought at any time prior to the child's twenty-first birthday. This section and section 19-4-107 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

Source: L. 87: Entire title R&RE, p. 795, § 1, effective October 1; entire section amended, p. 1587, § 59, effective October 1. **L. 88:** Entire section amended, p. 634, § 11, effective July 1. **L. 89:** Entire section amended, p. 794, § 19, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Prior to the repeal and reenactment of this title in 1987, the statute of limitations to determine a father and child relationship was contained in § 19-6-108. The statute of limitations as contained in that section was changed by L. 85, p. 596, § 18, to eighteen years. For the statute of limitations in effect prior to the change in 1985, see § 19-6-108 as contained in the 1978 Replacement Volume 8 and in annual supplements thereto prior to 1985.

ANNOTATION

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

Although § 19-4-107 (1)(a) states that an action 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) may be brought at any time, this section makes it clear that such an action initiated by the mother or father of a child or the "delegate child support enforcement agency" must be brought before the child's eighteenth birthday. If a child whose paternity has not been established initiates an action to declare the existence of the father and child

relationship, the action may be brought at any time prior to the child's twenty-first birthday. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

The statute of limitations under this section governs actions brought under § 19-4-107 (2). Although an action under § 19-4-107 (2) can be brought "at any time", this section requires that the action be brought prior to the child's eighteenth birthday. In re Parental Responsibilities of I.M., 2013 COA 107, 410 P.3d 488.

Extension of statute of limitations may create a remedy, but may not revive an existing cause of action. People v. Holleron, 797 P.2d 806 (Colo. App. 1990).

This section violates the equal protection clause of the fourteenth amendment of the U.S. Constitution in that it treated children with presumed fathers differently than children without presumed fathers. People in Interest of J.M.A., 803 P.2d 187 (Colo. 1990) (decided under law in effect prior to 1985 and subsequent amendments).

Period of limitation fixed when cause accrues. The period of limitation to be applied to plaintiff's action is initially determined by the statute effective when the cause accrued, and once the permissible time for commencing an action has expired and the bar created by the statute has attached, the rights and obligations of the parties are fixed. D.Z.M. v. D.A.G., 41 Colo. App. 377, 592 P.2d 1 (1978), aff'd, 199 Colo. 315, 607 P.2d 1004 (1980).

Section does not deny children whose parentage has not been established equal protection since the section bars actions brought by the mother or the state after three years but not actions by or on behalf of the child. People in Interest of T.L.H., 701 P.2d 87 (Colo. App. 1984).

19-4-109. Jurisdiction - venue.

(1) Without limiting the jurisdiction of any other court, the juvenile court has jurisdiction of an action brought pursuant to this article 4. The juvenile court's jurisdiction includes concurrent jurisdiction with a dependency and neglect court, as set forth in section 19-3-205 (1), to determine a parent-child legal relationship. A delegate child support enforcement unit also has jurisdiction to establish paternity in noncontested paternities in accordance with the procedures specified in article 13.5 of title 26. The action may be joined with an action in another court of competent jurisdiction for dissolution of marriage, legal separation, declaration of invalidity of marriage, or support.

(1.5) A paternity determination made by another state, whether established through voluntary acknowledgment, administrative processes, or judicial processes, shall be enforced and otherwise treated in the same manner as a judgment of this state.

(2) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this article with respect to a child who may have

been conceived by that act of intercourse. Upon filing of the petition, the court shall issue a summons. The hearing shall be set for a day not less than ten days after service is completed or on such later date as the court may order. In addition to any other method provided by rule or statute, including rule 4 (e) of the Colorado rules of civil procedure, when there is a basis for personal jurisdiction over an individual living outside this state pursuant to section 14-5-201, C.R.S., service may be accomplished by delivering a copy of the summons, together with a copy of the petition upon which it was issued, to the individual served. Such service may be by private process server or by sending such copies to such individual by certified mail with proof of actual receipt by such individual.

(3) The action may be brought in the county in which the child or the alleged father resides or is found, or in any county where public assistance was or is being paid on behalf of the child, or, if the father is deceased, in any county in which proceedings for probate of his estate have been or could be commenced.

Source: L. 87: Entire title R&RE, p. 795, § 1, effective October 1. **L. 89:** (1) amended, p. 1247, § 5, effective April 1; (3) amended, p. 794, § 20, effective July 1. **L. 94:** (1.5) added and (2) amended, p. 1541, § 14, effective May 31. **L. 2005:** (2) amended, p. 378, § 4, effective April 22. **L. 2021:** (1) amended, (HB 21-1220), ch. 212, p. 1129, § 5, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

The district court has exclusive jurisdiction in certain matters concerning children, such as dissolutions of marriage or legal separation. Thus, the effect of subsection (1) is to provide an alternate forum for the resolution of paternity disputes. In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990).

Subsection (1) does not require that a parentage action be brought in the juvenile court before joinder with action in another court, and the district court had the authority to determine the issue of parentage once it was raised by the presumed father. In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990).

When a paternity issue arises in a nonpaternity proceeding, court must follow procedure under the Uniform Parentage Act. People ex rel. J.G.C., 2013 COA 171, 318 P.3d 576.

Personal service upon the father in Colorado enables the state to exercise

personal jurisdiction over him, even if the child was not conceived by acts of sexual intercourse in the state of Colorado. People ex rel. J.A.E.S., 7 P.3d 1021 (Colo. App. 2000).

Venue provision of subsection (3) prevails over any conflicting provisions in the Colorado rules of civil procedure. In re U.M. v. District Court, 631 P.2d 165 (Colo. 1981).

Applied in People in Interest of M.E.W.F., 42 Colo. App. 495, 600 P.2d 108 (1979).

19-4-110. Parties.

The child may be made a party to the action. If the child is a minor, the court may appoint a guardian ad litem. The child's mother or father may not represent the child as guardian or otherwise. The court shall make the natural mother, each man presumed to be the father under section 19-4-105, and each man alleged to be the natural father parties or, if not subject to the jurisdiction of the court, provide notice of the action in a manner prescribed by the court and an opportunity to be heard. If a man who is alleged to be the natural father is deceased, the court shall make the personal representative of his estate, if one has been appointed, a party. If a personal representative has not been appointed, the court shall make the deceased man's spouse or an immediate blood relative a party. If a spouse or immediate blood relative is not known or does not exist, the court shall appoint a representative for the alleged natural father who is deceased. The court may align the parties. When the person to be served has no residence within Colorado and his or her place of residence is not known or when he or she cannot be found within the state after due diligence, service must be by publication pursuant to rule 4 (g) of the Colorado rules of civil procedure; except that service must be by a single publication and must be completed not less than five days prior to the time set for hearing on paternity adjudication.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 93:** Entire section amended, p. 954, § 3, effective May 28. **L. 2006:** Entire section amended, p. 517, § 4, effective August 7. **L. 2016:** Entire section amended, (HB 16-1165), ch. 157, p. 496, § 9, effective January 1, 2017.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981).

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

People had standing to bring action. Evidence showing that mother was receiving assistance from county department of public welfare for benefit of child was sufficient to allow the people to have standing to bring action to establish paternity. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

For case holding that under former law child was not party to paternity action, see People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

The child is an indispensable party to a paternity proceeding. Unless the child can be made a party, the trial court is without jurisdiction to resolve any matters pertaining to the paternity suit. In re Burkey, 689 P.2d 726 (Colo. App. 1984).

Intervention by department of social services. Where the interest of the department of social services in a support obligation owed to a dependent child is contingent on the outcome of a paternity action, it was improper to allow it to intervene as a party to the action. However, such action was harmless since the department could have enforced its interest derived from the paternity proceeding in a separate proceeding following entry of the order determining paternity. J.E.S. v. F.F., 762 P.2d 703 (Colo. App. 1988).

A child must be made a party to a paternity action and must be represented individually by an appropriate fiduciary despite the language in the statute that the court may appoint a guardian ad litem. People in Interest of E.E.A. v. J.M., 854 P.2d 1346 (Colo. App. 1992); S.O.V. v. People in Interest of M.C., 914 P.2d 355 (Colo. 1996).

Court deprived of subject matter jurisdiction where court failed to join or give notice to all presumed fathers and any alleged natural fathers. Court must join all presumed fathers and natural fathers over whom it may exercise personal jurisdiction and must give notice to those whom it cannot join. People ex rel. J.G.C., 2013 COA 171, 318 P.3d 576.

Guardian ad litem is not a true party to a paternity proceeding. To be a true party, a person must be competent to sue, have the right to control the proceedings, to defend, to present and cross-examine witnesses, and to appeal in his or her own right. In a paternity proceeding, a guardian ad litem is appointed for the sole purpose of representing the child's best interests and, although the child is a party, the guardian ad litem does not have the right to control the proceedings, to defend the action, or to appeal in his or her own right. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

While the trial court erred in determining its own subject matter jurisdiction, because the error in finding that the child did not have to be made a proper party could have been corrected on

direct appeal, the doctrines of claim and issue preclusion bar any collateral attack on the trial court's original jurisdiction. People in Interest of E.E.A. v. J.M., 854 P.2d 1346 (Colo. App. 1992).

While the trial court erred in finding that the child did not have to be made a proper party, the error was based on a statute with inherently contradictory language and, therefore, the court did not manifestly abuse its authority in entertaining the action. People in Interest of E.E.A. v. J.M., 854 P.2d 1346 (Colo. App. 1992).

District court lacks jurisdiction to resolve matters in a paternity action unless each man presumed to be the children's father and each man alleged to be the children's natural father are made parties to or given notice of the action. In re Support of E.K., 2013 COA 99, 410 P.3d 480.

Absent special circumstances, once a determination of paternity has been made and permanent orders entered resolving custody, child support, and parenting time, the appointment of the guardian ad litem terminates. The Uniform Parentage Act is ambiguous as to the length of the guardian ad litem's appointment and there is no reason why the child and parents should suffer the expense and continued invasion of privacy caused by the indefinite appointment of a guardian ad litem, although the court may conclude that appointment of a guardian is necessary for a limited purpose or duration when issues are raised after the entry of permanent orders. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

The appointment of a guardian ad litem to represent a child's best interests in a paternity action continues during a direct appeal, initiated by one of the parties, from the permanent orders entered by the court in that action. In re S.R.H., 981 P.2d 199 (Colo. App. 1998), rev'd on other grounds sub nom. N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000).

The 1993 amendment to this section was a change in procedural law and therefore applied to causes of action that existed on the effective date of the amendment. People ex rel. Orange Co. v. M.A.S., 962 P.2d 339 (Colo. App. 1998).

Applied in Jefferson Co. Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980).

19-4-111. Pretrial proceedings.

(1) As soon as practicable after an action to declare the existence or nonexistence of the parent-child relationship has been brought, an informal hearing shall be held if it is determined by the court to be in the child's best interest. The court may order that the hearing be held before a magistrate. The public must be barred from the hearing if it is determined by the court to be in the best interest of any of the parties. A record of the proceeding or any portion thereof must be kept if any party requests or the court orders. Rules of evidence need not be observed. At the informal hearing, the judge or magistrate shall give a verbal advisement to the parties that a

request for genetic tests must not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5). The judge or magistrate shall further advise the parties that, if genetic tests are not obtained prior to the legal establishment of parentage and submitted into evidence prior to the entry of the final order establishing parentage, the genetic tests may not be allowed into evidence at a later date. The judge or magistrate shall further advise the parties that subsequent to an adjudication of parentage, upon motion, the court shall enter orders for allocation of parental responsibilities pursuant to section 14-10-124 (1.5); except that, in matters involving a nonresident party, the court shall first determine whether it has authority to issue an order allocating parental responsibilities pursuant to article 13 of title 14.

(2) Upon the refusal of any witness, including a party, to testify under oath or produce evidence, the court may order such witness to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that such witness' testimony or evidence might tend to incriminate such witness, the court may grant such witness immunity from the use of the testimony or evidence the witness is required to produce to prove the commission of a criminal offense by the witness. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

(3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

(4) Upon the filing of a petition under this article, any party may seek the issuance of a temporary protection order or injunction under the criteria set forth in section 14-10-108, C.R.S. Any party may further seek temporary orders as to the allocation of parental responsibilities, including allocation of decision-making responsibility and parenting time, and support once an order determining the existence of the parent and child relationship has been entered by the court. The filing of a motion for temporary orders shall not prevent a party or public agency from seeking other relief as may be provided by this article. Issues of temporary orders concerning the allocation of parental responsibilities, including decision-making responsibility and parenting time, and issues of support shall be determined in accordance with the criteria set forth in the "Uniform Dissolution of Marriage Act", article 10 of title 14, C.R.S. Any temporary protection order issued pursuant to this subsection (4) shall be on a standardized form prescribed by the judicial department, and a copy shall be provided to the protected person.

(5) At the time a protection order is requested pursuant to this section, the court shall inquire about, and the requesting party and such party's attorney shall have an independent duty to disclose, knowledge such party and such party's attorney may have concerning the existence of any prior protection orders of any court addressing in whole or in part the subject matter of the requested protection order.

(6) The duties of peace officers enforcing orders issued pursuant to this section 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.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 91:** (1) amended, p. 363, § 35, effective April 9. **L. 93:** (2) amended, p. 1737, § 30, effective July 1. **L. 94:** (4) to (6) added, p. 2016, § 11, effective January 1, 1995. **L. 98:** (4) amended, p. 1409, § 70, effective February 1, 1999. **L. 2003:** (4) and (5) amended, p.1016, § 26, effective July 1. **L. 2005:** (1) amended, p. 378, § 5, effective January 1, 2006. **L. 2023:** (1) amended, (SB 23-173), ch. 330, p. 1975, § 6, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-112. Genetic or other tests - administrative subpoena to compel genetic testing.

(1) Upon motion of the court or any of the interested parties, genetic tests or other tests of inherited characteristics shall be ordered and the results received in evidence, as provided in section 13-25-126. Upon agreement of the mother and the presumed or alleged father or fathers, genetic tests or other tests of inherited characteristics may be administered prior to filing of an action. If the action is then filed, the test results must be admitted into evidence as provided in section 13-25-126.

(2) (a) A delegate child support enforcement unit is authorized to produce, issue, and serve a subpoena to compel a party in a juvenile court case to appear, at a specified location and time, for a genetic test sample that is collected for assistance in paternity determination. The subpoena must allow a lab-certified child support enforcement unit sample collector, an accredited genetic-testing laboratory company, a health clinic, or a hospital to conduct a buccal swab or other lab-approved collection method of the alleged father, mother, and child whose paternity is at issue. The sample may then be used for paternity testing purposes, provided appropriate chain-of-custody documentation is followed. Test results obtained through the subpoena may be admitted as evidence pursuant to section 13-25-126. The subpoena may be served by first-class mail or by electronic means, if that notice preference by the party is documented.

(b) If a party fails to honor the first subpoena, the delegate child support enforcement unit may issue a second subpoena or file the appropriate motion with the court to compel compliance with a judicial genetic testing order pursuant to section 13-25-126. If the delegate child support enforcement unit issues a second subpoena and that subpoena is not honored, the delegate child support enforcement unit may file the appropriate motion with the court to compel compliance with a judicial genetic testing order pursuant to section 13-25-126. A nonappearance default may be sought against a nonappearing party only after a judicial genetic testing order is not honored.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 91:** Entire section amended, p. 254, § 11, effective July 1. **L. 2018:** Entire section amended, (HB 18-1363), ch. 389, p. 2322, § 2, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R.McG. v. J.W.", see 59 Den. L.J. 157 (1981). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983).

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

Requirement of blood tests. On motion of the alleged father, the trial of the issue of paternity of the unborn child shall not be held until after blood grouping tests are available. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969) (decided under former § 19-6-104 prior to the 1977 repeal and reenactment of this article).

This section does not provide for genetic testing during paternity adjudications after a legal judgment of paternity has entered. People ex rel. J.A.U. v. R.L.C., 47 P.3d 327 (Colo. 2002).

Evidence from tests sufficient for summary judgment. K.H.R. by and through D.S.J. v. R.L.S., 807 P.2d 1201 (Colo. App. 1990).

19-4-113. Evidence relating to paternity.

(1) Evidence relating to paternity may include:

(a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(c) Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(d) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(e) All other evidence relevant to the issue of paternity of the child.

(2) In any action brought pursuant to article 13 or 13.5 of title 26, C.R.S., the parties shall be required to use the laboratory designated by the delegate child support enforcement unit for genetic tests or other tests of inherited characteristics. Any subsequent test or other tests shall be determined by the court as provided in section 13-25-126, C.R.S.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 92:** (2) added, p. 183, § 1, effective August 1. **L. 97:** (1)(c) amended, p. 562, § 9, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

Common-law rule of testimony of parties. The common-law rule prohibiting a husband or wife from testifying to nonaccess in filiation cases first arose in the middle of the 18th century. Colorado adopted the common law of England as it existed prior to the announcement of that rule. Vasquez v. Esquibel, 141 Colo. 5, 346 P.2d 293 (1959).

There is a presumption of legitimacy of children born to a married woman. Vasquez v. Esquibel, 141 Colo. 5, 346 P.2d 293 (1959).

Such presumption may be overcome by evidence of nonaccess of the husband during the period when conception occurred, and it is error to reject such evidence in an action to establish paternity of a child. Vasquez v. Esquibel, 141 Colo. 5, 346 P.2d 293 (1959).

Burden of proof. If the presumption of legitimacy of children born to a married woman is overcome, it would still be incumbent on a petitioner to establish to the satisfaction of a trial court that a respondent was the father of a child, but he cannot rely on the outmoded and archaic conclusiveness of a presumption in the light of facts which a petitioner offers to prove. Vasquez v. Esquibel, 141 Colo. 5, 346 P.2d 293 (1959).

Preponderance of proof required. The trial court's instruction to the effect that petitioner must prove paternity by a preponderance of the evidence, rather than by clear and convincing evidence, correctly stated the law. McCoy v. People in Interest of Minor Child, 165 Colo. 407, 439 P.2d 347 (1968).

Prima facie case established. In a proceeding to determine paternity of a child, a petitioner's testimony of acts of intercourse with respondent and her pregnancy following and birth of the child within the permissible period is sufficient to establish a prima facie case and require submission of the issues to a jury. Medina v. Gonzales, 141 Colo. 118, 347 P.2d 138 (1959).

Evidence of specific resemblance is probative of paternity and should be admitted, but only when presented by a qualified expert witness who relates to the jury those characteristics which bear on paternity. People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

Scientific foundation for evidence of specific resemblance. Unlike evidence of general resemblance, there is a firm scientific foundation for inferring parentage from the existence of evidence of specific resemblance. People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

This section is sufficiently broad to order the husband, who was the presumed father, to submit to blood tests. People in Interest of M.P.R., 723 P.2d 743 (Colo. App. 1986).

Human leukocyte antigen test admissible on issue of paternity because it is capable of establishing either that an individual could not be the father of a certain child or that the probability that he is the father exceeds ninety percent. E.M.F. v. N.N., 717 P.2d 961 (Colo. App. 1985).

Exhibition of child is discretionary. In a paternity action, the question of whether the child is to be exhibited before the trier of fact is a discretionary matter on the part of the trial court, and its determination will be upheld on review in the absence of an abuse of that discretion. In re People in Interest of R.D.S., 32 Colo. App. 26, 507 P.2d 481, aff'd, 183 Colo. 89, 514 P.2d 772 (1973).

Refusal to allow such exhibition upheld. Where the court ruled in a paternity action that exhibition of the child would have been of no probative value, and appellant made no offer of proof and advanced no argument that could have been a basis for the reviewing court to determine that the trial court was in error, and where the existence of the child was not in dispute, and ample evidence was presented to support a verdict for or against either party, there was no abuse of discretion in the court's ruling. In re People in Interest of R.D.S., 32 Colo. App. 26, 507 P.2d 481, aff'd, 183 Colo. 89, 514 P.2d 772 (1973).

Exhibition of child for purpose of showing general resemblance denies right to cross-examination. Exhibition of a child to the jury in a paternity action for the purpose of showing general resemblance without expert testimony effectively denies the respondent the right of cross-examination, because the mere exhibition of a child without comment leaves a jury with the uncontroverted inference of similarities

between such child and the alleged father. People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

And is of questionable probative value and irrelevant. Because the probative force of evidence of general resemblance is questionable, yet gives rise to the conflicting interest of undue jury sympathy, prejudice, and confusion, exhibition of a child to jury, when offered to show paternity by way of general resemblance is irrelevant as a matter of law. People in Interest of R.D.S., 183 Colo. 89, 514 P.2d 772 (1973).

No statutory basis for guardian ad litem obtaining genetic testing in a paternity proceeding at the expense of the department of social services or a county to provide a basis for diagnosing future problems that a minor child may encounter in later years. Figueroa v. Juvenile Court, 197 Colo. 510, 595 P.2d 223 (1979).

19-4-114. Pretrial recommendations - temporary orders.

(1) On the basis of the information produced at the pretrial hearing, the judge or magistrate conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) That the action be dismissed with or without prejudice;

(b) That the matter be compromised by an agreement among the alleged father, the mother, and the child in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or magistrate conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or magistrate conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in section 19-4-116 (6), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him.

(c) That the alleged father voluntarily acknowledge his paternity of the child;

(d) That the action be consolidated with a relinquishment action filed pursuant to part 1 of article 5 of this title.

(2) If the parties accept a recommendation made in accordance with subsection (1) of this section, judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) of this section and genetic tests have not been taken, the court shall require the parties to submit to genetic tests, if practicable. Thereafter, the judge or magistrate shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial. If the evidence relating to paternity meets the requirements set forth in section 13-25-126 (1)(g), C.R.S., the court shall issue temporary orders establishing current child support, foster care maintenance, and medical support to remain in effect pending a final disposition of the proceeding.

(4) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(5) The informal hearing may be terminated and the action set for trial if the judge or magistrate conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3) of this section.

Source: L. 87: Entire title R&RE, p. 797, § 1, effective October 1. **L. 91:** (1), (3), and (5) amended, p. 363, § 36, effective April 9. **L. 93:** (1)(b) amended, p. 1780, § 43, effective June 6. **L. 97:** (3) amended, p. 562, § 10, effective July 1; (3) amended, p. 1275, § 14, effective July 1. **L. 2003:** (3) amended, p. 1270, § 61, effective July 1. **L. 2005:** (1)(d) added, p. 102, § 4, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments made to subsection (3) by House Bill 97-1205 and Senate Bill 97-114 were harmonized.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (3), see section 1 of chapter 236, Session Laws of Colorado 1997.

19-4-115. Civil action.

An action under this article is a civil action governed by the Colorado rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 19-4-111 (2) and (3), 19-4-112, and 19-4-113 apply.

Source: L. 87: Entire title R&RE, p. 798, § 1, effective October 1. **L. 91:** Entire section amended, p. 254, § 12, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-115 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Applied in In re U.M. v. District Court, 631 P.2d 165 (Colo. 1981).

19-4-116. Judgment or order - birth-related costs - evidence.

(1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate or if the court enters a judgment or order determining the existence of a parent and child relationship during the course of a proceeding held pursuant to article 3 of this title, the court shall order that a new birth certificate be issued under section 19-4-124.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the recovery of child support debt pursuant to section 14-14-104, C.R.S., the allocation of parental responsibilities with respect to the child and guardianship of the child, parenting time privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay for genetic testing and to pay the reasonable expenses of the mother's pregnancy and confinement.

(b) Repealed.

(c) Bills for pregnancy, childbirth expenses, and genetic testing are admissible as evidence without the necessity of third-party foundation testimony and shall constitute prima facie

evidence of the amounts incurred for such services or for expenses incurred on behalf of the child.

(4) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court or delegate child support enforcement unit may enter an order directing the obligor to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period that occurred prior to the month the child support obligation begins. The court may limit the obligor's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) The judgment or order may include a provision requiring that the respondent initiate inclusion of the child under a medical insurance policy currently in effect for the benefit of the respondent, purchase medical insurance for the child, or in some other manner provide for the current or future medical needs of the child. At the same time, the court may make a determination of whose responsibility it shall be to pay required medical insurance deductibles and copayments. If the judgment or order does not contain a provision regarding medical support, such as insurance coverage, payment for medical insurance deductibles and copayments, or unreimbursed medical expenses, that fact may be grounds for a modification of the order under section 14-10-122, C.R.S.

(6) The court or delegate child support enforcement unit has the discretion to enter an order directing the obligor to pay a reasonable amount of retroactive child support for a time period that occurred prior to the month the child support obligation begins. In determining the amount of retroactive child support, the court shall consider all relevant factors, including:

(a) The needs of the child;

(b) The standard of living and circumstances of the parents;

(c) The relative financial means of the parents;

(d) The earning ability of the parents;

(e) Repealed.

(f) The age of the child;

(g) The financial resources of the child;

(h) The responsibility of the parents for the support of others;

(i) The value of services contributed by the parent with whom the child resides the majority of the time;

(j) The standard of living the child would have enjoyed had the parents been an intact family;

(k) The child support guidelines, as set forth in section 14-10-115, C.R.S;

(l) The ability of the obligor to pay court-ordered current child support in addition to a potential judgment for retroactive child support;

(m) Efforts the parents have made to contact each other and communicate the needs of the child, including requests for financial support;

(n) Any evidence regarding a parent's attempt to avoid service;

(o) Support provided by the obligor, including, but not limited to, money, supplies, food, clothing, and gifts;

(p) Evidence of efforts to restrict access to the child from the other parent; and

(q) Evidence that the parents had a financial agreement during the retroactive time period.

(7) Any order of support made pursuant to subsections (4) to (6) of this section shall continue until the child is nineteen years of age, unless the support order is terminated sooner by court order.

(8) The court may order support to be continued after the child is nineteen years of age if the child is unable to care for himself or herself by reason of mental or physical disability or other reason justifiable in the opinion of the court.

(9) All child support orders entered pursuant to this article shall include the names and dates of birth of the parties and of the children who are the subject of the order and the parties' residential and mailing addresses. The social security numbers of the parties and children shall be collected pursuant to sections 14-14-113 and 26-13-127, C.R.S.

Source: L. 87: Entire title R&RE, p. 798, § 1, effective October 1; (6)(i) and (6)(j) amended and (6)(k) added, p. 1587, § 60, effective October 1. **L. 89:** (3), (5), and (7) amended, p. 794, § 21, effective July 1. **L. 93:** (3) amended, p. 582, § 21, effective July 1; (8) amended, p. 1638, § 25, effective July 1. **L. 94:** (4), (7), and (8) amended, p. 1542, § 15, effective May 31. **L. 95:** (3) amended, p. 1397, § 2, effective July 1. **L. 97:** (3)(a) amended and (3)(c) and (9) added, p. 1276, §§ 15, 16, effective July 1. **L. 98:** (3)(a) and (6)(i) amended, p. 1409, § 71, effective February 1, 1999. **L. 99:** (2) and (9) amended, p. 1086, § 5, effective July 1. **L. 2008:** (9) amended, p. 1348, § 4 effective July 1. **L. 2023:** (4) amended, (SB 23-173), ch. 330, p. 1976, § 7, effective September 1. **L. 2025:** IP(6), (6)(g), and (6)(j) amended and (6)(l), (6)(m), (6)(n), (6)(o), (6)(p), and (6)(q) added, (HB 25-1159), ch. 334, p. 1762, § 7, effective February 1, 2026; (6)(e)(II) added by revision, (HB 25-1159), ch. 334, pp. 1762, 1766, §§ 7, 13.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective June 30, 1999. (See L. 95, p. 1397.)

(3) Subsection (6)(e)(II) provided for the repeal of subsection (6)(e), effective February 1, 2026. (See L. 2025, pp. 1762, 1766.)

Cross references: For the legislative declaration contained in the 1993 act amending subsection (3), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the 1997 act amending subsection (3)(a) and adding subsections (3)(c) and (9), see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Law reviews. For comment, "The Unwed Father's Parental Rights and Obligations After S.P.B.: A Retreat in Constitutional Protection" see 60 Den. L.J. 659 (1983).

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

Constitutionality. This section does not violate due process in creating an irrebuttable presumption that a father should share in the duty of child support. People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

There is no violation of equal protection in the statutory obligation of both parents to pay child support or in the denial to an unwed father of the right to demand the termination of a pregnancy. People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

Former section constitutional. Former section compelling a father to support unborn child and its mother was constitutional. Cederquist v. Archuleta, 127 Colo. 41, 253 P.2d 431 (1953).

Former statute which provided for assessment of damages held unconstitutional and would not support a judgment of damages. This did not relieve the father of an illegitimate child of his obligation to support the child since the finding of the jury as to the father of the child involved stood. Loveland v. Lewis, 169 Colo. 149, 454 P.2d 84 (1969).

Law liberally interpreted. Where the paternity of the child is established beyond question, the law should be liberally construed to insure the necessary help to the child and its mother, consonant with the father's ability to pay. Davis v. People, 103 Colo. 437, 86 P.2d 975 (1939).

The primary issue for determination in a paternity case is whether the alleged father is, in fact, the father. A.R.B. v. G.L.P., 180 Colo. 439, 507 P.2d 468 (1973).

Determination of status of child is conclusive. A proceeding to determine the parentage of a child is in the direct interest of the child and the status of the child as to its parentage determined in such a proceeding is just as conclusive and binding upon the child as it would be upon a parent brought into court under the provisions of the statute. In re Morrow's Estate, 100 Colo. 424, 68 P.2d 36 (1937).

A person who is determined to be a non-parent under the Uniform Parentage Act but who fits the criteria in § 14-10-123 (1) may qualify as an "appropriate party" within the meaning of this section. In re Ohr, 97 P.3d 354 (Colo. App. 2004).

Payment of reasonable expenses of mother's pregnancy and confinement is authorized and jurisdiction rests exclusively under the Uniform Parentage Act and not under the Uniform Dissolution of Marriage Act (UDMA). In re Custody of Garcia, 695 P.2d 774 (Colo. App. 1984).

Question of child support involved. In a paternity proceeding the question of support of the child, both past and future, is involved. People in Interest of A.A.T., 191 Colo. 494, 554 P.2d 302 (1976).

A father may be required to pay child support retroactive to the birth of the child pursuant to subsection (4). In re Smith, 7 P.3d 1012 (Colo. App. 1999).

Subsection (4) permits an award of child support retroactive to the date of the child's birth and does not violate equal protection by treating unmarried parents differently from married parents. People ex rel. B.W., 17 P.3d 199 (Colo. App. 2000).

Jurisdiction to award back child support. The use of the word "may" in the first sentence of subsection (3) indicates that the general assembly intended to allow the trial court broad discretion in determining support issues, including that of child support arrearages. People in Interest of L.W., 756 P.2d 392 (Colo. App. 1988) (decided under former § 19-6-116 as it existed prior to the 1987 repeal and reenactment of this title).

Juvenile court properly considered the father's earning ability and the parties' agreement to sell jointly owned house in determining whether an increase in child support was warranted for child born out of wedlock and the juvenile court did not abuse its discretion in ordering increased child support upon the sale of said house. M.H.W. by M.E.S. v. D.J.W., 757 P.2d 1129 (Colo. App. 1988).

Unless an order specifically states that it is not subject to modification a trial court may modify a lump-sum child support order. M.F. v. L.M., 780 P.2d 69 (Colo. App. 1989).

Deferred compensation in father's nonqualified retirement plan is not income for child support purposes under this act. Applying the definition of income in § 14-10-115, the court determined that it was not income because father did not have

the ability to use it to pay his expenses, including child support. Father was not vested in the plan, there was no account in his name, the plan would pay only upon retirement if certain conditions were met, and father would forfeit the plan if he was fired, quit, or retired before age sixty-five, and once retired, it would pay out over 10 years. In re N.J.C., 2019 COA 153M, 467 P.3d 1209.

Request to hear change of minor's name within broad grant of authority to trial court pursuant to subsection (3). Whether change of name is in the best interests of a minor child is a factual determination for the trial court. D.K.W. v. J.L.B., 807 P.2d 1222 (Colo. App. 1990); S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Trial court may deviate from presumed amount of support in § 14-10-115 according to the criteria in subsection (6) of this section so long as it enters findings that allow an appellate court and the parties to discern the reasons for the deviation. In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

Power of court to issue temporary orders. The juvenile court may, in its discretion in a proper case, issue temporary orders providing for protection, support, or medical and surgical treatment as it deems in the best interest of the child prior to adjudication or disposition of the petition to determine paternity. People in Interest of Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

Evidence as to the putative father's ability to pay must not only be adduced but the ability of the man charged to pay must bear some relationship to the sum awarded. Noffsinger v. Sipes, 161 Colo. 413, 422 P.2d 639 (1967).

Continuing jurisdiction of the trial court under this section allows appointment of a guardian ad litem even after the entry of permanent orders when deemed necessary by the court. Such appointment may be made on motion of a party or on the court's own motion; however, appointment of a guardian ad litem after the entry of permanent orders should not be done as a matter of course. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994); S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

In paternity proceedings, juvenile court must make and modify permanent orders regarding parenting time in accordance with the UDMA. People in Interest of S.E.G., 934 P.2d 920 (Colo. App. 1997).

Parenting time is primarily a right of the child and only secondarily a right of the parent. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Relevant factors that the court appropriately considered under subsection (3)(a) included the facts that the mother was rigid and inflexible, the father harbored anger and hostility, and visitation occurred in an atmosphere of tension and distrust. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

A specific order, containing limitations on father's parenting time, was

appropriate where the evidence showed a lack of cooperation between the parties. Under such circumstances, a general order does not meet the purposes for which parenting time is intended. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Not all medical expenses allocated. To harmonize this section and § 19-4-129, only uninsured medical expenses exceeding $100 for enumerated health problems may be apportioned between the parties in a paternity action filed on or after July 1, 1988. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Cost of a nanny may be included in the calculation of child support. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Mother not precluded from bringing a paternity action under this section after conclusion of an action under the UDMA. Although the issue of paternity had been established in the UDMA action, the issue of whether the mother was entitled to birth-related costs was unresolved and could not have been resolved in prior action. In re G.E.R., 264 P.3d 637 (Colo. App. 2011).

19-4-117. Costs.

The court shall order reasonable fees of counsel, experts, and the child's guardian ad litem and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court. In any action brought pursuant to article 13 or 13.5 of title 26, C.R.S., the final costs of any genetic tests or other tests of inherited characteristics shall be assessed against the nonprevailing party on the parentage issue.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 92:** Entire section amended, p. 183, § 2, effective August 1. **L. 97:** Entire section amended, p. 563, § 11, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-117 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

This section and § 13-25-126 are inconsistent on the question of who bears the cost of additional blood tests in paternity

actions, but § 13-25-126 controls. L.D.G. v. E.R., 723 P.2d 746 (Colo. App. 1986).

Attorney fees. This section does not predicate an award of attorney fees and costs upon a showing of bad faith. In re C.R.A.H., 647 P.2d 239 (Colo. App. 1981).

Expert witness fees. Expert witnesses are entitled to fees for the time actually spent in the courtroom. In re C.R.A.H., 647 P.2d 239 (Colo. App. 1981).

Mileage fees for out-of-state witnesses. Out-of-state witnesses not under subpoena are not entitled to a mileage fee. In re C.R.A.H., 647 P.2d 239 (Colo. App. 1982).

Determination as to payment of guardian ad litem fees is within discretion of the juvenile court, and its decision will not be disturbed on appeal absent a clear abuse of that discretion. G.K.D. v. R.A.D., 759 P.2d 851 (Colo. App. 1988).

Section dictates that the trial court assess the costs of the genetic tests against the nonprevailing parties, here the mother and the county department of social services, even though there was a presumption of paternity based on the father's acknowledgment of paternity on the birth certificate. People ex rel. L.J.P., 2 P.3d 140 (Colo. App. 2000).

Applied in In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

19-4-118. Enforcement of judgment or order.

(1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this article or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, or the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(2) The court may order support payments to be made to the obligee, the clerk of the court, in those cases in which the executive director of the department of human services has notified the state court administrator pursuant to section 26-13-114 (5), C.R.S., that the judicial district in which the court is situated is ready to participate in the family support registry, through the family support registry, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court. The court may not order payments to be made to the clerk of the court once payments may be made through the family support registry.

(3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(4) In making any order for support pursuant to this section, the court shall take into consideration the capability of both parents to provide support.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 98:** (2) amended, p. 766, § 16, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-118 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Applied in Deeb v. Morris, 14 B.R. 217 (D. Colo. 1981).

19-4-119. Modification of judgment or order.

(1) The court has continuing jurisdiction to modify or revoke a judgment or order:

(a) For future education and support; and

(b) With respect to matters listed in sections 19-4-116 (3) and (4) and 19-4-118 (2); except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 19-4-116 (4) may specify that the judgment or order may not be modified or revoked.

(2) The court may modify an order of support only in accordance with the provisions of and the standard for modification in section 14-10-122, C.R.S.

(3) The trial court retains jurisdiction to modify an order concerning child support or concerning the allocation of parental rights and responsibilities based on a change in circumstances during the pendency of an appeal.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 90:** (2) added, p. 892, § 16, effective July 1. **L. 2021:** (3) added, (HB 21-1031), ch. 116, p. 451, § 7, effective May 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-119 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Section 8 of chapter 116 (HB 21-1031), Session Laws of Colorado 2021, provides that the act changing this section applies to any request to modify an order appealed on, after, or before May 7, 2021.

Cross references: For the legislative declaration in HB 21-1031, see section 1 of chapter 116, Session Laws of Colorado 2021.

ANNOTATION

Unless an order specifically states that it is not subject to modification, a trial court may modify a lump-sum child support order. M.F. v. L.M., 780 P.2d 69 (Colo. App. 1989) (decided under former § 19-6-119 as it existed prior to the 1987 repeal and reenactment of this title).

Continuing jurisdiction of the trial court under this section allows appointment of a guardian ad litem even after the entry of permanent orders when deemed necessary by the court. Such appointment may be made on motion of a party or on the court's own motion; however, appointment of a guardian ad litem after the entry of permanent orders should not be done as a matter of course. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

In paternity proceedings, juvenile court must make and modify permanent orders regarding parenting time in accordance with the Uniform Dissolution of Marriage Act, § 14-10-101 et seq. People in Interest of S.E.G., 934 P.2d 920 (Colo. App. 1997).

19-4-120. Represented by counsel.

At the pretrial hearing and in further proceedings, any party may be represented by counsel or a licensed legal paraprofessional, but a licensed legal paraprofessional shall not engage in any tasks or activities that are prohibited by the Colorado supreme court pursuant to court rules.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 2024:** Entire section amended, (HB 24-1291), ch. 131, p. 473, § 24, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-120 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-121. Hearings and records - confidentiality. (Repealed)

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-4-122. Action to declare mother and child relationship.

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this article applicable to the father and child relationship apply.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-122 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Applied in In re S.N.V., 284 P.3d 147 (Colo. App. 2011).

19-4-123. Promise to render support.

(1) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to section 19-4-107 (4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-123 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-124. Birth records.

(1) Upon order of a court of this state or upon an order issued and filed pursuant to article 13.5 of title 26, C.R.S., or upon request of a court of another state, the state registrar of vital statistics shall prepare a new certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate, but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons or, in exceptional cases only, upon an order of the court for good cause shown.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1. **L. 89:** (1) amended, p. 1247, § 6, effective April 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-124 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-125. "Father" defined.

In case of a maternity suit against a purported mother, where appropriate in the context, the word "father" shall mean "mother".

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-127 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Applied in In re S.N.V., 284 P.3d 147 (Colo. App. 2011).

19-4-126. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-128 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-127. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and, to this end, the provisions of this article are severable.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-129 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

Applied in Jefferson County Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980).

19-4-128. Right to trial to court.

Any party may demand a trial to the court to determine the existence or nonexistence of the parent and child relationship. No party may demand a jury trial, and notwithstanding any demand which may have been made, trial shall be to the court and not to a jury.

Source: L. 88: Entire section added, p. 746, § 15, effective July 1. **L. 92:** Entire section amended, p. 183, § 3, effective August 1. **L. 94:** Entire section amended, p. 1542, § 16, effective May 31. **L. 97:** Entire section amended, p. 1276, § 17, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

19-4-129. Child support - guidelines - schedule of basic support obligations.

The provisions of section 14-10-115, C.R.S., shall apply to all child support obligations, established or modified, as part of any proceeding under this article, whether filed on or subsequent to July 1, 1988.

Source: L. 88: Entire section added, p. 746, § 15, effective July 1.

ANNOTATION

Trial court may deviate from presumed amount of support in § 14-10-115 according to the criteria listed in § 19-4-116 (6) so long as it enters findings that allow an appellate court and the parties to discern the reasons for the deviation. In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

Court must allocate dependency exemption between the parties based on their respective gross incomes pursuant to § 14-10-115. Federal tax law contemplates such an allocation, and does not preempt it. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Not all medical expenses allocated. To harmonize this section and § 19-4-116, only uninsured medical expenses exceeding $100 for enumerated health problems may be apportioned between the parties in a paternity action filed on or after July 1, 1988. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

19-4-130. Temporary orders for allocation of parental responsibilities.

(1) Upon the filing of any proceeding under this article 4 or under article 13.5 of title 26, the court shall, upon motion of a party, enter a temporary or permanent order allocating parental responsibilities that allocates the decision-making responsibility and parenting time of the child until further order of the court.

(2) Subsection (1) of this section does not apply to any parentage determination made pursuant to section 14-5-402.

Source: L. 92: Entire section added, p. 184, § 4, effective August 1. **L. 96:** Entire section amended, p. 612, § 14, effective July 1. **L. 98:** (1) amended, p. 1410, § 72, effective February 1, 1999. **L. 2015:** (2) amended, (HB 15-1198), ch. 173, p. 568, § 35, effective July 1. **L. 2023:** Entire section amended, (SB 23-173), ch. 330, p. 1982, § 23, effective June 2.

ARTICLE 4.5

Colorado Surrogacy Agreement Act

19-4.5-101. Short title.
19-4.5-102. Legislative declaration.
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19-4.5-110. Parentage of deceased intended parent under surrogacy agreement.
19-4.5-111. Court order of parentage under surrogacy agreement.
19-4.5-112. Effect of surrogacy agreement.
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19-4.5-114. Certain provisions of law not applicable to surrogacy agreements.

19-4.5-101. Short title.

The short title of this article 4.5 is the "Colorado Surrogacy Agreement Act".

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 409, § 1, effective May 6.

19-4.5-102. Legislative declaration.

(1) The general assembly finds and declares that surrogacy agreements executed pursuant to this article 4.5 are in accord with the public policy of this state.

(2) The general assembly further finds and declares that the purpose of this article 4.5 is to:

(a) Establish consistent standards and procedural safeguards to promote the best interests of the children who are born as a result of surrogacy agreements executed pursuant to this article 4.5;

(b) Protect all parties involved in surrogacy agreements executed pursuant to this article 4.5; and

(c) Recognize the technological advances in assisted reproductive medicine and allow the use of these advances by intended parents and gestational surrogates and genetic surrogates according to the public policy of this state.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 409, § 1, effective May 6.

19-4.5-103. Definitions.

As used in this article 4.5, unless the context otherwise requires:

(1) "Assisted reproduction" means a method of causing pregnancy through means other than by sexual intercourse. In the foregoing context, the term includes, but is not limited to:

(a) Intrauterine or intracervical insemination;

(b) Donation of eggs or sperm;

(c) Donation of embryos;

(d) In vitro fertilization and embryo transfer;

(e) Intracytoplasmic sperm injection; and

(f) Assisted reproductive technology.

(2) "Child" means an individual or individuals born pursuant to assisted reproduction whose parentage may be determined under this article 4.5 or other law.

(3) "Compensation" means payment of any valuable consideration for time, effort, support, pain, or risk.

(4) "Donor" means an individual who provides gametes intended for use in assisted reproduction, whether or not for consideration. "Donor" does not include a person who gives birth to a child conceived by assisted reproduction, except in the case of genetic surrogacy, or an individual who is a parent under the rules governing the parentage of children conceived through assisted reproduction.

(5) "Embryo" means a fertilized egg that has the potential to develop into a fetus if transferred into a uterus.

(6) "Embryo transfer" or "transfer" means the placement of an embryo into a uterus.

(7) "Gamete" means a cell containing a haploid complement of DNA that has the potential to form an embryo when combined with another gamete. Sperm and eggs are gametes.

(8) "Genetic surrogate" means an individual who is not an intended parent and who agrees to become pregnant through assisted reproduction using their own donated gametes, under a surrogacy agreement as provided in this article 4.5.

(9) "Gestational surrogate" means an individual who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not their own, under a surrogacy agreement as provided in this article 4.5.

(10) "Intended parent" means an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.

(11) "Licensed mental health professional" means a certificate holder or licensee, as those terms are defined in section 12-245-202, certified or licensed pursuant to article 245 of title 12.

(12) "Medical evaluation" means a complete consultation with and evaluation by a licensed medical doctor.

(13) "Mental health consultation" means a consultation with and, when required by this article 4.5, an assessment by a licensed mental health professional.

(14) "Surrogacy agreement" means an agreement between one or more intended parents and an individual who is not an intended parent in which the individual agrees to become pregnant through assisted reproduction and that provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy agreement.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 410, § 1, effective May 6. **L. 2022:** (11) amended, (SB 22-212), ch. 421, p. 2973, § 42, effective August 10.

19-4.5-104. Eligibility requirements.

(1) To execute an agreement to act as a gestational surrogate or genetic surrogate, an individual must:

(a) Be at least twenty-one years of age;

(b) Previously have given birth to at least one child;

(c) Complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(d) Complete a mental health consultation by a licensed mental health professional; and

(e) Have independent legal representation of their choice by an attorney licensed in this state throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(2) To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, must:

(a) Be at least twenty-one years of age;

(b) Complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor; and

(c) Have independent legal representation of the intended parent's or parents' choice by an attorney licensed in this state throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 411, § 1, effective May 6.

19-4.5-105. Process requirements for a surrogacy agreement.

(1) A surrogacy agreement must be executed in compliance with the following rules:

(a) At least one party must be a resident of this state, or the birth will occur or is anticipated to occur in this state, or the assisted reproduction performed pursuant to the surrogacy agreement will occur in this state;

(b) A gestational surrogate or genetic surrogate and each intended parent must meet the requirements of section 19-4.5-104;

(c) Each intended parent, the gestational surrogate or genetic surrogate, and the surrogate's spouse, if any, must be parties to the agreement;

(d) Each party listed in subsection (1)(c) of this section shall sign the agreement;

(e) The signature of each party to the agreement must be attested by a notarial officer;

(f) The intended parent or parents may pay for independent legal representation for the gestational surrogate or genetic surrogate; and

(g) The agreement must be executed before a medical procedure occurs related to the surrogacy agreement, other than the medical evaluation and mental health consultation required by section 19-4.5-104.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 412, § 1, effective May 6.

19-4.5-106. Required contents of surrogacy agreement.

(1) A surrogacy agreement must comply with the following requirements:

(a) A gestational surrogate or genetic surrogate agrees to attempt to become pregnant by means of assisted reproduction;

(b) Except as otherwise provided in section 19-4.5-111, the gestational surrogate or genetic surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a child conceived by assisted reproduction under the agreement;

(c) The gestational surrogate or genetic surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement;

(d) Except as otherwise provided in section 19-4.5-111, the intended parent, or, if there are two intended parents, each one jointly and severally, immediately on birth will be the exclusive parent or parents of the child, regardless of number of children born or gender or mental or physical condition of each child;

(e) Except as otherwise provided in section 19-4.5-111, the intended parent, or, if there are two intended parents, each parent jointly and severally, immediately on birth will assume responsibility for the financial support of the child, regardless of the number of children born or gender or mental or physical condition of each child;

(f) The agreement must include information disclosing how each intended parent will cover the agreed-upon expenses of the gestational surrogate or genetic surrogate, the assisted reproduction expenses, and the medical expenses for the surrogate and the child;

(g) The agreement must permit the gestational surrogate or genetic surrogate to make all health and welfare decisions regarding themselves and the pregnancy;

(h) The agreement must include information about each party's right under this article 4.5 to terminate the surrogacy agreement.

(2) A surrogacy agreement may provide for:

(a) Payment of compensation, support, and reasonable expenses; and

(b) Reimbursement of specific agreed-upon expenses if the agreement is terminated under this article 4.5.

(3) A right created under a surrogacy agreement is not assignable and there is no third-party beneficiary of the agreement other than the child.

(4) In the event that any of the requirements of this section are not met, a court of competent jurisdiction shall determine parentage based on the parties' intent.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 412, § 1, effective May 6.

19-4.5-107. Effect of subsequent change of marital status.

(1) Unless a surrogacy agreement expressly provides otherwise:

(a) The marriage of a gestational surrogate or genetic surrogate after the agreement is signed by all parties does not affect the validity of the agreement, their spouse's consent to the agreement is not required, and their spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(b) The dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance of the gestational surrogate or genetic surrogate after the agreement is signed by all parties does not affect the validity of the agreement.

(2) Unless a surrogacy agreement expressly provides otherwise:

(a) The marriage of an intended parent after the agreement is signed by all parties does not affect the validity of a surrogacy agreement, the consent of the spouse of the intended parent is not required, and the spouse of the intended parent is not, based on the agreement, a parent of a child conceived by assisted reproduction under the agreement; and

(b) The dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance of an intended parent after the agreement is signed by all parties does not affect the validity of the agreement and, except as otherwise provided in section 19-4.5-110 or 19-4.5-112, the intended parents are the parents of the child.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 413, § 1, effective May 6.

19-4.5-108. Termination of surrogacy agreement.

(1) A party to a surrogacy agreement may terminate the agreement, at any time before a gamete or an embryo transfer, by giving notice of termination in a record to all other parties. If a gamete or an embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent gamete or embryo transfer.

(2) Unless a surrogacy agreement provides otherwise, on termination of the agreement pursuant to subsection (1) of this section, the parties are released from the agreement; except that each intended parent remains responsible for expenses that are reimbursable under the agreement and incurred by the gestational surrogate or genetic surrogate through the date of termination.

(3) Except in a case involving fraud, no party is liable to any other party for a penalty or liquidated damages for terminating a surrogacy agreement under this section.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 414, § 1, effective May 6.

19-4.5-109. Establishment of parent-child relationship under surrogacy agreement.

(1) Except as otherwise provided in subsection (3) of this section or section 19-4.5-110 (2) or 19-4.5-112, on birth of a child conceived by assisted reproduction under a surrogacy agreement, each intended parent is, by operation of law, a parent of the child.

(2) Except as otherwise provided in subsection (3) of this section or section 19-4.5-112, neither a gestational surrogate or genetic surrogate nor the surrogate's spouse or former spouse, if any, is a parent of the child.

(3) If a child is alleged to be a genetic child of the individual who agreed to be a gestational surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the individual who agreed to be a gestational surrogate, parentage must be determined based on article 4 of this title 19.

(4) Except as otherwise provided in subsection (3) of this section or section 19-4.5-110 (2) or 19-4.5-112, if, due to a clinical or laboratory error, a child conceived by assisted reproduction under a surrogacy agreement is not genetically related to an intended parent or a donor who donated to the intended parent or parents, each intended parent, and not the gestational surrogate or genetic surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to any other claim of parentage.

(5) A donor is not a parent of a child conceived by assisted reproduction.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 414, § 1, effective May 6.

19-4.5-110. Parentage of deceased intended parent under surrogacy agreement.

(1) Section 19-4.5-109 applies to an intended parent even if the intended parent died during the period between the transfer of a gamete or embryo and the birth of the child.

(2) Except as otherwise provided in section 19-4.5-112, an intended parent is not a parent of a child conceived by assisted reproduction under a surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(a) The agreement provides otherwise; and

(b) The transfer of a gamete or embryo occurs not later than thirty-six months after the death of the intended parent or birth of the child occurs not later than forty-five months after the death of the intended parent.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 415, § 1, effective May 6.

19-4.5-111. Court order of parentage under surrogacy agreement.

(1) Except as otherwise provided in section 19-4.5-110 (2) or 19-4.5-112, before, on, or after the birth of a child conceived by assisted reproduction pursuant to a surrogacy agreement, a party to the agreement may commence a proceeding in a juvenile court in this state by filing a petition for determination of parent-child relationship with admissions of parentage, as applicable by the intended parents, and admissions of nonparentage by the gestational surrogate or genetic surrogate and their spouse, if any, as applicable and for an order or judgment:

(a) Declaring that each intended parent is a parent of the child and ordering that parental rights and duties vest immediately on the birth of the child exclusively in each intended parent;

(b) Declaring that the gestational surrogate or genetic surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child;

(c) Designating the content of the birth record in accordance with article 2 of title 25 and directing the Colorado department of public health and environment or state registrar to designate each intended parent as a parent of the child;

(d) To protect the privacy of the child and the parties, declaring that the court record is not open to inspection;

(e) If necessary, that the child be surrendered to the intended parent or parents; and

(f) For other relief the court determines necessary and proper.

(2) The court may issue an order or judgment under subsection (1) of this section before the birth of the child. The court shall stay enforcement of the order or judgment until the birth of the child.

(3) Neither this state nor the Colorado department of public health and environment is a necessary party to a proceeding under subsection (1) of this section.

(4) The petition described in subsection (1) of this section must set forth the facts of the surrogacy arrangement.

(5) If a court order of parentage is issued in another state, the order must be registered with a Colorado court of competent jurisdiction before being valid in this state.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 415, § 1, effective May 6.

19-4.5-112. Effect of surrogacy agreement.

(1) A surrogacy agreement that complies with sections 19-4.5-104, 19-4.5-105, and 19-4.5-106 is enforceable.

(2) If a child was conceived by assisted reproduction under a surrogacy agreement that does not comply with sections 19-4.5-104, 19-4.5-105, and 19-4.5-106, the court shall determine the rights and duties of the parties to the agreement consistent with the intent of the parties at the time of execution of the agreement. Each party to the agreement and any individual who at the time of the execution of the agreement was a spouse of a party to the agreement has standing to maintain a proceeding to adjudicate an issue related to the enforcement of the agreement.

(3) Except as expressly provided in a surrogacy agreement or in subsection (4) or (5) of this section, if the agreement is breached by the gestational surrogate or genetic surrogate or one or

more intended parents, the nonbreaching party is entitled to the remedies available at law or in equity.

(4) Specific performance is not a remedy available for breach by a gestational surrogate or genetic surrogate of a provision in the agreement that the surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

(5) Except as otherwise provided in subsection (4) of this section, if an intended parent is determined to be a parent of the child, specific performance is a remedy available for:

(a) Breach of the agreement by a gestational surrogate or genetic surrogate which prevents the intended parent from exercising immediately on birth of the child the full rights of parentage; or

(b) Breach by the intended parent which prevents the intended parent's acceptance, immediately on birth of the child conceived by assisted reproduction under the agreement, of the duties of parentage.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 416, § 1, effective May 6.

19-4.5-113. Duty to support.

(1) The establishment of the parent and child relationship pursuant to a valid surrogacy agreement, court order of parentage, and this article 4.5 is the basis upon which an action for child support may be brought against the intended parent and acted upon by the court or the delegate child support enforcement unit without further evidentiary proceedings.

(2) The breach of the surrogacy agreement by the intended parent does not relieve the intended parent of the support obligations imposed by the parent and child relationship pursuant to the provisions of this article 4.5.

(3) The donor is not the legal parent of the child thereby conceived and has no rights or duties stemming from the conception of the child.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 417, § 1, effective May 6.

19-4.5-114. Certain provisions of law not applicable to surrogacy agreements.

(1) A surrogacy agreement is not considered:

(a) An adoption pursuant to article 5 of this title 19; or

(b) A surrender of custody or termination of parental rights of the child by the donor in violation of the requirements of article 3 of this title 19.

(2) The payment of reasonable expenses and support in connection with a valid surrogacy agreement does not constitute a violation of section 19-5-213.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 417, § 1, effective May 6.

ARTICLE 5

Relinquishment and Adoption

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PART 1

RELINQUISHMENT

19-5-100.2. Legislative declaration.

(1) The general assembly hereby finds that parental relinquishment and adoption of children are important and necessary options to facilitate the permanent placement of minor children if the birth parents are unable or unwilling to provide proper parental care. The general assembly further finds that adoption offers significant psychological, legal, economic, and social benefits not only for children who might otherwise be homeless but also for parents who are unable to care for their children and for adoptive parents who desire children to nurture, care for, and support. Conversely, the general assembly recognizes that disrupted adoptive placements often have a profound and negative impact on individuals, particularly children, involved in the adoption proceedings.

(2) It is the purpose of this article 5 to promote the integrity and finality of adoptions to ensure that children placed in adoptive placements will be raised in stable, loving, and permanent families. It is the further intent of the general assembly that a prospective parent with a disability should not be denied the opportunity to provide a permanent adoptive placement for a child

based solely on the parent's disability, as provided for in section 24-34-805 (2). The general assembly intends that by enacting this legislation, it will be protecting children from being uprooted from adoptive placements and from the life-long emotional and psychological trauma that often accompanies being indiscriminately moved.

Source: L. 94: Entire section added, p. 746, § 1, effective April 20. **L. 2018:** (2) amended, (HB 18-1104), ch. 164, p. 1135, § 9, effective April 25.

ANNOTATION

Language of legislative declaration should not be construed to recognize the importance of the adoption process at the cost of denying the rights of a fit biological parent. M.C. v. Adoption Choices of Colo., Inc., 2014 COA 161, 369 P.3d 659, rev'd on other grounds, 2015 CO 72, 363 P.3d 193.

Articles 3 and 5 of the Children's Code are not interchangeable for purposes of termination of parental rights. Parental rights cannot be terminated under article 5 if a dependency and neglect action under this article 3 is still active. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875.

19-5-100.5. Applicability of article.

Except where indicated otherwise, each provision of this article pertaining to relinquishment or adoption shall apply only to child welfare adoptions and not to private adoptions.

Source: L. 2010: Entire section added, (HB 10-1106), ch. 278, p. 1273, § 4, effective May 26.

19-5-101. Termination of the parent-child legal relationship.

(1) The juvenile court may, upon petition, terminate the parent-child legal relationship between a parent or parents, or a possible parent or parents, and a child in proceedings pursuant to:

(a) Section 19-1-104 (1)(d);

(a.5) Section 19-5-103.5 (2)(d);

(b) Section 19-5-105;

(c) Section 19-5-203 (1)(d), (1)(e), (1)(f), (1)(j), and (1)(k);

(d) Section 19-5-105.5; or

(e) Section 19-5-105.7.

(2) No parent shall relinquish the parent-child legal relationship with a child other than in accordance with the provisions of this article.

(3) A termination by a court of a parent-child legal relationship pursuant to proceedings under this section or any section described by subsection (1) of this section shall not be deemed to terminate a sibling relationship between sibling children who are parties to the termination of the parent-child legal relationship.

Source: L. 87: Entire title R&RE, p. 801, § 1, effective October 1. **L. 99:** (1) amended, p. 1065, § 9, effective June 1. **L. 2007:** (1) amended, p. 113, § 1, effective July 1. **L. 2008:** (3) added, p. 2, § 2, effective August 5. **L. 2013:** (1)(b) and (1)(c) amended and (1)(d) added, (SB 13-227), ch. 353, p. 2057, § 2, effective July 1. **L. 2025:** (1) amended, (HB 25-1185), ch. 158, p. 634, § 1, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For article, "A Lawyer's Advice to the Unmarried Mother", see 31 Dicta 112 (1954). For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983).

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

Nothing prohibits court from appointing a guardian ad litem (GAL) should parent fail to appear in court. In re R.L.S., 2019 COA 112, 451 P.3d 1249.

Father did not waive his request for a GAL. Because he was in custody out of state, unrepresented, and indigent, he could not appear in court. In re R.L.S., 2019 COA 112, 451 P.3d 1249.

Paternal rights (now parent-child legal relationships) may be forfeited by abandonment of the child. Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954).

Statutory relinquishment cannot be waived because it is a part of the court process in such matters. It is necessary in order that the parent be under the jurisdiction of the court where the other statutory provision of counseling and guidance can be given. Fackerell v. District Court, 133 Colo. 370, 295 P.2d 682 (1956).

An attempt to relinquish a minor child to an individual is without any force or effect. Consent alone adds nothing in the way of giving jurisdiction to the court. Fackerell v. District Court, 133 Colo. 370, 295 P.2d 682 (1956).

In a dependency and neglect case under article 3, a parent's parental rights may be terminated only through the Parent-Child Legal Relationship Termination Act of 1987, §§ 19-3-601 to 19-3-612. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875.

19-5-102. Venue.

(1) A petition for relinquishment of the parent-child relationship shall be filed in the county where the child resides or in the county where the petitioner resides. If a child placement agency is involved, the petition may be filed in the county where the child placement agency is located.

(2) A petition for termination of the parent-child legal relationship pursuant to section 19-5-105.5 or section 19-5-105.7 must be filed in the county where the child resides or in the county where the petitioner resides.

Source: L. 87: Entire title R&RE, p. 801, § 1, effective October 1. **L. 88:** Entire section R&RE, p. 746, § 16, effective July 1. **L. 89:** Entire section amended, p. 938, § 1, effective March 21. **L. 2014:** Entire section amended, (HB 14-1162), ch. 167, p. 591, § 5, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-102.5. Relinquishment hearings - court docket priority.

(1) On and after July 1, 2002, any hearing concerning a petition for relinquishment filed in a district court, the Colorado court of appeals, or the Colorado supreme court shall be given a priority on the court's docket. On and after July 1, 2002, if there is no determination on a case

concerning a petition for relinquishment by any such court within two months of the filing of the petition, it shall be given a priority on the court's docket that supersedes the priority of any other priority civil hearing on the court's docket.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this section shall affect the priority of a hearing concerning the issuance of a temporary protection order pursuant to section 13-14-104.5, C.R.S.

(3) The provisions of this section shall be implemented within existing appropriations.

Source: L. 2002: Entire section added, p. 1644, § 2, effective July 1. **L. 2003:** (2) amended, p. 1016, § 27, effective July 1. **L. 2004:** (2) amended, p. 556, § 15, effective July 1. **L. 2013:** (2) amended, (HB 13-1259), ch. 218, p. 1016, § 21, effective July 1.

19-5-103. Relinquishment procedure - petition - hearings.

(1) Any parent desiring to relinquish his or her child shall:

(a) Obtain counseling for himself or herself and the child to be relinquished as the court deems appropriate from the county department of human or social services in the county where the parent resides or from a licensed child placement agency, and, if the petitioner has not received the counseling required by the court, the petition must be continued until counseling is obtained, and the court shall refer the petitioner to counseling;

(b) (I) Petition the juvenile court upon a standardized form prescribed by the judicial department giving the following information: The name of both natural parents, if known; the name of the child, if named; the ages of all parties concerned; and the reasons for which relinquishment is desired.

(II) The petition shall be accompanied by a standardized affidavit of relinquishment counseling prescribed by the judicial department that includes:

(A) A statement indicating the nature and extent of counseling furnished to the petitioner, if any, and the recommendations of the counselor;

(B) A copy of the original birth certificate or a copy of the application therefor; and

(C) 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.

(1.5) (a) Pursuant to article 1.2 of this title 19, the petition for relinquishment must:

(I) Include a statement indicating whether the child is an Indian child; and

(II) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the Indian child's parent or Indian custodian and to the Indian child's tribe pursuant to article 1.2 of this title 19, the postal receipts must be attached to the petition and filed with the court or filed within fourteen days after the filing of the petition, as specified in article 1.2 of this title 19.

(2) The counseling specified in subsection (1)(a) of this section and provided by the department or the child placement agency shall include, but not be limited to, the following:

(a) Information to the relinquishing parent concerning the permanence of the decision and the impact of such decision on the relinquishing parent now and in the future;

(b) Information concerning each parent's complete medical and social histories;

(c) In the case of pregnancy, referral of the woman for medical care and for determination of eligibility for medical assistance;

(d) Information concerning alternatives to relinquishment and referral to private and public resources that may meet the parent's needs;

(e) Relinquishment services necessary to protect the interests and welfare of a child born in a state institution;

(f) Information to the child's parent that if he or she applies for public assistance for himself or herself and the child, he or she must cooperate with the child support enforcement unit for the establishment and enforcement of a child support order; and

(g) The confidentiality of all information, except for nonidentifying information as defined in section 19-1-103 that may be accessed pursuant to part 4 of this article 19, obtained by the department and the child placement agency in the course of relinquishment counseling unless the parent provides written permission or a release of information is ordered by a court of competent jurisdiction and except for a copy of an original birth certificate that may be obtained by an adult adoptee, adult descendant of an adoptee, or a legal representative of the adoptee or descendant as authorized by section 19-5-305. The counseling must also include notice that a birth parent has the opportunity to file a written statement specifying that the birth parent's information remain confidential, an explanation of the rights and responsibilities of birth parents who disagree about consent as set forth in section 19-5-305, and notice that a birth parent has the opportunity to sign and submit a contact preference form and updated medical history statements to the state registrar as set forth in section 19-5-305 (1.5).

(2.5) In those cases in which a parent proposes to relinquish his or her parent-child legal relationship with respect to a child who is under one year of age pursuant to the expedited procedures set forth in section 19-5-103.5, the licensed child placement agency or the county

department of human or social services assisting the relinquishing parent shall proceed with filing the petition and providing notice as set forth in section 19-5-103.5.

(3) Upon receipt of the petition for relinquishment, the court shall set the same for hearing on the condition that the requirements of subsection (1) of this section have been complied with by the petitioner.

(4) (a) Except as otherwise provided in section 19-5-103.5 (2)(d), the parent-child legal relationship of a parent shall not be terminated by relinquishment proceedings unless the parent joins in the petition.

(b) The relinquishing parent, child placement agency, and county department of human or social services shall provide the court any and all information described in section 19-1-103 (103) that is available to the relinquishing parent, agency, or county department.

(c) When a motion has been filed to terminate parental rights, a respondent parent with a pending dependency and neglect case brought pursuant to article 3 of this title 19 may pursue relinquishment pursuant to this article 5. Any relinquishment that occurs pursuant to this article 5 must be certified into the dependency and neglect case. In any case where a respondent parent has relinquished the parent's rights pursuant to this article 5, the juvenile court shall follow the procedures set forth in part 6 of article 3 of this title 19 to terminate any remaining respondent parent rights. When a motion has been filed to terminate parental rights pursuant to section 19-3-604, the caseworker shall, upon request by a parent and if services are available, refer the requesting parent to relinquishment counseling. The county shall make reasonable attempts to refer relinquishment services that are accessible to the parent.

(5) The court shall not issue an order of relinquishment until it is satisfied that the relinquishing parent and the child, if determined appropriate by the court, have been counseled pursuant to subsection (1) of this section and this subsection (5) and fully advised of the consequences of the parent's act. The court may order counseling for any age child to be relinquished if the court deems such counseling would be in the child's best interests. The court may order that a child younger than twelve years of age be prepared for relinquishment, termination of parental rights, or adoption.

(6) If the court finds after the hearing that it is in the best interests of the child that no relinquishment be granted, the court shall enter an order dismissing the action.

(7) (a) The court shall enter an order of relinquishment if the court finds after the hearing that:

(I) The relinquishing parent or parents and any child that the court directed into counseling have been counseled as provided in subsections (1) and (5) of this section; and

(II) The parent's decision to relinquish is knowing and voluntary and not the result of any threats, coercion, or undue influence or inducements; and

(III) The relinquishment would best serve the interests of the child to be relinquished.

(b) There shall be a rebuttable presumption that a relinquishment would not be in the child's best interests if the child is twelve years of age or older and objects to the relinquishment.

(8) If the court is not satisfied that the relinquishing parents and the child, if twelve years of age or older, have been offered proper and sufficient counsel and advice, it shall continue the matter for such time as the court deems necessary.

(9) (a) The court may appoint a guardian ad litem to protect the interests of the child if:

(I) The court finds that there is a conflict of interest between the child and the child's parents, guardian, or legal custodian;

(II) The court finds that such appointment would be in the best interests of the child; or

(III) The court determines that the child is twelve years of age or older and that the welfare of the child mandates such appointment. If counsel for youth is appointed pursuant to article 3 of this title 19, the counsel for youth is appointed pursuant to this section.

(b) Reasonable fees for guardians ad litem or counsel for youth appointed pursuant to this subsection (9) must be paid by the relinquishing parent or parents; except that, in the case of an indigent parent or parents, such fees must be paid as an expense of the state from annual appropriations to the office of the child's representative.

(10) The court may interview the child in chambers to ascertain the child's wishes as to the relinquishment proceedings. The court may permit counsel to be present at such an interview. The court shall cause a record of the interview to be made, and it shall be made a part of the record in the case.

(11) The court may seek the advice of professional personnel whether or not said personnel are employed on a regular basis by the court. Any advice given by professional persons shall be in writing and shall be made available by the court to attorneys of record, to the parties, and to any other expert witnesses upon request, but it shall be considered confidential for any other purposes, shall be sealed, and shall not be open to inspection except by consent of the court. Attorneys of record may call for the cross-examination of any professional persons consulted by the court.

(12) The provisions of this section, including but not limited to relinquishment counseling, notification, and the relinquishment hearing, shall apply in any case involving a child in Colorado or for whom Colorado is the home state as described in section 14-13-102 (7), C.R.S., including any case in which it is proposed that the child to be relinquished will be relinquished or adopted outside the state of Colorado.

(13) (a) (I) If a child was conceived as a result of an act that led to a parent's conviction for sexual assault or for a conviction of an act in which the underlying factual basis was sexual

assault, the victim of the sexual assault or crime may file a petition in the juvenile court to prevent future contact with the parent who committed the sexual assault and to relinquish the parent-child legal relationship of the victim of the sexual assault or crime.

(II) A person who alleges that they are a victim of sexual assault and who alleges that a child was conceived as a result of a sexual assault of which a conviction did not occur may file a petition in the juvenile court to prevent future contact with the parent who allegedly committed the sexual assault and to relinquish the parent-child legal relationship of the alleged victim of the sexual assault.

(b) A parent who is a victim or who alleges that they are a victim as described in subsection (13)(a) of this section and who wants to relinquish the child who was conceived or is alleged to have been conceived as described in subsection (13)(a) of this section shall include with their petition for relinquishment documentation concerning the sexual assault or conception. The documentation may include:

(I) A court record documenting the conviction for sexual assault or conviction of an act in which the underlying factual basis was sexual assault;

(II) A police report concerning the sexual assault;

(III) Medical records, forensic exam results, or genetic testing results;

(IV) Records from a licensed mental health professional or victim's advocate; or

(V) A sworn affidavit from the petitioner that alleges the petitioner is a victim of sexual assault that resulted in the conception of the child to be relinquished.

(c) (I) If the petition for relinquishment includes documentation of a parent's conviction for sexual assault or for a conviction of an act in which the underlying factual basis was sexual assault and the child to be relinquished was conceived as a result of the crime, or if the court finds, based on a preponderance of the evidence, that the relinquishment petitioner is a victim of a sexual assault that resulted in the conception of the child to be relinquished, then notwithstanding any provision of this section to the contrary, the petitioner is exempt from, and the court shall not require the petitioner to:

(A) Satisfy any counseling requirements pursuant to this section; or

(B) Pay fees for guardians ad litem or counsel for youth pursuant to this section.

(II) If the petition for relinquishment includes documentation of a parent's conviction for sexual assault or for a conviction of an act in which the underlying factual basis was sexual assault and the child to be relinquished was conceived as a result of the crime, or if the court finds, based on a preponderance of the evidence, that the relinquishment petitioner is a victim of a sexual assault that resulted in the conception of the child to be relinquished, then notwithstanding any law to the contrary, if the court grants a final order of relinquishment, the

court's final order of relinquishment must divest the relinquishing parent of all legal obligations they may have with respect to the child relinquished, including child support, at the time of relinquishment.

(d) A parent who is a party to a pending dependency and neglect case pursuant to article 3 of this title 19 may pursue relinquishment pursuant to this subsection (13) at any time during the dependency and neglect proceedings.

Source: L. 87: Entire title R&RE, p. 801, § 1, effective October 1. **L. 92:** (1)(b)(II) amended, p. 179, § 1, effective March 20. **L. 97:** Entire section amended, p. 1155, § 1, effective July 1. **L. 2000:** (2)(g) amended, p. 1373, § 6, effective July 1; (12) amended, p. 1538, § 6, effective July 1. **L. 2002:** (1.5) added, p. 787, § 8, effective May 30. **L. 2003:** (2.5) added, p. 872, § 2, effective July 1. **L. 2005:** (2)(g) amended, p. 992, § 4, effective July 1. **L. 2007:** (4)(a) amended, p. 115, § 5, effective July 1. **L. 2012:** (1.5)(b) amended, (SB 12-175), ch. 208, p. 875, § 135, effective July 1. **L. 2014:** (2)(g) amended, (SB 14-051), ch. 260, p. 1048, § 3, effective July 1. **L. 2018:** (1)(a), (2.5), and (4)(b) amended, (SB 18-092), ch. 38, p. 424, § 65, effective August 8. **L. 2020:** (4)(c) added, (HB 20-1104), ch. 50, p. 175, § 2, effective September 14. **L. 2021:** IP(2), (2)(g), and (4)(b) amended, (SB 21-059), ch. 136, p. 734, § 83, effective October 1. **L. 2022:** (9)(a)(I), (9)(a)(III), and (9)(b) amended, (HB 22-1038), ch. 92, p. 438, § 15, effective January 9, 2023. **L. 2025:** (13) added, (HB 25-1185), ch. 158, p. 634, § 2, effective August 6; IP(1.5)(a) and (1.5)(b) amended, (HB 25-1204), ch. 338, p. 1817, § 8, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (1.5), see section 1 of chapter 217, Session Laws of Colorado 2002. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For article, "Colorado Moves Toward Full Compliance With Federal

Indian Child Welfare Act", see 31 Colo. Law. 77 (Nov. 2002).

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

The purpose of this section is to prevent the relinquishment of a child by parents who do not realize the seriousness and finality of their acts. It does not provide that the department of welfare or the court should argue with the parents concerning the reasons for their relinquishment or seek to thwart the exercise of their free and voluntary will. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Child is ward of state during proceedings. The initiation of any proceedings in a court in which the rights, status, and welfare of an infant may be affected immediately establishes the infant's relation to the court as that of its ward. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Power of court to grant petition is discretionary. This section, which confers upon the court jurisdiction of relinquishment procedures, vests in the trial court the discretionary power to grant or deny the petition for relinquishment. People in re K.W.E., 31 Colo. App. 219, 500 P.2d 167 (1972).

Relinquishment does not require known identity of adoptive parents. In relinquishing children the parents do not have the slightest idea as to who, if anyone, shall become the adoptive parents. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Evidence established consent was knowing and voluntary. Evidence that natural parents of child were fully advised of the seriousness and finality of relinquishing their child for adoption, and willingly and voluntarily sought to divest themselves of all legal rights and obligations with respect to such child, was sufficient to comply with the provisions of this section. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Denial of petition did not abuse discretion. Trial court does not abuse discretion in denying petition for relinquishment of child on basis of finding, supported by the record, that a mother is not in any position to make such an important decision. People in re K.W.E., 31 Colo. App. 219, 500 P.2d 167 (1972).

Grounds for reversal of order for relinquishment. Once the order for relinquishment has been granted, it cannot be reversed except where the court lacks jurisdiction, or when consent of the parents is obtained through fraud, overreaching pressure, or duress. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Where the child has not been adopted prior to an attack on a relinquishment decree and mistake and misunderstanding invalidated the parents' consent to the relinquishment, a court may reverse the final order of relinquishment. People In re J.B.P., 44 Colo. App. 95, 608 P.2d 847 (1980).

Void decree subject to collateral attack. Where statutory requirements are not met, the court cannot enter a valid adoption decree, and the decree is thereby absolutely void on its face and may be the subject of a

collateral attack, and the lack of these jurisdictional matters made the decree subject to an attack at any stage of the proceedings or after entry of judgment. The lack of jurisdiction is usually shown by the judgment roll, and in adoption cases the record constitutes the judgment roll. Fackerell v. District Court, 133 Colo. 370, 295 P.2d 682 (1956).

Motion to vacate order of relinquishment properly denied. In a proceeding by the natural parents of a minor child to set aside a relinquishment and consent to adoption, where it is shown that the court had jurisdiction, and there being no allegation of coercion, duress, or pressure exerted upon the parents to induce them to relinquish the child, a motion to vacate such consent was properly denied. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Time limit between petition and hearing. Although no time limit is prescribed by statute for hearing after the filing of a petition for the relinquishment and adoption of a minor child, reasonable time should elapse between the filing of the petition and a hearing thereon, permitting the court to examine into the facts to determine whether relinquishment is advisable under the circumstances. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Only parties of record and their attorneys are granted access to reports under this section. Where grandparent was never a proper party of record and did not have standing to become one in the relinquishment proceeding, she and her counsel were properly denied access to reports. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

Standard of professional conduct in Colorado required attorney to discuss relinquishment counseling with his or her client in both in-state and out-of-state adoptions. Thus trial court properly submitted to the jury the issue of whether defendant attorney breached a duty of care to plaintiffs. Boyd v. Garvert, 9 P.3d 1161 (Colo. App. 2000) (case arose prior to enactment of subsection (12)).

19-5-103.5. Expedited relinquishment procedure - children under one year of age - other birth parents - notice - termination.

(1) (a) Notwithstanding the provisions of section 19-5-103 to the contrary, a parent desiring to relinquish his or her child may seek an expedited order terminating his or her parent-child legal relationship without the necessity of a court hearing if:

(I) The child is under one year of age, at the time of filing the petition;

(II) The relinquishing parent is being assisted by a licensed child placement agency or the county department of human or social services in the county where such parent resides;

(III) The requirements of section 19-5-103 (1) have been met; and

(IV) The parent signs an affidavit stating his or her desire to voluntarily relinquish his or her parent-child legal relationship with the child and consenting to a waiver of his or her right to contest a termination of parentage.

(b) (I) The affidavit required to be signed by the parent seeking to relinquish his or her parental rights pursuant to this section must advise the relinquishing parent of the consequences of the relinquishment decision and must further advise the relinquishing parent that he or she is still required to obtain the relinquishment counseling described in section 19-5-103 (1)(a) and (2). The relinquishing parent must be advised of the opportunity to seek independent counseling. The affidavit must also advise the relinquishing parent that he or she may withdraw the affidavit anytime after signing it but before the affidavit and petition are filed with the court. The relinquishing parent may sign the affidavit before the birth of the child. The relinquishing birth parent may withdraw the affidavit from the child placement agency or county department of human or social services in the county where the parent resides any time after signing it but before the affidavit and petition are filed with the court.

(II) The affidavit shall include the following:

(A) A statement that the petitioner has completed the relinquishment counseling required in section 19-5-103 (1) and (2) or understands he or she must complete the counseling prior to entry of the order of termination;

(B) A statement that the child to be relinquished is under one year of age at the time of filing the petition;

(C) A statement that the relinquishing parent's decision is knowing and voluntary and not the result of threats, coercion, or undue influence or inducements; and

(D) A statement that the relinquishing parent believes the relinquishment is in the best interests of the child.

(III) The relinquishing parent's signature on the affidavit must be witnessed by two witnesses, one of whom is either a representative of the licensed child placement agency with which the relinquishing parent has contracted or a representative of the county department of human or social services in the county where the parent resides, whichever is assisting the parent. The other witness must not be associated with either the licensed child placement agency or the county department of human or social services in the county where the parent resides, whichever is assisting the parent, and must not be the potential adoptive parent of the child to be relinquished.

(IV) The affidavit shall be notarized and shall be attached to the petition for relinquishment and filed with the court after the birth of the child. The petition for relinquishment may not be filed until at least four days after the birth of the child.

(c) If the birth parent has signed the affidavit described in this subsection (1) and if it is properly witnessed and notarized and attached to the petition, the court may vacate the hearing required pursuant to section 19-5-103 (3) and, upon making the findings set forth in section 19-5-103 (7)(a), shall enter an order of relinquishment, without a hearing, no more than seven business days after the date of the filing of the petition for relinquishment and the accompanying affidavit.

(2) (a) Notwithstanding the provisions of section 19-5-105 to the contrary, in those cases in which a parent seeks to relinquish his or her parent-child legal relationship with a child pursuant to this section, the licensed child placement agency or the county department of human or social services assisting the relinquishing parent shall proceed with filing the petition for termination of the other birth parent's or possible birth parents' parent-child legal relationship and notify pursuant to this section the other birth parent or possible birth parents identified pursuant to section 19-5-105 (2).

(b) Notice of the proceeding pursuant to this section shall be given to every person identified as the other birth parent or a possible birth parent in the manner appropriate under the Colorado rules of juvenile procedure for the service of process or in any manner the court directs; except that notice shall not be required to be given to a person who has received notice pursuant to section 19-5-103.7 if the person waives the right to contest a termination of parental rights and waives the right to further notice concerning the expedited relinquishment or if the person fails to reply as required pursuant to section 19-5-103.7. The notice shall inform the parent or alleged parent whose rights are to be determined that failure to file an answer or to appear within twenty-one days after service and, in the case of an alleged father, failure to file a claim of paternity under article 4 of this title within twenty-one days after service, if a claim has not previously been filed, may likely result in termination of the parent's or the alleged parent's parental rights to the child. The notice shall also inform the parent or alleged parent whose rights are to be determined that the person has the right to waive his or her right to appear and contest and that failure to appear and contest may likely result in termination of the parent's or the alleged parent's parental rights to the child. Proof of giving the notice shall be filed with the court before the petition is heard or otherwise acted upon. If no person has been identified as the birth parent, the court shall order that notice be provided to all possible birth parents by publication or public posting of the notice at times and in the places and manner the court deems appropriate.

(c) The other birth parent or possible birth parents may sign the affidavit of voluntary relinquishment described in subsection (1) of this section. Such birth parent may sign the affidavit prior to the birth of the child. If the other birth parent or possible birth parent signs an affidavit of voluntary relinquishment, he or she may withdraw the affidavit from the child placement agency or the county department of human or social services assisting the relinquishing parent any time after signing it but before the affidavit and petition are filed with the court.

(d) (I) The court shall vacate the proceeding and, at the time of the review of the case pursuant to paragraph (c) of subsection (1) of this section, enter an order terminating the parent-child legal relationship of the other birth parent or possible birth parent if the other birth parent or possible birth parent:

(A) Has waived his or her right to contest the termination of parental rights; or

(B) Has failed to appear and contest or to file an answer to the petition for termination or to file a paternity action within the prescribed twenty-one days following the date of the service, publication, or posting of the notice as provided in the notice pursuant to paragraph (b) of this subsection (2); or

(C) Has signed the affidavit of voluntary relinquishment described in subsection (1) of this section; or

(D) Has waived his or her right to notice and right to contest the termination of parental rights pursuant to section 19-5-103.7.

(II) If the provisions of subparagraph (I) of this paragraph (d) do not apply and the other birth parent or possible birth parent expresses his or her desire to appear and contest the termination of the parent-child legal relationship, the court shall proceed with a hearing on the petition for termination of the other birth parent's parent-child legal relationship.

(3) The licensed child placement agency or the county department of human or social services assisting the relinquishing parent shall not submit the documents referenced in subsections (1) and (2) of this section for judicial review unless a permanent placement for the child has been identified.

(4) The court shall not be bound to enter an order terminating a parent-child legal relationship upon the affidavit of the relinquishing parent pursuant to subsection (1) of this section and the court shall not be bound to enter an order terminating a parent-child legal relationship of the other birth parent or possible birth parents pursuant to subsection (2) of this section, but the court may, upon its own motion, require that a formal hearing be held to determine any or all issues presented by the pleadings.

Source: L. 2003: Entire section added, p. 869, § 1, effective July 1. **L. 2004:** (2)(a) amended, p. 263, § 1, effective April 5. **L. 2005:** (2)(b) and (2)(d) amended, p. 101, § 2, effective July 1. **L. 2007:** (2)(a) and (2)(d)(II) amended, p. 114, § 4, effective July 1. **L. 2012:** (2)(b) and (2)(d)(I)(B) amended, (SB 12-175), ch. 208, p. 875, § 136, effective July 1. **L. 2018:** (1)(a)(II), (1)(b)(I), (1)(b)(III), (2)(a), (2)(c), and (3) amended, (SB 18-092), ch. 38, p. 425, § 66, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Birth parents are not precluded from withdrawing expedited relinquishment petitions. In re A.T.M., 205 P.3d 703 (Colo. App. 2010).

Until a petition is actually granted, nothing in the statute makes it irrevocable. In re A.T.M., 205 P.3d 703 (Colo. App. 2010).

Notice through publication inadequate where birth mother had knowledge of father's location. Birth mother's fraudulent misrepresentations to the court deprived birth father of his constitutional right to due process, thus making the judgment terminating his parental rights void by default. In re C.L.S., 252 P.3d 556 (Colo. App. 2011).

19-5-103.7. Anticipated expedited relinquishment - children under one year of age - notice to other or possible parent - administrative procedures.

(1) Notwithstanding any provision of section 19-5-103 to the contrary, a licensed child placement agency assisting a parent who plans to relinquish a child through an expedited relinquishment pursuant to section 19-5-103.5, may provide notice of the anticipated expedited relinquishment on behalf of the relinquishing parent to any other birth parent or possible birth parent identified pursuant to section 19-5-105 (2) who is not a presumed parent pursuant to section 19-4-105 (1).

(2) The licensed child placement agency may give notice of the anticipated expedited relinquishment prior to or after the filing of the affidavit and petition with the court, but not more than sixty-three days prior to the anticipated birth of the child to be relinquished.

(3) (a) Notice to the other birth parent or possible birth parent given pursuant to this section shall be provided:

(I) By publication appearing in a newspaper of general circulation in the county of the person's last-known address, if the person's identity is known, or the county in which the relinquishing parent reports the conception to have occurred. Notice by publication is only proper if a person has not been identified as the other birth parent or possible birth parent or the location of the other birth parent or possible birth parent has not been determined after diligent efforts.

(II) In person, delivered:

(A) In a manner appropriate under the Colorado rules of juvenile procedure for the service of process; or

(B) By an employee or a representative of the licensed child placement agency assisting the relinquishing parent, with a requirement that the other birth parent or possible birth parent sign a statement acknowledging receipt of the notice; or

(III) By certified mail to only the other birth parent or possible birth parent, return receipt requested, with return receipt providing prima facie evidence of service.

(b) The date of notice shall be considered either the date on which the notice is delivered pursuant to subparagraph (II) of paragraph (a) of this subsection (3) or the date on the return receipt for notice given by certified mail pursuant to subparagraph (III) of paragraph (a) of this subsection (3), whichever is applicable. If notice is provided by publication, the date of notice shall be the date of the first day of publication.

(4) (a) Notice of the anticipated expedited relinquishment given pursuant to this section shall include the name, mailing address, and physical address of the licensed child placement agency providing the notice and shall inform the other birth parent or possible birth parent of the following:

(I) The name of the parent of the child who anticipates seeking to relinquish his or her parental rights for purposes of the child's adoption and the anticipated date of birth or the actual date of birth of the child;

(II) That the other birth parent or possible birth parent has been identified by the parent who anticipates seeking to relinquish his or her parental rights as potentially being the other birth parent of the child, or, if no other birth parent or possible birth parent has been identified, that the parent who anticipates seeking to relinquish his or her parental rights is unable to identify the other birth parent or possible birth parent;

(III) That placing a child for adoption requires termination of the child's parent-child legal relationships;

(IV) That the other birth parent or possible birth parent has a right to contest the termination of parental rights; and

(V) That failure to declare an intent to contest the termination of parental rights may likely result in a termination of the person's parental rights to the child, and that, to declare an intent to contest the termination of the parent-child legal relationship, the other birth parent or possible birth parent shall:

(A) No later than twenty-one days after the date of notice pursuant to paragraph (b) of subsection (3) of this section or before a relinquishment petition is filed with the court, whichever occurs later, either return a reply form to the licensed child placement agency by

certified mail, return receipt requested, or personally appear at the licensed child placement agency to declare an intent to contest the termination of parental rights; and

(B) No later than twenty-one days after the date of notice pursuant to paragraph (b) of subsection (3) of this section or before a relinquishment petition is filed with the court, whichever occurs later, file a claim of paternity pursuant to article 4 of this title and notify the licensed child placement agency pursuant to section 19-4-105.5 (4);

(VI) That the other birth parent or possible birth parent may waive the right to contest the termination of parental rights and that waiver may likely result in a termination of the person's parental rights to the child; and

(VII) That further notice related to the anticipated expedited relinquishment proceedings shall not be provided to the other birth parent or possible birth parent without receipt of a response required by subparagraph (V) of this paragraph (a).

(b) (I) Except when notice is provided by publication, the licensed child placement agency assisting the relinquishing parent with an expedited relinquishment shall send or deliver a reply form described in sub-subparagraph (A) of subparagraph (V) of paragraph (a) of this subsection (4) to the other birth parent or possible birth parent at the same time and by the same method as the delivery of notice given pursuant to subsection (3) of this section. The reply form sent pursuant to this paragraph (b), or otherwise available at the licensed child placement agency pursuant to paragraph (b) of subsection (7) of this section, shall be signed by the other birth parent or possible birth parent, witnessed, and dated, and shall require the other birth parent or possible birth parent to disclose the following information to the licensed child placement agency:

(A) The full name of the other birth parent or possible birth parent;

(B) The name of the relinquishing parent and the anticipated date of birth or the actual date of birth of the child to be relinquished, as listed on the notice;

(C) The other birth parent's or possible birth parent's address;

(D) The case number of the pending action filed, if any, by the other birth parent or the possible birth parent for determination of the parent-child legal relationship pertaining to the child to be relinquished; and

(E) If a case concerning the determination of the parent-child legal relationship pertaining to the child to be relinquished has been filed, a copy of any court orders issued regarding the other birth parent's or possible birth parent's parent-child legal relationship.

(II) In addition to the requirements of subparagraph (I) of this paragraph (b), the reply form sent or delivered pursuant to this paragraph (b), or otherwise available at the licensed child placement agency pursuant to paragraph (b) of subsection (7) of this section, shall provide

response options for selection by the other birth parent or the possible birth parent replying to the notice, which response options shall be substantially similar to the following:

(A) That the person replying to the notice acknowledges that there may be a parent-child legal relationship, declares an intent to contest the termination of parental rights, and declares an intent to seek to have the court make this determination;

(B) That the person replying to the notice acknowledges that there may be a parent-child legal relationship, waives the right to contest a termination of parental rights, and waives the right to further notice concerning the expedited relinquishment and the termination of parental rights with respect to the child; and

(C) That the person replying to the notice does not acknowledge that there may be a parent-child legal relationship, waives the right to contest a termination of parental rights, and waives the right to further notice concerning the expedited relinquishment and the termination of parental rights with respect to the child.

(III) In addition to the requirements of subparagraphs (I) and (II) of this paragraph (b), the reply form sent or delivered pursuant to this paragraph (b), or otherwise available at the licensed child placement agency pursuant to paragraph (b) of subsection (7) of this section, shall include a statement of acknowledgment by the other birth parent or possible birth parent that there is a requirement to file a claim of paternity and to notify the licensed child placement agency pursuant to section 19-4-105.5 (4) no later than twenty days after the date of notice or before a relinquishment petition is filed with the court, whichever occurs later.

(5) To properly reply and declare an intent to contest the termination of the parent-child legal relationship pursuant to this section, the other birth parent or possible birth parent shall, no later than twenty days after receiving notice pursuant to subsection (3) of this section or before a relinquishment petition is filed with the court, whichever occurs later:

(a) Return a reply form to the licensed child placement agency by certified mail, return receipt requested, or, for other birth parents or possible birth parents who receive notice by publication or who otherwise decide not to return the reply form by certified mail, personally appear at the licensed child placement agency to declare an intent to contest the termination of parental rights in the anticipated proceedings; and

(b) File a claim of paternity pursuant to article 4 of this title and notify the licensed child placement agency pursuant to section 19-4-105.5 (4).

(6) The other birth parent or possible birth parent who is served with notice pursuant to subsection (3) of this section and fails to reply as required in subsection (5) of this section irrevocably waives the right to further notice of proceedings related to the anticipated expedited relinquishment and irrevocably waives the right to appear and contest the termination of his or

her parental rights, unless the other birth parent or possible birth parent proves, by clear and convincing evidence, the following:

(a) That it was not possible for the other birth parent or possible birth parent to properly reply and declare an intent to contest the termination of the parent-child legal relationship pursuant to the requirements of subsection (5) of this section; and

(b) That the other birth parent or possible birth parent did properly reply and declare an intent to contest the termination of the parent-child legal relationship pursuant to the requirements of subsection (5) of this section within twenty days after it became possible for the other birth parent or possible birth parent to do so.

(7) (a) If the other birth parent or possible birth parent replies to the notice provided pursuant to subsection (3) of this section by returning the reply form via certified mail to the licensed child placement agency that sent the notice, the licensed child placement agency shall accept and file the original reply form with the court upon filing the petition for relinquishment or upon receipt of the reply form, whichever occurs later. The date of the reply shall be then noted on the return receipt.

(b) If the other birth parent or possible birth parent replies to the notice provided pursuant to subsection (3) of this section by appearing in person at the licensed child placement agency to declare his or her response, the licensed child placement agency shall provide a reply form for the other birth parent or the possible birth parent to complete and sign. An agency or social services employee shall sign the form as a witness. The licensed child placement agency shall accept the completed, signed reply form, provide a copy of the form to the other birth parent or the possible birth parent, and file the original with the court upon filing the petition for relinquishment or upon receipt of the completed reply form, whichever occurs later. The date of the reply shall be the date on which the other birth parent or the possible birth parent signs the reply.

(c) (I) Notwithstanding any provision of this section to the contrary, if the other birth parent or possible birth parent replies to notice provided by publication pursuant to subsection (3) of this section by contacting the licensed child placement agency in a manner other than is specified in paragraph (b) of this subsection (7), and the other birth parent or possible birth parent provides his or her full name and address, the licensed child placement agency shall:

(A) Within seven days after the contact, and by certified mail, return receipt requested, send a reply form to the other birth parent or possible birth parent with a written statement informing the person that the date he or she contacted the licensed child placement agency in response to the notice received shall be considered his or her date of reply if he or she returns the form no later than fourteen days after the date noted on the return receipt, and that, if he or she returns the form more than fourteen days after the date noted on the return receipt, the date the licensed

child placement agency actually receives the reply form shall be considered his or her reply date; and

(B) Maintain a dated record to submit to the court of all communications made related to this paragraph (c).

(II) The date of reply provided in the manner described in this paragraph (c) shall be the date the other birth parent or possible birth parent contacts the licensed child placement agency in response to the notice received if he or she returns the form no later than fourteen days after the date noted on the return receipt of the form. If the other birth parent or possible birth parent returns the form more than fourteen days after the date noted on the return receipt, the date the reply is received by the licensed child placement agency shall be considered the reply date.

(d) Notwithstanding any provision of this section to the contrary, if the other birth parent or possible birth parent files a claim of paternity pursuant to article 4 of this title and provides notice to the licensed child placement agency pursuant to section 19-4-105.5, then such claim and notice shall be deemed to satisfy the requirements of subsection (5) of this section, so long as the claim of paternity is filed and notice is provided to the licensed child placement agency no later than twenty-one days after receiving notice pursuant to subsection (3) of this section or before a relinquishment petition is filed with the court.

(e) The other birth parent or possible birth parent who replies to a licensed child placement agency pursuant to this subsection (7) shall notify the agency of any change in his or her address.

(f) (I) Notwithstanding any provision of this section to the contrary, the licensed child placement agency shall respond as specified in subparagraph (II) of this paragraph (f) and shall not have the duty to respond as required in paragraph (a), (b), or (c) of this subsection (7) or to file any further documentation of a respondent's reply if, before the respondent replies to the notice as described in paragraph (a), (b), or (c) of this subsection (7), all of the following have occurred:

(A) The relinquishment petition has been filed with the court;

(B) At least twenty-one days have passed since the notice was provided; and

(C) The licensed child placement agency has filed the affidavit of administrative notice described in subsection (8) of this section with the court.

(II) If the requirements specified in subparagraph (I) of this paragraph (f) have been met before the respondent replies to the notice as described in paragraph (a), (b), or (c) of this subsection (7), the licensed child placement agency shall provide the respondent, to the extent of the agency's knowledge, with the following information:

(A) Verification that the petitions and affidavit have been filed;

(B) The court in which the case was filed;

(C) The case number; and

(D) Whether the court has ordered the termination of the respondent's parental rights.

(8) A licensed child placement agency that provides notice of the anticipated expedited relinquishment on behalf of the relinquishing parent to the other birth parent or possible birth parent pursuant to the provisions of this section shall have the duty to file with the court the following information at the time it files the petition for relinquishment:

(a) An affidavit of administrative notice with respect to the other birth parent or possible birth parent who has received notice pursuant to subsection (3) of this section, including the following information, if available:

(I) The method of providing notice;

(II) The date of notice;

(III) The deadline for reply;

(IV) The date of the reply;

(V) The intent declared in the reply;

(VI) A statement indicating whether an action relating to the parent and child legal relationship was filed;

(VII) A statement indicating whether the person's reply was timely; and

(VIII) A statement indicating that the expedited relinquishment was filed pursuant to section 19-5-103.5.

(b) In addition to the affidavit of administrative notice filed with the court pursuant to paragraph (a) of this subsection (8), the licensed child placement agency shall file all available evidence supporting the affidavit, including but not limited to signed return receipts, completed reply forms, affidavits of service of process, evidence of publication, evidence of the filing of an action relating to the parent and child legal relationship, and any other records of pertinent communication with the possible birth parent or other birth parent.

(9) Nothing in this section shall be construed to require a parent who plans to relinquish a child through an expedited relinquishment pursuant to section 19-5-103.5 to file the expedited relinquishment.

(10) Nothing in this section shall be construed to authorize the filing of a petition and affidavit of relinquishment prior to the birth of a child.

Source: L. 2005: Entire section added, p. 95, § 1, effective July 1. **L. 2007:** (3)(a)(II) amended and (7)(f) added, pp. 114, 113, §§ 3, 2, effective July 1. **L. 2012:** (2), (4)(a)(V), (7)(c)(I)(A), (7)(c)(II), (7)(d), and (7)(f)(I)(B) amended, (SB 12-175), ch. 208, p. 875, § 137, effective July 1.

ANNOTATION

Statute does not bar a due process challenge to the termination of a parent's rights when the parent alleges a lack of notice or insufficient notice that results from the other parent's failure or refusal to identify him or her as a possible parent. District court erred in strictly applying the statute of limitations on due process challenge when insufficient notice was given. In re J.M.A., 240 P.3d 547 (Colo. App. 2010).

Notice through publication inadequate where birth mother had knowledge of father's location. Birth mother's fraudulent misrepresentations to the court deprived birth father of his constitutional right to due process, thus making the judgment terminating his parental rights void by default. In re C.L.S., 252 P.3d 556 (Colo. App. 2011).

19-5-104. Final order of relinquishment.

(1) If the court terminates the parent-child legal relationship of both parents or of the only living parent, the court, after taking into account the religious background of the child, shall order guardianship of the person and legal custody transferred to:

(a) The county department of human or social services; or

(b) A licensed child placement agency; or

(c) A relative of the child; or

(d) An individual determined to be of good moral character through a process that includes the assessment made pursuant to section 19-5-206 (2)(g), if such individual shall have had the child living in his or her home for six months or more, including a foster parent or a designated adoptive parent.

(2) (a) The court shall consider, but shall not be bound by, a request that custody of the child, with the option of applying for adoption, be placed in a grandparent, aunt, uncle, brother, or sister of the child or a foster parent. When ordering legal custody of the child, the court shall give preference to a grandparent, aunt, uncle, brother, or sister of the child when such relative has made a timely request therefor and the court determines that such placement is in the best interests of the child. Such request must be submitted to the court prior to commencement of the hearing on the petition for relinquishment. If such legal custody is granted, guardianship of the

child shall remain with the parent, if the legal parent-child relationship has not been terminated, or the guardianship shall be transferred pursuant to subsection (1) of this section. Nothing in this section shall be construed to require the birth parents or the child placement agency with custody of the child to notify said relatives described in this subsection (2) of the pending relinquishment of parental rights. This subsection (2) shall not apply in cases where the birth parents have designated an adoptive family for the child or the birth parents have designated that legal custody of the child shall not be in a person described in this subsection (2) and where the child has not been in legal custody of a relative requesting guardianship or custody as described in this section or the child has not been in the physical custody of such relative for more than six months.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), in cases in which a parent is seeking to relinquish his or her parent-child legal relationship with more than one child of a sibling group at one time, if the county department or child placement agency locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) No person shall be precluded from adopting a child solely because that person has been a child's foster parent.

(4) The order of relinquishment shall set forth all pertinent facts brought at the hearing, and, in addition, it shall state that the court is satisfied that the counsel and guidance provided for in section 19-5-103 (1) and (5) has been offered the relinquishing parent or parents and any child for whom the court has ordered counseling.

(5) (a) A final order of relinquishment must divest the relinquishing parent or parents of all legal rights and obligations they may have with respect to the child relinquished, but it shall not modify the child's status as an heir at law, which ceases only upon a subsequent final decree of adoption; except that the relinquishing parent's or parents' obligation to pay for services received by the child through the department, or other support received, must be terminated upon a subsequent final decree of adoption or by order of the court at the time of relinquishment. The order of relinquishment must release the relinquished child from all legal obligations with respect to the relinquishing parent or parents.

(b) Pursuant to section 19-5-103 (13), if the petition for relinquishment includes documentation of a parent's conviction for sexual assault or for a conviction of an act in which the underlying factual basis was sexual assault and the child to be relinquished was conceived as a result of the crime, or if the court finds, based on a preponderance of the evidence, that the relinquishing parent is a victim of a sexual assault that resulted in the conception of the child to be relinquished, then notwithstanding any law to the contrary, if the court grants a final order of relinquishment, the court's final order of relinquishment must divest the relinquishing parent of

all legal obligations they may have with respect to the child relinquished, including child support, at the time of relinquishment.

(6) If one parent files a petition for the relinquishment of a child and the agency or person having custody of the child files a petition to terminate the rights of the other parent pursuant to section 19-5-105, the court shall set a hearing, as expeditiously as possible, on the relinquishment petition. A court may enter an order of relinquishment for the purpose of adoption prior to the relinquishment or termination of the other parent's parental rights. Except as otherwise provided in subsection (7) of this section, an order of relinquishment is final and irrevocable.

(7) (a) A relinquishment may be revoked only if, within ninety-one 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.

(b) Notwithstanding paragraph (a) of this subsection (7), a relinquishment may not be revoked on the basis that the relinquishment or termination of the other parent's parental rights was not obtained because the relinquishing parent knew, but did not disclose, the name or whereabouts of such other parent.

(8) If the relinquishment by an individual is revoked pursuant to subsection (7) of this section and no grounds exist under section 19-5-105 or under part 6 of article 3 of this title for terminating the parental rights of that individual, the court shall dismiss any proceeding for adoption and shall provide for the care and custody of the child according to the child's best interests.

(9) The fact that the relinquishing parent or parents are minors shall in no way affect the validity of the final order of relinquishment.

Source: L. 87: Entire title R&RE, p. 802, § 1, effective October 1. **L. 88:** (1)(d) and (2) amended and (2.5) added, p. 757, § 3, effective May 31. **L. 94:** (4.3), (4.5), and (4.7) added, p. 747, § 2, effective April 20; (4) amended, p. 2688, § 210, effective July 1. **L. 97:** Entire section amended, p. 1158, § 2, effective July 1. **L. 2003:** (2) amended, p. 2627, § 8, effective June 5. **L. 2010:** IP(1) and (1)(d) amended, (HB 10-1106), ch. 278, p. 1273, § 3, effective May 26. **L. 2012:** (7)(a) amended, (SB 12-175), ch. 208, p. 877, § 138, effective July 1. **L. 2018:** (1)(a) amended, (SB 18-092), ch. 38, p. 426, § 67, effective August 8. **L. 2025:** (5) amended, (HB 25-1185), ch. 158, p. 636, § 3, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983). For article, "House Bill 1268 — In the Best Interests of the Child", see 18 Colo. Law. 1703 (1989).

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

Minors are competent to relinquish their children to a state agency. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

A partial or conditional relinquishment is not authorized by this section. People in re K.W.E., 31 Colo. App. 219, 500 P.2d 167 (1972).

Grounds for reversal of relinquishment order. Once the order for relinquishment has been granted, it cannot be reversed except where the court lacks jurisdiction or when consent of the parents is obtained through fraud, overreaching pressure, or duress. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

After relinquishment, parents have no control over adoption. Where parents voluntarily relinquish a child, the parents have by court decree been divested of all of their legal rights and obligations to said child. They have no control over the child or the adoption proceedings, notice to them is not required, their consent, if given, is meaningless. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Where both parents stated that they did not want the grandmother to have custody of the child and the grandmother had never had physical or legal custody of the child, the provisions of subsection (2) specifically operate to prevent the grandmother from having standing in the relinquishment proceedings. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

The proceedings for voluntary relinquishment under this section are separate and distinct from the proceedings for determining whether a child is dependent or neglected under § 19-3-605. Under dependency and neglect proceedings, the grandparent may be an interested party. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

Adopted step-daughter not entitled to inheritance. After husband and wife were divorced and order of relinquishment became final, daughter from wife's former marriage, who had been adopted by husband, was divested of her status as heir. In re Estate of Haddan, 874 P.2d 1081 (Colo. App. 1994).

An agreement between parents for the father to relinquish his parental rights does not terminate his child support obligation. The support obligation remains in effect until the date upon which the final relinquishment court order divests the parent of all legal rights and obligations with respect to the child. In re Gross, 2016 COA 36, 371 P.3d 744.

Applied, with respect to grandparents' request, in People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

19-5-105. Proceeding to terminate parent-child legal relationship.

(1) If one parent relinquishes or proposes to relinquish or consents to the adoption of a child, the agency or person having custody of the child shall file a petition in the juvenile court to terminate the parent-child legal relationship of the other parent, unless the other parent's relationship to the child has been previously terminated or determined by a court not to exist. This section applies whether or not the other parent is a presumed parent pursuant to section 19-4-105 (1).

(2) In an effort to identify the other birth parent, the court shall cause inquiry to be made of the known parent and any other appropriate person. The inquiry shall include the following: Whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(3) If, after the inquiry, the other birth parent is identified to the satisfaction of the court or if more than one person is identified as a possible parent, each shall be given notice of the proceeding in accordance with subsection (5) of this section, including notice of the person's right to waive his or her right to appear and contest. If any of them waives his or her right to appear and contest or fails to appear or, if appearing, cannot personally assume legal and physical custody, taking into account the child's age, needs, and individual circumstances, such person's parent-child legal relationship with reference to the child shall be terminated. If the other birth parent or a person representing himself or herself to be the other birth parent appears and demonstrates the desire and ability to personally assume legal and physical custody of the child, taking into account the child's age, needs, and individual circumstances, the court shall proceed to determine parentage under article 4 of this title. If the court determines that the person is the other birth parent, the court shall set a hearing, as expeditiously as possible, to determine whether the interests of the child or of the community require that the other parent's rights be terminated or, if they are not terminated, to determine whether:

(a) To award custody to the other birth parent or to the physical custodian of the child; or

(b) To direct that a dependency and neglect action be filed pursuant to part 5 of article 3 of this title with appropriate orders for the protection of the child during the pendency of the action.

(3.1) The court may order the termination of the other birth parent's parental rights upon a finding that termination is in the best interests of the child and that there is clear and convincing evidence of one or more of the following:

(a) That the parent is unfit. In considering the fitness of the child's parent, the court shall consider the following:

(I) An emotional illness, a behavioral or mental health disorder, or an intellectual and developmental disability of the parent of such duration or nature as to render the parent unlikely, within a reasonable period of time, to care for the ongoing physical, mental, and emotional needs of the child;

(II) A single incident of life-threatening or serious bodily injury or disfigurement of the child or other children;

(III) Conduct toward the child or other children of a physically or sexually abusive nature;

(IV) A history of violent behavior that demonstrates that the individual is unfit to maintain a parent-child relationship with the minor, which may include an incidence of sexual assault, as defined in section 19-1-103, that resulted in the conception of the child;

(V) Excessive use of intoxicating liquors or use of controlled substances, as defined in section 18-18-102 (5), C.R.S., that affects the ability of the individual to care and provide for the child;

(VI) Neglect of the child or other children;

(VII) Injury or death of a sibling or other children due to proven abuse or neglect by such parent;

(VIII) Whether, on two or more occasions, a child in the physical custody of the parent has been adjudicated dependent or neglected in a proceeding under article 3 of this title or comparable proceedings under the laws of another state or the federal government;

(IX) Whether, on one or more prior occasions, a parent has had his or her parent-child legal relationship terminated pursuant to this section or article 3 of this title or comparable proceedings under the laws of another state or the federal government.

(b) That the parent has not established a substantial, positive relationship with the child. The court shall consider, but shall not be limited to, the following in determining whether the parent has established a substantial, positive relationship with the child:

(I) Whether the parent has maintained regular and meaningful contact with the child;

(II) Whether the parent has openly lived with the child for at least one hundred eighty days within the year preceding the filing of the relinquishment petition or, if the child is less than one year old at the time of the filing of the relinquishment petition, for at least one-half of the child's life; and

(III) Whether the parent has openly held out the child as his or her own child.

(c) That the parent has not promptly taken substantial parental responsibility for the child. In making this determination the court shall consider, but shall not be limited to, the following:

(I) Whether the parent who is the subject of the petition is served with notice and fails to file an answer within thirty-five days after service of the notice and petition to terminate the parent-child legal relationship, or within twenty-one days if the petition for termination was filed pursuant to section 19-5-103.5, or fails to file a paternity action, pursuant to article 4 of this title, within thirty-five days after the birth of the child or within thirty-five days after receiving notice that he is the father or likely father of the child, or, for those petitions filed pursuant to section 19-5-103.5, within twenty-one days after the birth of the child or after receiving notice that he is the father or likely father of the child;

(II) Whether the parent has failed to pay regular and reasonable support for the care of the child, according to that parent's means; and

(III) Whether the birth father has failed to substantially assist the mother in the payment of the medical, hospital, and nursing expenses, according to that parent's means, incurred in connection with the pregnancy and birth of the child.

(3.2) In considering the termination of a parent's parental rights, the court shall give paramount consideration to the physical, mental, and emotional conditions and needs of the child. Such consideration shall specifically include whether the child has formed a strong, positive bond with the child's physical custodian, the time period that the bond has existed, and whether removal of the child from the physical custodian would likely cause significant psychological harm to the child.

(3.3) If the child is under one year of age at the time that the relinquishment petition is filed, there is an affirmative defense to any allegations under subparagraph (VI) of paragraph (a), paragraph (b), and paragraph (c) of subsection (3.1) of this section that the parent's neglect, failure to establish a substantial relationship, or failure to take substantial responsibility for the child was due to impediments created by the other parent or person having custody. A parent shall demonstrate such impediments created by the other parent or person having custody by a preponderance of the evidence.

(3.4) (a) If the court determines not to terminate the nonrelinquishing parent's parental rights nor to direct that a dependency and neglect action be filed, the court shall proceed to determine

custody of the child, parenting time with the child, duty of support, and recovery of child support debt.

(b) The court shall determine custody based upon the best interests of the child giving paramount consideration to the physical, mental, and emotional conditions and needs of the child.

(c) If the child or youth has been out of the birth parents' care for more than one year, irrespective of incidental communications from the relinquishing or nonrelinquishing parent, there is a rebuttable presumption that the best interests of the child or youth will be served by granting custody to the person in whose care the child or youth has been for that period. Such presumption may be overcome by a preponderance of the evidence.

(3.5) Notwithstanding subsection (3.4) of this section, the court shall grant custody of the child to the nonrelinquishing birth parent if the court finds that the birth parent has the ability and the desire to assume personally legal and physical custody of the child promptly and that all of the following exists:

(a) The nonrelinquishing parent has established a substantial, positive relationship with the child;

(b) The nonrelinquishing parent has promptly taken substantial parental responsibility for the child; and

(c) The award of custody to the nonrelinquishing parent is in the best interests of the child.

(3.6) Except for a parent whose parental rights have been relinquished pursuant to section 19-5-104, a person who has or did have the child in his or her care has the right to intervene as an interested party and to present evidence to the court regarding the nonrelinquishing parent's contact, communication, and relationship with the child. If custody is at issue pursuant to subsection (3.4) of this section, such person also has the right to present evidence regarding the best interests of the child and his or her own suitability as a placement for the child.

(4) If, after the inquiry, the court is unable to identify the other birth parent or any other possible birth parent and no person has appeared claiming to be the other birth parent and claiming custodial rights, the court shall enter an order terminating the unknown birth parent's parent-child legal relationship with reference to the child. Subject to the disposition of an appeal upon the expiration of thirty-five days after an order terminating a parent-child legal relationship is issued under subsection (3) of this section or this subsection (4), the order cannot be questioned by any person, in any manner, or upon any ground, except fraud upon the court or fraud upon a party. Upon an allegation of fraud, the termination order cannot be questioned by any person, in any manner or upon any ground, after the expiration of ninety-one days from the date that the order was entered.

(5) Notice of the proceeding shall be given to every person identified as the other birth parent or a possible birth parent in the manner appropriate under the Colorado rules of juvenile procedure for the service of process or in any manner the court directs. The notice shall inform the parent or alleged parent whose rights are to be determined that failure to file an answer or to appear within thirty-five days after service and, in the case of an alleged father, failure to file a claim of paternity under article 4 of this title within thirty-five days after service, if a claim has not previously been filed, may likely result in termination of the parent's or the alleged parent's parental rights to the minor. The notice also shall inform the parent or alleged parent whose rights are to be determined that such person has the right to waive his or her right to appear and contest and that failure to appear and contest may likely result in termination of the parent's or the alleged parent's parental rights to the minor. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the birth parent, the court shall order that notice be provided to all possible parents by publication or public posting of the notice at times and in places and manner the court deems appropriate.

(6) In those cases in which a parent proposes to relinquish his or her parent-child legal relationship with a child who is under one year of age, pursuant to the expedited procedures set forth in section 19-5-103.5, the licensed child placement agency or the county department of human or social services assisting the relinquishing parent shall proceed with filing the petition for termination of the other birth parent's or possible birth parents' parent-child legal relationship and notify the other birth parent or possible birth parents as provided in section 19-5-103.5 (2).

Source: L. 87: Entire title R&RE, p. 803, § 1, effective October 1. **L. 94:** Entire section amended, p. 747, § 3, effective April 20. **L. 97:** IP(3), (3.1)(c)(I), and (5) amended, p. 1160, § 3, effective July 1. **L. 98:** (3.1)(a)(II) amended, p. 1421, § 8, effective July 1. **L. 2001:** (3.1)(a)(VI) amended and (3.1)(a)(VIII) and (3.1)(a)(IX) added, p. 499, § 2, effective May 4. **L. 2003:** (3.1)(c)(I) amended and (6) added, p. 872, § 3, effective July 1. **L. 2012:** (3.1)(a)(V) amended, (HB 12-1311), ch. 281, p. 1625, § 62, effective July 1; (3.1)(c)(I), (4), and (5) amended, (SB 12-175), ch. 208, p. 877, § 139, effective July 1. **L. 2014:** (3.1)(a)(IV) amended, (HB 14-1162), ch. 167, p. 591, § 6, effective July 1. **L. 2017:** IP(3.1)(a) and (3.1)(a)(I) amended, (HB 17-1046), ch. 50, p. 158, § 11, effective March 16; (3.1)(a)(I) amended, (SB 17-242), ch. 263, p. 1318, § 168, effective May 25. **L. 2018:** (6) amended, (SB 18-092), ch. 38, p. 426, § 68, effective August 8. **L. 2021:** (3.1)(a)(IV) amended, (SB 21-059), ch. 136, p. 734, § 84, effective October 1. **L. 2023:** (3.4)(c) amended, (HB 23-1027), ch. 284, p. 1685, § 22, effective June 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-126 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983). For article, "Relinquishment of Children in Colorado", see 15 Colo. Law. 2008 (1986).

No due process right for an incarcerated parent to be present at termination hearings where parent appeared in proceeding through counsel, presented evidence as to parole date by affidavit, and submitted a brief. Matter of Catholic Charities, 942 P.2d 1380 (Colo. App. 1997).

Judgment terminating father's right void because it was entered in violation of his due process right to appointed counsel. In re R.A.M. for Adoption of B.G.B., 2014 COA 68, 411 P.3d 814.

Due process requires the appointment of counsel when a parent's interests are at their strongest, the state's interests are at their weakest, and the risks of error are at their peak. In re R.A.M. for Adoption of B.G.B., 2014 COA 68, 411 P.3d 814.

A request for counsel under the due process clause is not limited to a formal request using specific words. In re R.A.M. for Adoption of B.G.B., 2014 COA 68, 411 P.3d 814.

C.A.R. 3.4 does not violate plaintiff's constitutional right to equal protection because parents whose rights are terminated under this article of the Colorado Children's Code are not similarly situated to those parents whose rights are terminated under article 3 of the code. C.A.R. 3.4 applies to parents subject to dependency and neglect proceedings under article 3 of the Colorado Children's Code. As such, the proceedings focus primarily on the protection and safety of the children, not on the custodial interests of the parent. Further, such a proceeding can be initiated only by the state. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

The express purposes of the relinquishment and adoption statutes is to promote the integrity and finality of adoption. Court did not misconstrue this section in finding that the father was unable personally to assume custody of the child promptly. Matter of Catholic Charities, 942 P.2d 1380 (Colo. App. 1997).

The general assembly intended that custody be given only if a parent can promptly assume ongoing parental responsibility for the child. Had the general assembly intended to allow a nonrelinquishing parent to avoid termination

by making alternative custodial arrangements, it would have so provided. Matter of Catholic Charities, 942 P.2d 1380 (Colo. App. 1997).

Where a court finds that a parent is "not unfit", the court must begin with the presumption that the parent is acting in his or her child's best interests in seeking custody of the child, and that it is not in the child's best interests to terminate the parent-child legal relationship or to award custody to another party. M.C. v. Adoption Choices of Colo., Inc., 2014 COA 161, 369 P.3d 659, rev'd on other grounds, 2015 CO 72, 363 P.3d 193.

To rebut that presumption, a party seeking to terminate the parent's rights and obtain or retain custody of the child must prove by clear and convincing evidence not only that the statutory criteria for termination of the parent's rights set forth in subsection (3.1) and the criteria for an award of custody set forth in subsection (3.4) have been met, but also that it is not in the child's best interests to allow the parent-child legal relationship to remain intact nor to award custody of the child to the parent. M.C. v. Adoption Choices of Colo., Inc., 2014 COA 161, 369 P.3d 659, rev'd on other grounds, 2015 CO 72, 363 P.3d 193.

If the court chooses to terminate the parent-child legal relationship and award custody to another party, then, in addition to making findings regarding satisfaction of the statutory criteria for termination and custody, the court must make findings as to the "special factors" that justify rejecting the parent's determination of the child's best interests. M.C. v. Adoption Choices of Colo., Inc., 2014 COA 161, 369 P.3d 659.

Section does not authorize termination of the parent-child legal relationship of the other parent in anticipation of possible stepparent adoption. Statutes governing parental relinquishment and adoption must be read together in order to effectuate the legislative intent and give consistent, harmonious, and sensible effect to all their parts. Thus, since mother wanted to keep her relationship intact but involuntarily end father's in order to make children available for stepparent adoption, reliance on this section was inappropriate. In re D.S.L., 18 P.3d 856 (Colo. App. 2001).

Any defect in subject matter jurisdiction resulting from a parent not having custody of child at time of filing petition to terminate parental rights is cured by the filing of subsequent petitions to terminate by agency and adoptive parents. People in the Matter of A.L.B., 994 P.2d 476 (Colo. App. 1999).

Statute does not bar a due process challenge to the termination of a parent's rights when the parent alleges a lack of notice or insufficient notice that results from the other parent's failure or refusal to identify him or her as a possible parent. District court erred in strictly applying the statute of limitations on due process challenge when insufficient notice was given. In re J.M.A., 240 P.3d 547 (Colo. App. 2010).

Father's motion for relief not time-barred because judgment was void. Where notice through publication was inadequate

because birth mother made fraudulent misrepresentations to the court, birth father was deprived of his constitutional right to due process, thus making the judgment terminating his parental rights void by default. The requirements of due process take precedence over statutory enactments. In re C.L.S., 252 P.3d 556 (Colo. App. 2011).

Trial court protected father's fundamental liberty interest in his children by applying a presumption in favor of preserving parental rights and making findings to overcome the presumption by clear and convincing evidence. While the supreme court did not specifically hold that Troxel v. Granville, 530 U.S. 57 (2000), applies to parental termination proceedings, the trial court afforded father Troxel's heightened due process requirements. In Interest of Baby A, 2015 CO 72, 363 P.3d 193.

The specific findings that a court must make before terminating parental rights, including a parent's failure to promptly take responsibility for his or her children and the best interests of the children, constitute special factors that, along with the presumption in favor of the parent, satisfy Troxel's due process requirements. In Interest of Baby A, 2015 CO 72, 363 P.3d 193.

Trial court did not err in finding that father failed to pay regular and reasonable support for the care of the children. In Interest of Baby A, 2015 CO 72, 363 P.3d 193.

Trial court did not err in allowing intervenor adoptive parents to present evidence on the children's best interests and future placement at the termination hearing. In Interest of Baby A, 2015 CO 72, 363 P.3d 193.

When a child has been adjudicated dependent or neglected, all matters related to that child's status must be addressed through the open dependency and neglect case. The dependency and neglect court maintains continuing, exclusive jurisdiction over any such child. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875.

A county department of human services seeking to terminate through this article 5, relinquishment and adoption, an incarcerated father's parental rights to children who had been adjudicated as dependent and neglected was required to proceed instead through the laws and courts created for article 3, dependency and neglect. People in Interest of E.M., 2016 COA 38M, 417 P.3d 843, aff'd sub nom. People in Interest of L.M., 2018 CO 34, 416 P.3d 875.

19-5-105.5. Termination of parent-child legal relationship upon a finding that the child was conceived as a result of sexual assault - legislative declaration - definitions.

(1) The general assembly hereby declares that the purpose of this statute is to protect the victim of a sexual assault and to protect the child conceived as a result of that sexual assault by creating a process to seek termination of the parental rights of the perpetrator of the sexual assault and by issuing protective orders preventing future contact between the parties. The general assembly further declares that this section creates civil remedies and is not created to punish the perpetrator but rather to protect the interests of the child and the victim of a sexual assault.

(2) As used in this section, unless the context otherwise requires:

(a) "Convicted" or "conviction" has the same meaning as defined in section 19-1-103.

(a.5) "Disability" means:

(I) A physical or mental impairment that substantially limits one or more major life activities; or

(II) A record of a physical or mental impairment that substantially limited a major life activity.

(a.7) "Petitioner" means a victim of sexual assault who files a petition for termination of the parent-child legal relationship of the other parent as provided in this section.

(a.8) "Respondent" means a person against whom a petition for termination of the parent-child legal relationship is filed as provided in this section.

(b) "Sexual assault" has the same meaning as defined in section 19-1-103.

(c) "Victim" has the same meaning as defined in section 19-1-103.

(3) If a child was conceived as a result of an act that led to the parent's conviction for sexual assault or for a conviction in which the underlying factual basis was sexual assault, the victim of the sexual assault or crime may file a petition in the juvenile court to prevent future contact with the parent who committed the sexual assault and to terminate the parent-child legal relationship of the parent who committed the sexual assault or crime.

(4) The verified petition filed under this section must allege that:

(a) The respondent was convicted on or after July 1, 2013, of an act of sexual assault against the petitioner or convicted of a crime in which the underlying factual basis was sexual assault against the petitioner;

(b) A child was conceived as a result of the act of sexual assault or crime described under paragraph (a) of this subsection (4); and

(c) Termination of the parent-child legal relationship of the respondent with the child is in the best interests of the child.

(4.3) On or before January 1, 2026, the state court administrator shall develop a, or modify an existing, standardized petition form for a petitioner to complete and file pursuant to this section. At a minimum, the standardized petition form must allow a petitioner to allege the information described in subsection (4) of this section and provide the petitioner the ability to provide information to support their allegation that the respondent committed an act of sexual assault against the petitioner and that a child was conceived as a result of the sexual assault.

(4.5) After a petition has been filed pursuant to this section, the court shall issue a summons that recites briefly the substance of the petition and contains a statement that the purpose of the proceeding is whether to terminate the parent-child legal relationship of the respondent. The petitioner shall have the respondent personally served with a copy of the summons or notified through notice by publication consistent with the statutory provisions for notice in section 19-3-503 and pursuant to the Colorado rules of civil procedure, unless the respondent appears voluntarily or waives service. Upon request, the court shall protect the whereabouts of the petitioner and must identify the petitioner and the child in the summons by initials.

(5) (a) After a petition has been filed pursuant to this section, the court shall appoint a guardian ad litem, who must be an attorney, to represent the child's best interests in the proceeding; except that, if at any time the court determines that a guardian ad litem for the child is no longer necessary, the court may discharge the guardian ad litem. The petitioner and the respondent have the right to be represented by legal counsel in proceedings under this section. The petitioner and the respondent each have the right to seek the appointment of legal counsel if he or she is unable financially to secure legal counsel on his or her own. The court shall waive filing fees for an indigent petitioner.

(b) The court will work to ensure that a petitioner or a respondent who has a disability has equal access to participate in the proceeding. If the petitioner or respondent has a disability, he or she has the right to request reasonable accommodations in order to participate in the proceeding; except that the disability of the petitioner, the respondent, or the child must not be the cause for the unnecessary delay of the process. The court shall presume that a petitioner or a respondent with a disability is legally competent and able to understand and participate in the proceeding unless the petitioner or respondent is determined to be an incapacitated person, as defined in section 15-14-102 (5), C.R.S.

(6) In any proceeding held under this section, the court may grant protective measures in the courtroom as requested by the petitioner, including but not limited to allowing the petitioner to not appear in the presence of the respondent, so long as these measures do not violate due process. The petitioner's and the child's whereabouts must be kept confidential.

(6.5) A respondent may admit parentage or may request genetic testing or other tests of inherited characteristics to confirm paternity. The test results must be admitted into evidence as provided in section 13-25-126, C.R.S. The final costs for genetic tests or other tests of inherited characteristics must be assessed against the nonprevailing party on the parentage issue.

(6.6) If the parties consent, the court has continuing jurisdiction and authority in the same proceeding to enter an order of relinquishment pursuant to part 1 of article 5 of this title without a finding or admission of the elements required by subsection (7) of this section. As part of the agreement, the respondent must agree in writing to waive the right to access the original birth certificate or other relinquishment documents as permitted by law under article 5 of this title or pursuant to the rules of the state department of human services. The waiver must be filed with the court that issues the order of relinquishment and with the state registrar of vital statistics.

(6.7) The juvenile court shall accept and hear each petition to terminate the parent-child legal relationship filed pursuant to this section no more than one hundred twenty days after service of the petition or from the first appearance date, whichever is later, unless both parties consent to an extension or the court finds good cause to extend the hearing beyond one hundred twenty days.

(7) The court shall terminate the parent-child legal relationship of the respondent if the court finds by clear and convincing evidence, and states the reasons for its decision, that:

(a) The respondent was convicted on or after July 1, 2013, of an act of sexual assault against the petitioner or was convicted of a crime in which the underlying factual basis was sexual assault against the petitioner;

(b) A child was conceived as a result of that act of sexual assault or crime as evidenced by the respondent admitting parentage or genetic testing establishing the paternity; and

(c) Termination of the parent-child legal relationship is in the best interests of the child. There is a rebuttable presumption that terminating the parental rights of the parent who committed the act of sexual assault or crime is in the best interests of the child. The court shall not presume that having only one remaining parent is contrary to the child's best interests.

(7.3) If the child is an Indian child, the court shall ensure compliance with the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., and the provisions of article 1.2 of this title 19.

(7.5) If the court denies the petition to terminate the parent-child legal relationship, then the court shall articulate its reasons for the denial of the petition. If the court denies the petition, the court has continuing jurisdiction and authority to enter an order in the same proceeding allocating parental responsibilities between the parties, including but not limited to an order to not allocate parental responsibilities to the respondent. In issuing any order allocating parental responsibilities, including the duty of support, guardianship, and parenting time privileges with

the child or any other matter, the court shall determine whether the order is in the best interests of the child based on a preponderance of the evidence.

(8) (a) A respondent whose parental rights are terminated in accordance with this section has:

(I) No right to allocation of parental responsibilities, including parenting time and decision-making responsibilities for the child;

(II) No right of inheritance from the child; and

(III) No right to notification of, or standing to object to, the adoption of the child.

(b) Notwithstanding the provisions of section 19-3-608, termination of parental rights under subsection (7) of this section does not relieve the respondent of any obligation to pay child support or birth-related costs unless waived by the petitioner. In cases in which child support obligations are not waived, the court, as informed by the wishes of the petitioner, shall determine if entering an order to pay child support is in the best interests of the child. If the court orders the respondent to pay child support, the court shall order the payments to be made through the child support registry to avoid the need for any contact between the parties and order that the payments be treated as a nondisclosure of information case. If the petitioner's parent-child legal relationship to the child is terminated after the entry of a child support order against the respondent, the court shall modify the child support order accordingly.

(9) A respondent whose parent-child legal relationship has been terminated in accordance with this section has no right to make medical treatment decisions or any other decisions on behalf of the child.

(9.5) The court may order a respondent whose parent-child legal relationship has been terminated to provide medical and family information to be shared with the child, as appropriate, and with the petitioner. For terminations entered under this section and section 19-5-105.7, the state court administrator shall establish a uniform process to determine how the information is collected, who can access it, when it can be accessed, and how it is stored. The court may order that a respondent's failure to comply with the request for information in a timely manner constitutes contempt of court.

(10) The juvenile court has original concurrent jurisdiction to issue a temporary or permanent civil protection order pursuant to section 13-14-104.5 or 13-14-106, C.R.S.

(11) Termination of the parent-child legal relationship pursuant to subsection (7) of this section is an independent basis for termination of parental rights, and the court need not make any of the considerations or findings described in section 19-3-604, 19-5-103.5, or 19-5-105.

(12) Nothing in this section prohibits the termination of parental rights by the court using the criteria described in section 19-3-604, 19-5-103.5, or 19-5-105.

Source: L. 2013: Entire section added, (SB 13-227), ch. 353, p. 2057, § 3, effective July 1. **L. 2014:** Entire section amended, (HB 14-1162), ch. 167, p. 582, § 1, effective July 1. **L. 2021:** (2)(a), (2)(b), and (2)(c) amended, (SB 21-059), ch. 136, p. 735, § 85, effective October 1. **L. 2025:** (4.3) added and (6.7) amended, (HB 25-1185), ch. 158, p. 636, § 4, effective August 6; (7.3) amended, (HB 25-1204), ch. 338, p. 1817, § 9, effective August 6.

19-5-105.7. Termination of parent-child legal relationship in a case of an allegation that a child was conceived as a result of sexual assault but in which no conviction occurred - legislative declaration - definitions.

(1) The general assembly hereby declares that the purpose of this statute is to protect a person in a case where it is determined that he or she is a victim of sexual assault but in which no conviction occurred and to protect a child conceived as a result of that sexual assault by creating a process to seek termination of the parental rights of the perpetrator of the sexual assault and by issuing protective orders preventing future contact between the parties. The general assembly further declares that this section creates civil remedies and is not created to punish the perpetrator but rather to protect the interests of the petitioner and the child. The general assembly creates this section to address the procedures in cases where there are allegations of sexual assault but in which a conviction did not occur.

(2) As used in this section, unless the context otherwise requires:

(a) "Conviction" has the same meaning as defined in section 19-1-103.

(b) "Petitioner" means a person who alleges that he or she is a victim of sexual assault and who files a petition for termination of the parent-child legal relationship of the other parent as provided in this section.

(c) "Respondent" means a person against whom a petition for termination of the parent-child legal relationship is filed as provided in this section.

(d) "Sexual assault" has the same meaning as defined in section 19-1-103.

(3) The person who alleges that he or she is a victim of sexual assault and who alleges that a child was conceived as a result of a sexual assault in which a conviction did not occur may file a petition in the juvenile court to prevent future contact with the parent who allegedly committed the sexual assault and to terminate the parent-child legal relationship of the parent who allegedly committed the sexual assault.

(4) The verified petition filed under this section must allege that:

(a) The respondent committed an act of sexual assault against the petitioner;

(b) The respondent has not been convicted for the act of sexual assault;

(c) A child was conceived as a result of the act of sexual assault as described under paragraph (a) of this subsection (4); and

(d) Termination of the parent-child legal relationship of the respondent with the child is in the best interests of the child.

(4.3) On or before January 1, 2026, the state court administrator shall develop a, or modify an existing, standardized petition form for a petitioner to complete and file pursuant to this section. At a minimum, the standardized petition form must allow a petitioner to allege the information described in subsection (4) of this section and provide the petitioner the ability to provide information to support their allegation that the respondent committed an act of sexual assault against the petitioner and that a child was conceived as a result of the sexual assault.

(5) (a) After a petition has been filed pursuant to this section, the court shall issue a summons that recites briefly the substance of the petition and contains a statement that the purpose of the proceeding is to determine whether to terminate the parent-child legal relationship of the respondent. The petitioner shall have the respondent personally served with a copy of the summons or notified through notice by publication consistent with the statutory provisions for notice in section 19-3-503 and pursuant to the Colorado rules of civil procedure, unless the respondent appears voluntarily or waives service. Upon request, the court shall protect the whereabouts of the petitioner and must identify the petitioner and the child in the summons by initials.

(b) The court will work to ensure that a petitioner or a respondent who has a disability has equal access to participate in the proceeding. If the petitioner or respondent has a disability, he or she has the right to request reasonable accommodations in order to participate in the proceeding; except that the disability of the petitioner, the respondent, or the child must not be the cause for the unnecessary delay of the process. The court shall presume that a petitioner or a respondent with a disability is legally competent and able to understand and participate in the proceeding unless the petitioner or respondent is determined to be an incapacitated person, as defined in section 15-14-102 (5), C.R.S.

(6) After a petition has been filed pursuant to this section, the court shall appoint a guardian ad litem, who must be an attorney, to represent the child's best interests in the proceeding; except that, if at any time the court determines that a guardian ad litem for the child is no longer necessary, the court may discharge the guardian ad litem. The petitioner and the respondent have the right to be represented by legal counsel in proceedings under this section. The petitioner and the respondent each have the right to seek the appointment of legal counsel if he or she is unable financially to secure legal counsel on his or her own. The court shall waive filing fees for an indigent petitioner.

(7) In any proceeding held under this section, the court may grant protective measures in the courtroom as requested by the petitioner, including but not limited to allowing the petitioner to

not appear in the presence of the respondent so long as these measures do not violate due process. The petitioner's and the child's whereabouts must be kept confidential.

(8) A respondent may admit parentage or may request genetic testing or other tests of inherited characteristics to confirm paternity. The test results must be admitted into evidence as provided in section 13-25-126, C.R.S. The final costs for genetic tests or other tests of inherited characteristics must be assessed against the nonprevailing party on the parentage issue.

(9) If the parties consent, the court has continuing jurisdiction and authority in the same proceeding to enter an order of relinquishment pursuant to part 1 of article 5 of this title without a finding or admission of the elements required by subsection (11) of this section. As part of the agreement, the respondent must agree in writing to waive the right to access the original birth certificate or other relinquishment documents as permitted by law under article 5 of this title or pursuant to the rules of the state department of human services. The waiver must be filed with the court that issues the order of relinquishment and with the state registrar of vital statistics.

(10) The juvenile court shall accept and hear each petition to terminate the parent-child legal relationship filed pursuant to this section no more than one hundred twenty days after service of the petition or from the first appearance date, whichever is later, unless both parties consent to an extension or the court finds good cause to extend the hearing beyond one hundred twenty days.

(11) (a) The court shall terminate the parent-child legal relationship of the respondent if the court finds by clear and convincing evidence that:

(I) A sexual assault against the petitioner occurred;

(II) The sexual assault was perpetrated by the respondent;

(III) A child was conceived as a result of that act of sexual assault as evidenced by the respondent admitting parentage or genetic testing establishing the paternity;

(IV) Termination of the parent-child legal relationship is in the best interests of the child. The court shall not presume that having only one remaining parent is contrary to the child's best interests.

(b) If the child is an Indian child, the court shall ensure compliance with the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., and article 1.2 of this title 19.

(12) If the court denies the petition to terminate the parent-child legal relationship, the court shall articulate its reasons for the denial of the petition. If the court denies the petition, the court has continuing jurisdiction and authority to enter an order in the same proceeding allocating parental responsibilities between the petitioner and the respondent, including but not limited to an order to not allocate parental responsibilities to the respondent. In issuing any order allocating parental responsibilities, including the duty of support, guardianship, and parenting time

privileges with the child or any other matter, the court shall determine whether the order is in the best interests of the child based on a preponderance of the evidence.

(13) (a) A respondent whose parental rights are terminated in accordance with this section has:

(I) No right to allocation of parental responsibilities, including parenting time and decision-making responsibilities for the child;

(II) No right of inheritance from the child; and

(III) No right to notification of, or standing to object to, the adoption of the child.

(b) Notwithstanding the provisions of section 19-3-608, termination of parental rights under subsection (10) of this section does not relieve the respondent of any obligation to pay child support or birth-related costs unless waived by the petitioner. In cases in which child support obligations are not waived, the court, as informed by the wishes of the petitioner, shall determine if entering an order to pay child support is in the best interests of the child. If the court orders the respondent to pay child support, the court shall order the payments to be made through the child support registry to avoid the need for any contact between the parties and order that the payments be treated as a nondisclosure of information case. If the petitioner's parent-child legal relationship to the child is terminated after the entry of a child support order against the respondent, the court shall modify the child support order accordingly.

(14) A respondent whose parent-child legal relationship has been terminated in accordance with this section has no right to make medical treatment decisions or any other decisions on behalf of the child.

(15) The court may order a respondent whose parent-child legal relationship has been terminated to provide medical and family information to be shared with the child, as appropriate, and with the petitioner. The sharing of information must be consistent with the uniform process established by the state court administrator as provided in section 19-5-105.5 (9.5). The court may order that a respondent's failure to comply with the request for information in a timely manner constitutes contempt of court.

(16) The juvenile court has original concurrent jurisdiction to issue a temporary or permanent civil protection order pursuant to section 13-14-104.5 or 13-14-106, C.R.S.

(17) Termination of the parent-child legal relationship pursuant to subsection (10) of this section is an independent basis for termination of parental rights, and the court need not make any of the considerations or findings described in section 19-3-604, 19-5-103.5, or 19-5-105.

(18) Nothing in this section prohibits the termination of parental rights by the court using the criteria described in section 19-3-604, 19-5-103.5, or 19-5-105.

Source: L. 2014: Entire section added, (HB 14-1162), ch. 167, p. 587, § 4, effective July 1. **L. 2021:** (2)(a) and (2)(d) amended, (SB 21-059), ch. 136, p. 735, § 86, effective October 1. **L. 2025:** (4.3) added and (10) amended, (HB 25-1185), ch. 158, p. 637, § 5, effective August 6; (11)(b) amended, (HB 25-1204), ch. 338, p. 1818, § 10, effective August 6.

19-5-106. Records. (Repealed)

Source: L. 87: Entire title R&RE, p. 804, § 1, effective October 1. **L. 89:** Entire section amended, p. 943, § 3, effective March 27. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-5-107. When notice of relinquishment proceedings required. (Repealed)

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1. **L. 91:** Entire section amended, p. 254, § 13, effective July 1. **L. 92:** Entire section amended, p. 2175, § 30, effective June 2. **L. 94:** Entire section repealed, p. 752, § 4, effective April 20.

19-5-108. When notice of relinquishment proceedings required.

If the custodial parent has assigned rights to support for a child who is the subject of relinquishment proceedings to the department of human services, notice of the relinquishment proceedings shall be given, by the parent proposing to relinquish a child or by that parent's counsel, to the appropriate delegate child support enforcement unit in cases where there is no adoption proceeding pending.

Source: L. 96: Entire section added, p. 613, § 15, effective July 1.

19-5-109. Birth parent access to records related to relinquishment of parental rights.

(1) (a) Except for relinquishments ordered pursuant to section 19-5-105.5 (6.6) or 19-5-105.7 (9) or when the subsequent termination of the parent-child legal relationship is the result of a dependency and neglect action, in those cases in which a parent consents to the relinquishment of his or her child, the custodian of records shall provide to the relinquishing birth parent to whom the document pertains a copy of the relinquishment records, in the possession of the custodian of

records, that are signed by the relinquishing birth parent or by a parent, guardian, custodian, or legal representative on behalf of the relinquishing birth parent and any of the following records listed in this paragraph (a) in which the relinquishing birth parent is named, including:

(I) The original birth certificate of the child who is being relinquished;

(II) The petition to relinquish;

(III) The final order of relinquishment;

(IV) The affidavit of counseling, excluding any attachments and excluding any notes or prerelinquishment counseling documents;

(V) The temporary waiver of custody;

(VI) Expedited relinquishment documents, if applicable;

(VII) A relinquishment interrogatory from a birth parent;

(VIII) The order for publication of relinquishment;

(IX) The notice to terminate the parent-child legal relationship; and

(X) The medical records of a birth mother related to the pregnancy and birth, which records may only be released by the health-care provider, hospital, or maternity home that created the record.

(b) The custodian of records shall provide the records described in paragraph (a) of this subsection (1) to the relinquishing birth parent at the time of relinquishment of the child or at the time the document is created.

(2) If the records described in subsection (1) of this section were not provided to a birth parent at the time of the relinquishment of the child or at the time the document was created and if the subsequent termination of the parent-child legal relationship was not the result of a dependency or neglect action, then upon written request and proof of identification of the birth parent, the custodian of records shall provide access to and copies of the records described in subsection (1) of this section to the birth parent. Nothing in this section prevents the release of the records described in subsection (1) of this section to a birth parent who was a minor at the time of the relinquishment of a child in circumstances where the record was signed by a parent, guardian, legal custodian, or legal representative on behalf of the relinquishing birth parent.

(3) A licensed child placement agency is not liable to any person for the failure of a birth parent to request copies of the records described in subsection (1) of this section pursuant to the provisions of subsection (1) or subsection (2) of this section. A licensed child placement agency or succeeding custodian of records is not liable to any person for failure to produce a copy of a record that did not exist pursuant to the provisions of the Colorado Revised Statutes or rules at the time of the relinquishment of the child.

Source: L. 2014: Entire section added, (HB 14-1042), ch. 261, p. 1050, § 2, effective August 6; IP(1)(a) amended, (HB 14-1162), ch. 167, p. 595, § 10, effective August 6.

PART 2

ADOPTION

Law reviews. For article, "The Adoptee Trap, the Accidental Beneficiary, and the Rational Testator", see 42 Colo. Law. 29 (Feb. 2013); for comment, "Two Legal Mothers: Cementing Parental Rights for Lesbian Parents in Colorado", see 91 U. Colo. L. Rev. 1247 (2020).

19-5-200.2. Legislative declaration.

(1) Notwithstanding any other provisions of this title to the contrary, it is the intent of the general assembly that the court shall protect and promote the best interests of the children who are the subjects of proceedings held pursuant to this part 2 while giving due regard to the interests of any other individuals affected.

(2) The general assembly hereby finds and declares that:

(a) It is beneficial for a child placed for adoption to be able to continue relationships with his or her brothers and sisters, regardless of age, in order that the siblings may share their strengths and association in their everyday and often common experiences;

(b) When parents and other adult relatives are no longer available to a child, the child's siblings constitute his or her biological family;

(c) When placing children in adoptive placements, efforts should be made to place siblings together, unless there is a danger of specific harm to a child or it is not in the child's or children's best interests to be placed together. The general assembly further finds that if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, there should be a rebuttable presumption that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption should be rebuttable by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

Source: L. 94: Entire section added, p. 1198, § 1, effective May 19. **L. 2000:** Entire section amended, p. 476, § 6, effective July 1. **L. 2003:** (2)(c) amended, p. 2627, § 9, effective June 5.

19-5-201. Who may be adopted.

Any child legally available for adoption as provided in section 19-5-203, under eighteen years of age, and either present in the state at the time the petition for adoption is filed or under the jurisdiction of a court in Colorado for at least six months may be adopted. Upon approval of the court, a person eighteen years of age or older and under twenty-one years of age may be adopted as a child, and all provisions of this part 2 referring to the adoption of a child shall apply to such a person.

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1. **L. 2017:** Entire section amended, (HB 17-1304), ch. 339, p. 1807, § 1, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law, 1057 (1983). For article, "Lawful Permanent Residence and Citizenship for the Adopted Foreign Child", see 15 Colo. Law. 2207 (1986).

Trial court did not err in exercising jurisdiction in adoption proceeding where child had been in the state for the preceding 23 months and had been placed in the state with the parents' permission. In re Adoption of K.L.L. ex rel. V.M.D., 160 P.3d 383 (Colo. App. 2007).

19-5-202. Who may adopt.

(1) Any person twenty-one years of age or older, including a foster parent, may petition the court to decree an adoption.

(2) A minor, upon approval of the court, may petition the court to decree an adoption.

(3) A person having a living spouse from whom he is not legally separated shall petition jointly with such spouse, unless such spouse is the natural parent of the child to be adopted or has previously adopted the child.

(4) A person having a living partner in a civil union from whom the person is not legally separated shall petition jointly with the partner, unless the partner is the natural parent of the child to be adopted or has previously adopted the child.

(5) A person who is a partner in a civil union may adopt a child of the other partner through the same process outlined in section 19-5-203 for a stepparent adoption and shall be considered a stepparent for the purpose of determining whether a child is available for adoption pursuant to section 19-5-203 (1).

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1. **L. 88:** (1) amended, p. 758, § 4, effective May 31. **L. 2013:** (4) and (5) added, (SB 13-011), ch. 49, p. 167, § 24, effective May 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law, 1057 (1983). For article, "Lawful Permanent Residence and Citizenship for the Adopted Foreign Child", see 15 Colo. Law. 2207 (1986).

19-5-202.5. Adoption hearings - termination appeals - court docket priority - exceptions.

(1) On and after July 1, 2002, any hearing concerning a petition for adoption filed in a district court, the Colorado court of appeals, or the Colorado supreme court and any hearing concerning a petition filed in the Colorado court of appeals or the Colorado supreme court related to a child who is available for adoption due to an order of the court terminating the parent-child legal relationship shall be given a priority on the court's docket. On and after July 1, 2002, if there is no determination on a case concerning a petition for adoption or a case concerning a child who is available for adoption due to an order of the court terminating the parent-child legal relationship by any such court within six months of the filing of the petition, it shall be given a priority on the court's docket that supersedes the priority of any other priority civil hearing on the court's docket.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this section shall affect the priority of a hearing concerning the issuance of a temporary protection order pursuant to section 13-14-104.5, C.R.S.

(3) The provisions of this section shall be implemented within existing appropriations.

Source: L. 2002: Entire section added, p. 1643, § 1, effective July 1. **L. 2003:** (2) amended, p. 1016, § 28, effective July 1. **L. 2004:** (2) amended, p. 557, § 16, effective July 1. **L. 2013:** (2) amended, (HB 13-1259), ch. 218, p. 1017, § 22, effective July 1.

19-5-203. Availability for adoption.

(1) A child may be available for adoption only upon:

(a) Order of the court terminating the parent-child legal relationship in a proceeding brought under article 3 or 5 of this title;

(b) Order of the court decreeing the voluntary relinquishment of the parent-child legal relationship under section 19-5-103, 19-5-103.5, or 19-5-105;

(c) Written and verified consent of the guardian of the person, appointed by the court, of a child whose parents are deceased;

(d) (I) Written and verified consent of the parent in a stepparent adoption where the other parent is deceased or his parent-child legal relationship has been terminated under paragraph (a) or (b) of this subsection (1);

(II) Written and verified consent of the parent in a stepparent adoption, accompanied by an affidavit or sworn testimony of such parent, that the other birth parent has abandoned the child for a period of one year or more or that the other birth parent has failed without cause to provide reasonable support for such child for a period of one year or more. Upon filing of the petition in adoption, the court shall issue a notice directed to the other parent, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the other parent is known, service of such notice shall be in the manner provided by the Colorado rules of civil procedure for service of process. Upon affidavit by the petitioner that, after diligent search, the address of the other parent remains unknown, the court shall order service upon the other parent by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such time, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210 (2).

(d.5) (I) Written and verified consent in a second-parent adoption that the child has a sole legal parent, and the sole legal parent wishes the child to be adopted by a specified second adult.

(II) In a petition for a second-parent adoption, the court shall require a written home study report prepared by a county department of human or social services, designated qualified individual, or child placement agency and approved by the department pursuant to section 19-5-207.5 (2). If the child of a sole legal parent was adopted by that parent less than one hundred eighty-two days prior to the filing of an adoption petition by a second prospective parent and if the second prospective parent was included in the home study report that was prepared pursuant to section 19-5-207 for the adoption of the child by the first parent, then that home study report is a valid home study report for the purpose of the second parent's adoption. If the filing of a petition for adoption by the second prospective parent occurs one hundred eighty-two days or more after the adoption by the first parent, a separate home study report is required pursuant to section 19-5-207.

(e) Written and verified consent of the parent having only residual parental responsibilities when custody or parental responsibilities have been awarded or allocated to the other parent in a dissolution of marriage proceeding where the spouse of the parent having custody or parental responsibilities wishes to adopt the child;

(f) Written and verified consent of the parent or parents, as defined in section 19-1-103, in a stepparent adoption where the child's parents were not married at the time the child was conceived and born;

(g) A statement by the department of human services or its designated agent as to whether any placement arranged outside the state of Colorado was carried out by a child placement agency licensed or authorized under the laws of another state to make placements;

(h) Verification by the child placement agency, a county department of human or social services, or the attorney for the petitioner in any adoption proceeding that any custody obtained outside the state of Colorado was acquired by:

(I) Proceedings to relinquish all parent-child legal relationships which complied with the laws of the state where conducted or conformed substantially to the laws of this state; or

(II) Proceedings to terminate all parent-child legal relationships which complied with the laws of the state where conducted or conformed substantially to the laws of this state; or

(III) Written and verified consent, under the conditions set forth in paragraphs (c) to (f) of this subsection (1), which was executed in accord with the laws of the state where granted or in substantial conformity with the laws of this state;

(i) Verification by the department of human services or its designated agent that any custody obtained outside the state of Colorado was acquired by proceedings sanctioned by the federal immigration and naturalization service, or any successor agency, in cooperation with the

department of human services whenever such cooperation is authorized or advised by federal law;

(j) Submission of an affidavit or sworn testimony of the adoptive relative in a kinship adoption that the birth parent or birth parents have abandoned the child for a period of one year or more or that the birth parent or birth parents have failed without cause to provide reasonable support for such child for a period of one year or more, and that the relative seeking the kinship adoption has had physical custody of the child for a period of one year or more and the child is not the subject of a pending dependency and neglect proceeding pursuant to article 3 of this title. Upon filing of the petition in adoption, the court shall issue a notice directed to the birth parent or birth parents, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the birth parent is known, service of such notice shall be in the manner provided by the Colorado rules of civil procedure for service of process. Upon affidavit by the petitioner that describes with specificity the diligent search made by the petitioner, and that states that, after diligent search, the address of the birth parent or birth parents remains unknown, the court shall order service upon the birth parent or birth parents by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such hearing, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210 (2).

(k) Submission of an affidavit or sworn testimony of the legal custodian or legal guardian in a custodial adoption that the birth parent or birth parents have abandoned the child for a period of one year or more or that the birth parent or birth parents have failed without cause to provide reasonable support for such child for a period of one year or more and that the legal custodian or legal guardian seeking the custodial adoption has had the child in his or her physical custody for a period of one year or more. Upon filing of the petition in adoption, the court shall issue a notice directed to the birth parent or birth parents, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the birth parent or birth parents is known, service of such notice shall be in the manner provided by the Colorado rules of civil procedure for service of process. Upon affidavit by the petitioner that describes with specificity the diligent search made by the petitioner, and that states that, after diligent search, the address of the birth parent or birth parents remains unknown, the court shall order service upon the birth parent or birth parents by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such hearing, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210 (2).

(2) Written consent to any proposed adoption shall be obtained from the person to be adopted if such person is twelve years of age or older.

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1; (1)(f) amended, p. 1587, § 61, effective October 1. **L. 94:** (1)(g) and (1)(i) amended, p. 2688, § 211, effective July 1. **L. 97:** (1)(d)(II) amended, p. 1161, § 4, effective July 1. **L. 98:** (1)(f) amended, p. 822, § 29, effective August 5; (1)(e) amended, p. 1410, § 73, effective February 1, 1999. **L. 99:** (1)(j) and (1)(k) added, p. 1062, § 3, effective June 1. **L. 2005:** (1)(b) amended, p. 765, § 25, effective June 1. **L. 2007:** (1)(d.5) added, p. 837, § 1, effective August 3. **L. 2011:** (1)(i) amended, (HB 11-1303), ch. 264, p. 1158, § 38, effective August 10. **L. 2012:** (1)(d)(II), (1)(d.5)(II), (1)(j), and (1)(k) amended, (SB 12-175), ch. 208, p. 878, § 140, effective July 1. **L. 2018:** (1)(d.5)(II) and IP(1)(h) amended, (SB 18-092), ch. 38, p. 426, § 69, effective August 8; (1)(f) amended, (SB 18-095), ch. 96, p. 754, § 11, effective August 8. **L. 2021:** (1)(f) amended, (SB 21-059), ch. 136, p. 735, § 87, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

ANNOTATION

I. General Consideration.

II. Consent and Availability Without Consent.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For note, "Batton v. Massar: The Finality of Colorado Adoptions", see 35 U. Colo. L. Rev. 314 (1963). For article, "Substantive Changes in Adoption and Relinquishment Law in Colorado", see 16 Colo. Law. 2183 (1987). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (Oct. 2008). For article, "Colorado Civil Union Act", see 42 Colo. Law. 91 (July 2013).

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

Section held constitutional. Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973).

C.A.R. 3.4 does not violate plaintiff's constitutional right to equal protection because parents whose rights are terminated under this article of the Colorado Children's Code are not similarly situated to parents whose rights are terminated under article 3 of the code. C.A.R. 3.4 applies to parents subject to dependency and neglect proceedings under article 3 of the Colorado Children's Code. As such, the proceedings focus primarily on the protection and safety of the children, not on the custodial interests of the parent. Further, such a proceeding can be initiated only by the state. People ex rel. T.D., 140 P.3d 205 (Colo. App. 2006).

Purpose of section. The prime purpose of the provisions relating to adoption definitely pertain to the care, support, training, and welfare of children who are orphaned or left dependent during minority. Martin v. Cuellar, 131 Colo. 117, 279 P.2d 843 (1955).

The purpose of adoption proceedings is to change the status of a child and its adoptive parents and to create a new status, a new relationship of parent and child. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

The general assembly has evidenced a benign policy toward adopted persons. People ex rel. Dunbar v. White, 144 Colo. 212, 355 P.2d 963 (1960).

This section and § 19-5-211, when viewed together, exclude from the reach of adoption statutes all form of adoption not otherwise expressly permitted. Adoption of T.K.J., 931 P.2d 488 (Colo. App. 1996).

This section, when read together with § 19-5-211 contemplates two types of adoptions. The first is an adoption in which the rights of the parents are terminated by the court or are relinquished by the parents, or by the child's guardian if the parents are deceased. In such situation, final decree of adoption has effect of divesting the child's natural parents of all legal rights and obligations with respect to the child. The second is a "stepparent adoption", which constitutes the only exception to the general rule that an adoption divests both of the child's parents of all legal rights and duties relating to the child. This exception applies only when custodial parent is married to the adopting stepparent. Adoption of T.K.J., 931 P.2d 488 (Colo. App. 1996); In re D.S.L., 18 P.3d 856 (Colo. App. 2001).

Reading the plain language of this section in harmony with other statutes relating to adoption, children of same-sex couple whose parents were not married and whose parents did not intend to relinquish or terminate custody of children were not available for adoption. Adoption of T.K.J., 931 P.2d 488 (Colo. App. 1996).

Procedure mandatory. The procedure prescribed in subsection (1) cannot be ignored. Foley v. Carnesi, 123 Colo. 533, 232 P.2d 186 (1951).

Compliance with the provisions of the adoption statute is mandatory. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

Petitioners lacked standing to seek custodial adoption after their temporary guardianship expired and they failed to provide proper notice to parents of hearing to extend guardianship. Although trial court extended temporary guardianship,

that order was void for lack of notice to mother and father, therefore, petitioners lacked standing as the child's legal guardian. In re Adoption of K.L.L. ex rel. V.M.D., 160 P.3d 383 (Colo. App. 2007).

Petitioners lacked standing as the child's legal custodians because, although they had physical custody of the child for more than one year, there had been no court action divesting the parents of legal custody. In re Adoption of K.L.L. ex rel. V.M.D., 160 P.3d 383 (Colo. App. 2007).

"One year" in former subsection (1)(e)(II) (now subsection (1)(b)(II)) means the consecutive 12-month period immediately preceding the filing of the petition for stepparent adoption. In re R.H.N., 673 P.2d 805 (Colo. App. 1983); In re R.H.N., 710 P.2d 482 (Colo. 1985).

Responsibility of state to protect child's best interests. In an adoption proceeding, not only the custody, support, and education of a minor is involved, but one or both the parents may be deprived of their rights as parents. In such cases the state has an obligation to see that the best interests of the child and its welfare are served by the decree of adoption. Clerkin v. Geisendorfer, 137 Colo. 139, 323 P.2d 633 (1958).

The primary consideration in adoption proceedings is the welfare of the child, and secondly the rights of the parents. Moreau v. Buchholz, 124 Colo. 302, 236 P.2d 540 (1951).

Except when it is essential and of paramount necessity in the best interests of the child itself to provide otherwise, the law recognizes and enforces the right to the custody of their own children which nature gives to parents. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

In a valid adoption proceeding, the natural relationship of the parents is superseded by an artificial relationship, and courts should act with caution and circumspection in such proceedings, exerting every effort commensurate with the welfare of the child to prevail upon the natural parents to accept and fulfill their duties toward their child. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Parental rights (now parent-child legal relationship) must yield to interest and welfare of child. Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973); In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

As child is ward of state. The initiation of any proceedings in a court in which the rights, status, and welfare of an infant may be affected immediately establishes the infant's relation to the court as that of its ward. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

The power of the state to sever the ties between parent and child should be exercised with extreme care and only when the evidence clearly establishes the necessity of so doing. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

In assessing whether a parent has abandoned a child, the court must examine the totality of the circumstances, viewed in light of the best interests of the child, which assessment must include recognition both that every child is entitled

to support and nurturance and that, to preserve parental rights, a parent must give appropriate attention to parental responsibilities, with the primary consideration being the welfare of the child second to the rights of the parents. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

Where mother abandoned the child and did not have a relationship with the child, the court cannot benefit the best interests of the child by considering the prospects that the mother, having abandoned a child, may later seek to establish a relationship with the child where there has been no support and nurturance. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

Intent component of abandonment not adequately shown where, for most of one-year period prior to filing of petition for stepparent adoption, biological father was under court order that prohibited any meaningful contact concerning child, yet during that time period father's legal actions demonstrated that he did not intend to permanently abandon his rights with respect to the child. In re J.A.V., 206 P.3d 467 (Colo. App. 2009).

Further, trial court erred in deferring to the stay in the parental responsibilities case and proceeding with the stepparent adoption absent a prior resolution of father's motion for parenting time. In re J.A.V., 206 P.3d 467 (Colo. App. 2009).

Abandonment inquiry focuses on intent. Court must determine whether, under the totality of the circumstances, the parent's intent during the twelve months preceding the filing of the petition for adoption was to abandon the child. The abandonment determination is a question of fact best determined by the trial court, and the appellate court erred in holding, essentially as a matter of law, that father's filing of the parenting-time motions prior to the filing of the adoption petition precluded a finding of intent to abandon. D.P.H. v. J.L.B., 260 P.3d 320 (Colo. 2011).

Court was not required to stay adoption proceeding pending outcome of parenting-time motion so long as court took into account the fact of the motion in making its abandonment determination. D.P.H. v. J.L.B., 260 P.3d 320 (Colo. 2011).

A stepparent adoption proceeding is not based on a societal responsibility to improve a child's situation. The best interest of the child is only one of the factors to be considered in evaluating a petition in such a proceeding. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A parent-child relationship may not be destroyed and a new one created by adoption solely because an official of the state may believe the child's welfare and the stepparent's convenience will be served by such actions. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Where a petition for stepparent adoption is before the court, the court may consider the natural parent's past conduct and other relevant considerations in making a determination as to whether it is unlikely that the natural parent will make future

support payments on a regular and continuous basis. E.R.S. v. O.D.A., 779 P.2d 844 (Colo. 1989).

A stepparent adoption proceeding, like all other adoption proceedings, is concluded by a final decree of adoption. It is only when the final decree is entered that a natural parent is divested of all rights and obligations with respect to the child. People in Interest of S.M.O., 931 P.2d 572 (Colo. App. 1996).

A child is not available for adoption within the meaning of paragraph (f) of subsection (1), without the consent of both natural parents when both parents are living and the identity and whereabouts of both parents are known or ascertainable by due diligence. In re the Petition of S.O., 795 P.2d 254 (Colo. 1990).

Natural father's motion to set aside stepparent adoption was properly denied where father knowingly, intelligently, and voluntarily consented to his child's adoption by signing a waiver that was written in plain, clear, and unambiguous language. Father's claim that his consent was based on an understanding that he would receive visitation rights was insufficient to overcome the written consent and evidence that the father was sufficiently informed by court clerk as to the consequences of signing consent form. In re the Petition of S.O., 795 P.2d 254 (Colo. 1990).

Parent's incarceration. Incarceration is not a per se justification for failure to pay child support. The fact that a parent has been incarcerated for any or all of the 12-month period immediately preceding the filing of the petition is one factor to be considered by the court in making its determinations. In re R.H.N., 673 P.2d 805 (Colo. App. 1983); In re R.H.N., 710 P.2d 482 (Colo. 1985).

Determination of whether reasonable support was paid must be predicated on a party's financial circumstances rather than on a rigid interpretation of a support order entered at a prior time. In re R.H.N., 678 P.2d 1070 (Colo. App. 1984).

But parents are not excused from their obligation to support their children merely because their incomes are small. Although incarceration is a factual circumstance that the court may consider in deciding what level of support is reasonable, incarceration does not totally excuse a parent's obligation to provide some child support. In re R.H.N., 710 P.2d 482 (Colo. 1985).

Once court has determined that a natural parent has failed to provide child support during 12-month period preceding filing of petition under former subsection (1)(e)(II) (now subsection (1)(h)(II)), the court must look beyond the 12-month period to determine whether there is any likelihood that natural parent will provide child support. In re R.H.N., 710 P.2d 482 (Colo. 1985).

Whether a parent has failed to provide "reasonable support" is question of fact to be determined by the trial court on a case by case basis. In re F.J.H., 628 P.2d 159 (Colo. App. 1981); In re R.H.N., 710 P.2d 482 (Colo. 1985).

And parental rights not terminated whenever parent fails to provide support. This section does not permit the termination

of parental rights (now parent-child legal relationship) whenever a parent fails to provide the amount of support specified under a decree for a period of one year. In re F.J.H., 628 P.2d 159 (Colo. App. 1981).

Mistaken belief on support obligation considered in ruling on failure to provide support. While a divorced parent's support obligation is not legally suspended by the other parent's violation of the visitation provisions in a custody decree, a mistaken belief to this effect is a factual circumstance which the trial court may consider in ruling on the question of the failure to provide reasonable support without cause in a proceeding which involves the termination of a parent-child legal relationship. In re F.J.H., 628 P.2d 159 (Colo. App. 1981).

Because of the harshness of permanently terminating parental rights (now parent-child legal relationships), strict compliance with this section is required. Petition of T.C.H. v. J.M.S., 190 Colo. 246, 545 P.2d 1357 (1976); In re F.J.H., 628 P.2d 159 (Colo. App. 1981).

Substantial compliance with the statutory provisions is essential and must appear of record. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Burden of statutory adoption is same on all citizens. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

Exclusive method of adoption. Except in a very limited and unique situation, the only method of legal adoption under the laws of Colorado is pursuant to the Colorado Children's Code. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

A juvenile court has exclusive jurisdiction in adoption proceedings, but such jurisdiction does not extend to ousting a district court of jurisdiction in habeas corpus proceedings involving the unlawful restraint of an infant. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

But court cannot determine custody apart from adoption. In adoption proceedings, where for lack of jurisdiction or failure to meet statutory requirements, the effort to adopt fails, a juvenile court has no power to make an award of custody, nor to determine the relative rights of natural parents or of persons seeking to adopt a child. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Parent's abandonment of child is question of intent. Lack of mental capacity may be cause for failure to provide support and the presumption that an insanity adjudication results in the continuation of a state of mental incapacity applies in a proceeding under this section. Petition of D.L.M., 703 P.2d 1330 (Colo. App. 1985).

Adoption and abandonment proceedings distinguished. The question of abandonment is one of the elements involved in adoption proceedings, but that does not change adoption proceedings under this article to an abandonment proceeding under § 19-1-104. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

An adjudication in a habeas corpus proceeding involving custody of a minor child is not an adjudication of abandonment as defined in the adoption statute, nor as used in the dependent and neglected child

statute since a district court has no jurisdiction in abandonment proceeding. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Section may not be supplemented or supplanted by action in dependency. This section provides within itself sufficient means and authority to accomplish its purpose, and it may not be supplemented or supplanted by an action in dependency. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A petition in dependency may not be converted into a proceeding for stepparent adoption by the actions either of the parties, the referee, or the trial court. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

And procedures are not interchangeable. Since a petition in dependency concerns different matters and fulfills a different purpose than a proceeding for a stepparent adoption, procedures applicable to one may not be used to accomplish the ends of the other. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

For the distinction between notice required by § 19-3-103 and that required by this section, see People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Colorado courts have not recognized cultural adoption as being legal adoption. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

Equitable adoption for purposes of intestacy. Where there is "an oral contract to adopt a child, fully performed except that there was no statutory adoption", the child could be held equitably adopted for purposes of intestacy. The court has never applied the doctrine to factual situations other than those involving succession to an estate. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

Trial court's findings supported by evidence binding on appeal. Where the record contains evidence which supports the findings of the trial court that it is not in the best interest of the child to proceed with adoption, those findings are binding on appeal. In re J.A.A. v. C.R., 618 P.2d 742 (Colo. App. 1980).

Exclusion of expert witness testimony given the conflicting evidence was reversible error in kinship adoption case. Court must first determine whether terminating the parent-child legal relationship is in the best interests of the child before determining whether the child is available for adoption due to the parent's failure to provide reasonable support or abandonment. Social worker's excluded testimony did not relate to parent's failure to pay child support, but concerned threshold issue of whether termination was in the best interests of the child. In re C.A.B.L., 221 P.3d 433 (Colo. App. 2009).

Magistrate in kinship adoption proceeding may not take judicial notice of guardian ad litem's report in mother's dissolution case because report contains facts relating to the issues being litigated and mother has no opportunity to cross-examine guardian ad litem. However, the

court may take judicial notice of its own records and adopt factual findings from a previous case involving the same parties and the same issues. In re C.A.B.L., 221 P.3d 433 (Colo. App. 2009).

Applied in Bd. of Control of State Home v. Mulertz, 60 Colo. 468, 154 P. 742 (1916); People in Interest of K.S., 33 Colo. App. 72, 515 P.2d 130 (1973).

II. CONSENT AND AVAILABILITY WITHOUT CONSENT.

Law reviews. For note, "A Compilation of Consent Provisions of Adoption Statutes", see 24 Rocky Mt. L. Rev. 359 (1952). For comment on White v. Davis (163 Colo. 122, 428 P.2d 909 (1967)), see 40 U. Colo. L. Rev. 151 (1967).

This section applies simply to consent and not to waiver, and, in view of the expressed intent of the general assembly to give the natural parents protection from hurried and coerced decisions to give up their child, the meaning of this section cannot be extended to include waiver of notice. Thus, the notice required may not be waived by a minor parent. Foley v. Carnesi, 123 Colo. 533, 232 P.2d 186 (1951).

General assembly has wide discretion in determining when and under what conditions child may be adopted without consent of natural parents. Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973).

Parent has no absolute right to child under any and all circumstances. Stjernholm v. Mazaheri, 180 Colo. 352, 506 P.2d 155 (1973).

The determination that a child is "available for adoption" is only a preliminary step toward the replacement of the child's natural parent with one who appears to be more willing and able to provide the care, support, and training necessary for the child's proper development. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Objecting parent must show willingness to assume obligations. While a natural parent's rights may not be disregarded, expressed public policy declares that a parent seeking to prevent the adoption of his natural child by a stepparent may not stand upon his parental rights without demonstrating a willingness to assume parental obligations. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Failure to support and abandonment separate grounds. The Colorado Children's Code specifies that failure to support without cause is a separate and independent ground from that of abandonment for declaring a child available for adoption so that if sufficient proof on either or both grounds is submitted to the court, a judgment based thereon will not be disturbed. Karkanen v. Valdesuso, 33 Colo. App. 47, 515 P.2d 128 (1973).

This section does not require that abandonment and nonsupport must both be shown to terminate parental rights (now parent-child legal relationship). Buder v. Reynolds, 175 Colo. 28, 486 P.2d 432 (1971).

Prior court order mandating child support is not a prerequisite to a finding that a natural parent has failed without cause to provide child support. Accordingly, a child could be adopted without the natural father's consent where the natural father had failed to provide any child support for over a year preceding the filing for stepparent adoption, the evidence suggested that he would not pay child support in the future, and all procedural requirements of this section had been met. In re I.R.D., 971 P.2d 702 (Colo. App. 1998).

In assessing whether a parent has abandoned a child, the court must examine the totality of the circumstances viewed in light of the best interests of the child, and mother's single phone call made during the year prior to the filing of the petition for adoption would not preclude a finding of abandonment. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

Termination of parental rights (now parent-child legal relationship) constitutional. Requiring only a showing that the natural parent has failed without cause to provide reasonable support for a child for one year or more, when termination of a natural parent's rights is sought in a stepparent adoption, does not violate the natural parent's constitutional rights. Buder v. Reynolds, 175 Colo. 28, 486 P.2d 432 (1971).

Consent is necessary in all adoptions, since without valid consents courts are without jurisdiction to enter decrees of adoption. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Minor parent may give consent. Under this section, the minority of a natural parent is not a bar to such parent's consent to adoption. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

A mother's consent to the adoption is necessary unless she has forfeited her rights. Graham v. Francis, 83 Colo. 346, 265 P. 690 (1928).

When the petition in adoption was filed, there was no valid order of dependency. Without such a valid order the consent of the mother was essential, and not being filed with that petition, the court was without jurisdiction to enter the decree of adoption, and its jurisdiction was no greater because of the subsequent order of dependency based on a new petition. The adjudication of dependency entered subsequent to the filing of the petition in adoption could not give vitality to the adoption petition. Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955).

Unverified consent ineffective. Where the written consent of the natural parent is not subscribed and sworn to as required by this section, a decree of adoption will not be sustained. Allen v. Huffman, 135 Colo. 1, 307 P.2d 802 (1957).

Consent valid in absence of fraud, coercion, or misrepresentation. A mother may not avoid the consequences of her voluntary acts in consenting to the adoption of her children, on the ground that she did not realize the seriousness and finality of the paper she was signing, in the absence of fraud, coercion, or misrepresentation. Batton

v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Consent required where divorce decree specifically relieved father of duty to support child. T.C.H. v. J.M.S., 190 Colo. 246, 545 P.2d 1357 (1976).

After relinquishment, parental consent unnecessary. If there has been a relinquishment, then in proceedings for the adoption of the relinquished child, the agency to which the child has been relinquished is the only one that can consent. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Consent is not required where the parent has abandoned the child. Neville v. Bracher, 94 Colo. 550, 31 P.2d 911 (1934).

And such parent not entitled to notice of adoption. Where the mother abandons and deserts her child, she has no right to receive notice of the child's adoption. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Notice of adoption proceedings under this section need not be given where a valid relinquishment has been made, such relinquishment divesting the natural parents of all legal right in their child. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Under this section, no notice of an adoption proceeding is required to be given parents who have relinquished or lost their rights to the custody of their children by prior court action. Olsen v. Davidson, 142 Colo. 205, 350 P.2d 338 (1960).

Hearing on adequacy of notice required. Where the motion to vacate the adoption decrees claims no notice whatsoever and further alleges that in support of an order authorizing service by publication the procurer of the order made a false representation that he was unaware of the whereabouts of the natural father, the inherent seriousness of such allegations require an evidentiary hearing to determine whether the due process requirements in the adoption proceedings were met. White v. Davis, 163 Colo. 122, 428 P.2d 909 (1967) (decided under former § 4-1-16, C.R.S. 1963).

19-5-203.5. Confirmatory adoption - short title - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Court" means a district or juvenile court that has jurisdiction over the adoption.

(b) "Petitioner" means the person or persons filing a petition for adoption in accordance with this section.

(2) (a) Whenever a child is conceived as a result of assisted reproduction and the person who did not give birth is a parent or a presumed parent pursuant to section 19-4-106, or a child has a presumed parent pursuant to section 19-4-105, or when married parents engaging in surrogacy in another state that results in a court order establishing only one spouse as the parent, the parents

may complete an adoption of the child to affirm parentage in accordance with this section. Both parents must join the petition as petitioners.

(b) A complete petition for adoption must include the following documents:

(I) A copy of the petitioners' marriage or civil union certificate if the parents were married or in a civil union at the time of birth, if applicable, and declarations by the parent who did not give birth explaining the circumstances of birth and that the person is a parent based on contributing gametes or consenting to the conception of a child through assisted reproduction pursuant to section 19-4-106 and attesting that the child was born as a result of assisted reproduction and attesting that no competing claims of parentage exist;

(II) A copy of the child's birth certificate;

(III) If the child has attained the age of twelve years of age, the consent of the child; and

(IV) A sworn statement by each petitioner acknowledging parentage.

(c) A complete petition for adoption, as described in subsection (2)(b) of this section, serves as the petitioners' written consent to adoption.

(d) If the child is conceived using sperm, an egg, or an embryo from a donor, the court shall not require notice of the adoption to the donor or consent to the adoption by the donor.

(3) (a) The petitioners may file in, and jurisdiction is appropriate in, any of the following:

(I) The county where the child at issue is conceived or born;

(II) The county of residence of one or both of the petitioners; or

(III) A Colorado county chosen by the petitioners so long as the child was conceived or born in Colorado. The petitioners are not required to be residents of Colorado for jurisdiction to be appropriate so long as the child was conceived or born in Colorado.

(b) Unless otherwise ordered by the court for good cause shown, for purposes of evaluating and granting a petition for adoption pursuant to this section, the court shall not require:

(I) An in-person hearing or appearance;

(II) A home study by, notice to, or approval of the state department of human services or a licensed child placement agency as defined in section 19-1-103;

(III) Fingerprinting or a criminal offender record information search;

(IV) Verification that the child is not registered with the federal register for missing children or the central register; or

(V) A minimum residency period in the home of the petitioner.

(4) (a) The court shall grant the adoption and issue a decree of adoption within thirty days after finding:

(I) The petitioner filed a complete petition for adoption pursuant to subsection (2)(b) of this section; and

(II) (A) For parents who are spouses or civil union partners, the petitioners were married or in a civil union at the time of the child's conception or birth; or

(B) For presumed parents, or any other person with a claim to parentage of the child who is required to provide notice of, or consent to, the adoption, the person has received notice and provided consent to the adoption.

(b) A petition to adopt, pursuant to this section, when a petitioner's parentage is presumed or legally recognized under Colorado law, must not be denied solely on the basis that the petitioner's parentage is already presumed or legally recognized.

(c) When parentage is presumed or legally recognized pursuant to Colorado law, failure to petition for adoption pursuant to this section may not be considered as evidence when two or more presumptions conflict pursuant to section 19-4-105 (2)(a), nor in determining the best interest of the child.

(5) After the decree of adoption is issued regarding a child born to one or more parents, regardless of marital status, each parent is considered an equal parent with equal parenting rights and responsibilities.

(6) The decree of adoption must include findings that the parent who gave birth, or the adjudicated parent, and the parent who adopted the child are the parents of the child.

(7) The short title of this section is "Marlo's Law".

Source: L. 2022: Entire section added, (HB 22-1153), ch. 210, p. 1386, § 1, effective August 10.

19-5-204. Venue.

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.

Source: L. 87: Entire title R&RE, p. 806, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-205. Adoption decree of foreign country approved.

(1) (a) A petition seeking a decree declaring valid an adoption granted by a court of any country other than the United States of America may be filed at any time by residents of the state of Colorado.

(b) The petition shall contain all information required in section 19-5-207 (2); except that the court shall not require the petition to contain or be accompanied by the written consent described in section 19-5-207 (1), the written home study report described in section 19-5-207 (2)(a), the fees described in section 19-5-207.5 (4), or a written legal memorandum with specific references to the applicable law of the foreign country.

(2) The court shall issue a decree declaring valid an adoption granted by a court of competent jurisdiction or other authorized individual or entity of a country other than the United States of America upon a finding that:

(a) At the time the petition is filed, the petition contains a verified statement that at least one of the adopting parents is a citizen and resident of the state of Colorado or other evidence that at least one of the adopting parents is a citizen and resident of the state of Colorado;

(b) The original or a certified copy of a valid foreign adoption decree, together with a notarized translation, is presented to the court; and

(c) The child is either a permanent resident or a naturalized citizen of the United States. A photocopy of the child's resident alien card issued by the immigration and naturalization service of the United States, department of justice, or any successor agency, shall be sufficient evidence that the child is either a permanent resident or a naturalized citizen of the United States.

(2.5) The adopting parties filing a petition pursuant to this section shall not be required to be represented by an attorney.

(3) Any decree issued pursuant to this section shall have the same legal effect as any decree of adoption issued by the court.

Source: L. 87: Entire title R&RE, p. 806, § 1, effective October 1. **L. 97:** (1)(b) and (2) amended and (2.5) added, p. 1162, § 5, effective July 1. **L. 99:** (1)(b) amended, p. 1024, § 5, effective May 29. **L. 2011:** (2)(c) amended, (HB 11-1303), ch. 264, p. 1158, § 39, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-107.5 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "Lawful Permanent Residence and Citizenship for the Adopted Foreign Child", see 15 Colo. Law. 2207 (1986).

19-5-205.5. Nonpublic agency interstate and foreign adoptions - authority for state department to select agencies - legislative declaration.

(1) The general assembly finds that timely processing of adoptions is in the best interests of the children being adopted. It is therefore the intent of the general assembly to expedite permanency for those children who are being adopted. It is the purpose of this section to promote timely processing of nonpublic agency interstate and foreign adoptions while increasing the department of human services' capacity to utilize existing staff to perform other child welfare functions.

(2) (a) The department is authorized to select nonpublic, licensed child placement agencies authorized to handle adoptions or nonpublic agencies that meet the qualifying criteria to be licensed child placement agencies pursuant to part 9 of article 6 of title 26, and any implementing rules promulgated by the department for the provision of services to individuals seeking assistance in nonpublic agency interstate or foreign adoption cases pursuant to this part 2. The department shall, by rule, establish qualifying criteria by which such nonpublic agencies are selected for this purpose.

(b) The department shall further promulgate rules creating standards by which the department may evaluate the delivery of services by the selected nonpublic agencies and identifying the services and functions to be rendered by the nonpublic agencies selected pursuant to paragraph (a) of this subsection (2) including, but not limited to, the following:

(I) The review of all background information concerning the birth parents and individual case material on the adopting family's assessment;

(II) The review of all legal documents related to the relinquishment or termination of the birth parents' rights;

(III) The review of all birth and medical information;

(IV) The review of correspondence with the immigration and naturalization service in the United States, department of justice, or any successor agency, in foreign adoptions;

(V) The review of the child's social history, legal documents, medical information, and birth certificate in foreign adoption cases in which the child is to be placed in Colorado;

(VI) The provision of relinquishment counseling;

(VII) The promotion of permanent plans for the adopted child;

(VIII) The agency's compliance with federal and Colorado laws, including, but not limited to, the "Interstate Compact on Placement of Children" as set forth in part 18 of article 60 of title 24, C.R.S.;

(IX) The timeliness of the provision of services; and

(X) The overall protection of the child being adopted.

(3) (a) Nonpublic agencies may charge reasonable and necessary fees and costs to defray the direct and indirect expenses associated with the provision of nonpublic agency interstate and foreign adoption services associated with the statutorily required review and approval of interstate and foreign adoptive placements. Pursuant to section 19-5-208 (4), all fees and costs charged for services associated with the review and approval of interstate and foreign adoptions shall be separately specified in the expenses listed for the court's review as required.

(b) The department of human services shall, by rule, establish guidelines for the fees and costs which such nonpublic agencies selected pursuant to subsection (2) of this section may charge for the delivery of such services.

(4) All interstate and foreign adoptions in Colorado made by the court, the county departments of human or social services, or licensed child placement agencies must be made pursuant to section 19-5-206 (1).

(5) For purposes of this section, "nonpublic agency interstate and foreign adoption" is defined in section 19-1-103.

Source: L. 94: Entire section added, p. 1200, § 1, effective July 1. **L. 96:** (4) amended, p. 84, § 10, effective March 20. **L. 97:** (2)(a), IP(2)(b), and (2)(b)(I) amended and (5) added, p. 1162, § 6, effective July 1. **L. 2011:** (2)(b)(IV) amended, (HB 11-1303), ch. 264, p. 1159, § 40, effective August 10. **L. 2018:** (4) amended, (SB 18-092), ch. 38, p. 427, § 70, effective August 8. **L. 2021:** (5) amended, (SB 21-059), ch. 136, p. 735, § 88, effective October 1. **L. 2022:** (2)(a) amended, (HB 22-1295), ch. 123, p. 837, § 43, effective July 1.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-5-206. Placement for purposes of adoption.

(1) A placement of any child legally available for adoption pursuant to section 19-5-203 (1)(a), (1)(b), (1)(c), or (1)(g) must not be made for the purposes of adoption except by the court pursuant to section 19-5-104 (2), the county department of human or social services, or a licensed child placement agency.

(2) (a) In child welfare cases, a child's best interests shall be the primary consideration for a court, county department, or licensed child placement agency in making determinations concerning the placement of the child for the purpose of adoption.

(b) (Deleted by amendment, L. 2010, (HB 10-1106), ch. 278, p. 1272, § 2, effective May 26, 2010.)

(c) An agency that has responsibility for placing children out of the home shall use good faith efforts and due diligence to recruit and retain prospective foster and adoptive families from communities that reflect the racial, ethnic, cultural, and linguistic backgrounds of the children in the agency's care.

(d) In making determinations concerning the placement of a child for the purpose of adoption, a court, county department, or licensed child placement agency may, under extraordinary circumstances, consider the racial or ethnic background, color, or national origin of:

(I) The child; or

(II) A family who has submitted an application to adopt.

(e) A court, county department, or licensed child placement agency shall not delay a foster or adoptive placement of a child as a result of the racial or ethnic background, color, or national origin of:

(I) The child; or

(II) A family who has submitted an application to foster or adopt a child.

(f) In private adoption cases, a birth parent or birth parents may designate a specific applicant with whom they may wish to place their child for purposes of adoption. After assessment and approval of the potential adoptive parents and subsequent relinquishment of the child, the court shall grant guardianship of the child to a person or agency described in section 19-5-104 (1) until finalization of adoptive placement.

(g) The court may waive the assessment and approval of the potential adoptive parents in cases involving kinship or custodial adoption or may determine and order the kind of information or written report it deems necessary for the assessment and approval of the potential adoptive parents, including an abbreviated home study or home evaluation. The court may proceed to finalize such adoptive placement upon finding that the placement is in the best interests of the child.

(3) (Deleted by amendment, L. 2010, (HB 10-1106), ch. 278, p. 1272, § 2, effective May 26, 2010.)

Source: L. 87: Entire title R&RE, p. 807, § 1, effective October 1. **L. 89:** (2) amended, p. 938, § 2, effective March 21. **L. 94:** (2) amended, p. 71, § 1, effective March 15; (3) added, p. 673, § 2, effective July 1. **L. 99:** (2) amended, p. 1063, § 4, effective June 1. **L. 2010:** (2) and (3) amended, (HB 10-1106), ch. 278, p. 1272, § 2, effective May 26. **L. 2018:** (1) amended, (SB 18-092), ch. 38, p. 427, § 71, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983). For article, "Substantive Changes in Adoption and Relinquishment Law in Colorado", see 16 Colo. Law. 2183 (1987).

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

Welfare departments and placement agencies not solely authorized to place adoptive children. Inasmuch as the general assembly has granted the court exclusive jurisdiction over adoptions, has expressly authorized adoptive placement, and has given the court the final and sole responsibility of approving or disapproving adoptions, it would be totally inconsistent to conclude that the welfare department or licensed placement agencies are the sole entities authorized to place a child for adoption following termination of parental

rights. People in Interest of M.D.C.M., 34 Colo. App. 91, 522 P.2d 1234 (1974).

19-5-207. Written consent and home study report for public adoptions - fingerprint-based criminal history record checks - investigation - rules.

(1) When a child is placed for adoption by the county department of human or social services, a licensed child placement agency, or an individual, the department, agency, or individual shall file, with the petition to adopt, its written and verified consent to such adoption in addition to any notices received or sent pursuant to the terms of the "Interstate Compact on Placement of Children" set forth in part 18 of article 60 of title 24.

(2) In all petitions for adoption, whether by the court, the county department of human or social services, or child placement agencies, in addition to written consent, the court shall require a written home study report from the county department of human or social services, the designated qualified individual, or the child placement agency approved by the state department of human services pursuant to section 19-5-207.5 (2) showing the following:

(a) 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; but no physical examination shall be required of any person who in good faith relies upon spiritual means or prayer in the free exercise of religion to prevent or cure disease unless there is reason to believe such person's physical condition is such that he or she would be unable to take care of such child;

(b) Confirmation that the petitioner has participated in adoption counseling if the court deems appropriate. The counseling may address the permanence of the decision, the impact of the decision on the adopting parent and the adopting parent's family now and in the future, and the issues that may arise in the event that the adoptee at some time in the future desires to contact the relinquishing parent.

(c) The physical and mental condition of the child;

(d) The child's family background, including the names of parents and other identifying data regarding the parents, if obtainable;

(e) Reasons for the termination of the parent-child legal relationship;

(f) The suitability of the adoption of this child by this petitioner and the child's own disposition toward the adoption in any case in which the child's age makes this feasible; and

(g) The length of time the child has been in the care and custody of the petitioner.

(2.5) (a) (I) In all petitions for adoption, whether by the court, the county department of human or social services, or child placement agencies, in addition to the written home study report described in subsection (2) of this section, the court shall require the county department of

human or social services, the designated qualified individual, or the child placement agency to conduct the fingerprint-based criminal history record checks for any prospective adoptive parent or any adult residing in the home.

(II) For purposes of fulfilling the fingerprint-based criminal history record checks required in subsection (2.5)(a)(I) of this section, the state board of human services shall promulgate rules concerning petitions for adoption when a child is placed for adoption by the county department of human or social services or a child placement agency to require each prospective adoptive parent attempting to adopt a child placed for adoption by the county department of human or social services or a child placement agency to obtain fingerprint-based criminal history record checks through the Colorado bureau of investigation and the federal bureau of investigation. The prospective adoptive parent to whom this subsection (2.5)(a)(II) applies shall be responsible for the cost of the fingerprint-based criminal history record checks.

(III) For purposes of fulfilling the criminal history records check required in subparagraph (I) of this paragraph (a), a prospective adoptive parent, other than a prospective adoptive parent specified in subparagraph (II) of this paragraph (a), shall obtain fingerprint-based criminal history record checks through the Colorado bureau of investigation and the federal bureau of investigation. A prospective adoptive parent to whom this subparagraph (III) applies shall be responsible for providing a complete set of fingerprints to the Colorado bureau of investigation and for obtaining the fingerprint-based criminal history record checks. The prospective adoptive parent shall also be responsible for the cost of the criminal history record checks.

(IV) A prospective adoptive parent described in subsection (2.5)(a)(III) of this section shall be responsible for presenting the results of his or her fingerprint-based criminal history record checks and the results of the fingerprint-based criminal history records checks of any adult residing in the home to the court for review by the court. The county department of human or social services or the child placement agency, as may be appropriate, shall report to the court any case in which fingerprint-based criminal history record checks reveal that the prospective adoptive parent who is attempting to adopt a child placed for adoption by a county department of human or social services or child placement agency or any adult residing in the home was convicted at any time of a felony or misdemeanor in one of the following areas:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) Any crime against a child, including but not limited to child pornography;

(D) Any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(E) Violation of a protection order, as described in section 18-6-803.5, C.R.S.;

(F) Any crime involving violence, rape, sexual assault, or homicide; or

(G) Any felony physical assault or battery conviction or felony drug-related conviction within, at a minimum, the past five years.

(a.5) (I) Notwithstanding the provisions of sub-subparagraph (B) of subparagraph (II) of paragraph (b) of this subsection (2.5), a licensed child placement agency or a county placement agency may conduct an investigation of a prospective adoptive parent's background only if the fingerprint-based criminal history records check required pursuant to paragraph (a) of this subsection (2.5) reveals that the prospective adoptive parent was convicted of a felony or misdemeanor at least ten years prior to the application for adoption.

(II) If a licensed child placement agency or a county placement agency conducts an investigation of the prospective adoptive parent, it shall have the opportunity to present its findings to the juvenile court responsible for reviewing the petition for adoption. The licensed child placement agency or the county placement agency shall provide to the juvenile court responsible for reviewing the petition for adoption:

(A) A certified copy of any criminal court documentation substantiating the disposition of the applicant's felony criminal case; or

(B) Certified documentation that the court records concerning the felony case have been destroyed or are otherwise unavailable.

(III) Pending the results of the investigation by the licensed child placement agency or the county placement agency and the juvenile court's ruling on the eligibility of the applicant for the placement of a child, the child shall not be placed in the prospective adoptive parent's home if the fingerprint-based criminal history records check revealed that the prospective adoptive parent was convicted at any time of a felony or misdemeanor.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), a person convicted of a felony offense specified in subparagraph (IV) of paragraph (a) of this subsection (2.5) may be allowed to adopt a child if:

(A) The applicant has had no further arrests or convictions subsequent to the conviction;

(B) The applicant has not been convicted of a pattern of misdemeanors, as defined by rule of the state board of human services; and

(C) The court enters a finding consistent with section 19-5-210 (2)(d) that the adoption is in the best interests of the child.

(II) A person convicted of a felony offense as described in this subparagraph (II) shall not be allowed to adopt a child if there is:

(A) A felony conviction on the application for adoption that involves child abuse, as described in section 18-6-401, C.R.S.; a crime of violence, as defined in section 18-1.3-406,

C.R.S.; or a felony offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(B) A felony conviction on the application for adoption that occurred less than five years prior to the application that involved physical assault or battery or a drug-related offense; or

(C) A felony conviction on the application for adoption that occurred less than ten years prior to the application and involved domestic violence, as defined in section 18-6-800.3, C.R.S.

(c) In addition to the fingerprint-based criminal history record checks, the county department of human or social services, the individual, or the child placement agency conducting the investigation shall contact the state department of human services and the appropriate entity in each state in which the prospective adoptive parent or parents or any adult residing in the home has resided in the preceding five years to determine whether the prospective adoptive parent or parents or any adult residing in the home has been found to be responsible in a confirmed report of child abuse or neglect and shall report such information to the court. Information obtained from any state records or reports of child abuse or neglect must not be used for any purpose other than completing the investigation for approval of the prospective adoptive parent.

(d) The state board of human services shall promulgate rules setting forth the procedures for the fingerprint-based criminal history record check and the report to the court described in paragraph (a) of this subsection (2.5).

(3) In proposed relative adoptions, the court shall review the report prepared pursuant to subsection (2) of this section. The court may order further assessment if the court deems it necessary.

(4) Any party to the adoption proceeding may be entitled to see the report required by subsection (2) of this section; except that the names of parents and adoptive parents and any means of identifying either shall not be made available except upon order of the court.

(5) to (7) (Deleted by amendment, L. 99, p. 1018, § 1, effective May 29, 1999.)

(8) If a court orders a county department of human or social services to counsel a birth parent concerning relinquishment of a child pursuant to the provisions of sections 19-5-103 and 19-5-104, the county department shall charge a fee to meet the full cost of the counseling.

(9) If the child is being placed in an adoptive home by a licensed child placement agency, such agency shall file an affidavit with the court stating that the agency's license is in good standing with the department. A licensed child placement agency involved in an adoption proceeding pursuant to this article 5 shall immediately notify the court in writing of any suspension, revocation, or denial of its license or of any disciplinary action taken against the agency by the state of Colorado. Failure of the agency to provide such notification is a class 2 misdemeanor. The department shall, by rule, adopt a mechanism by which a child placement agency shall notify the court of any disciplinary action against the agency.

Source: L. 87: Entire title R&RE, p. 807, § 1, effective October 1. **L. 89:** (1) amended, p. 939, § 3, effective March 21. **L. 94:** (5) and (6) amended, p. 2688, § 212, effective July 1. **L. 97:** Entire section amended, p. 1163, § 8, effective July 1. **L. 98:** (2.5) added and (6) amended, p. 1423, §§ 10, 11, effective July 1. **L. 99:** IP(2), (2.5)(a), and (5) to (7) amended, p. 1018, § 1, effective May 29. **L. 2001:** (2.5) amended, p. 851, § 13, effective June 1. **L. 2003:** (2.5)(a) amended, p. 1016, § 29, effective July 1; (2.5)(a) amended, p. 1407, § 13, effective January 1, 2004. **L. 2005:** (2.5) amended, p. 584, § 1, effective May 26. **L. 2007:** (2.5)(b) amended and (2.5)(a.5) added, p. 693, § 1, effective May 3; (2.5)(a)(I), (2.5)(a)(IV)(C), and (2.5)(c) amended, p. 1019, § 10, effective May 22. **L. 2018:** (1), IP(2), (2.5)(a)(I), (2.5)(a)(II), IP(2.5)(a)(IV), (2.5)(c), and (8) amended, (SB 18-092), ch. 38, p. 427, § 72, effective August 8. **L. 2021:** (9) amended, (SB 21-271), ch. 462, p. 3221, § 390, effective March 1, 2022.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (2.5)(a) by House Bill 03-1117 and House Bill 03-1211 were harmonized.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (2.5), see section 1 of chapter 241, Session Laws of Colorado 2001. For the legislative declaration contained in the 2003 act amending subsection (2.5)(a), see section 1 of chapter 196, Session Laws of Colorado 2003. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

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

Agency alone can consent after relinquishment. If there has been a relinquishment, then in proceedings for the adoption of the relinquished child, the agency to which the child has been relinquished is the only one that can consent. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

Proof of abandonment does not assure adoption for the persons seeking to adopt. They may not qualify as adoptive parents because of lack of proof of financial ability, lack of moral qualities, or numerous other deficiencies. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

19-5-207.3. Placement of sibling groups.

(1) When a child is placed for adoption by the county department, if the child is part of a sibling group, as defined in section 19-1-103, the county department shall include in the adoption report prepared for the court the names and current physical custody and location of any siblings of the child who are also available for adoption; except that the names of children, parents, caretakers, and adoptive parents and any means of identifying such persons must not be made available to any party to the adoption proceeding except upon order of the court or as otherwise permitted by law.

(2) If the child is part of a sibling group, the county department shall make thorough efforts to locate a joint placement for all of the children in the sibling group who are available for adoption. If the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) If the child is part of a sibling group, as defined in section 19-1-103, and is being placed for adoption by a child placement agency in either a circumstance involving siblings who are the result of a multiple birth or a circumstance in which a parent has relinquished parental rights to the children to a child placement agency, the child placement agency shall make thorough efforts to locate a joint placement for all of the children in the sibling group who are available for adoption. If the child placement agency locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children. If an entire sibling group is not placed together in an adoptive placement, the child placement agency shall place as many siblings of the group together as possible, considering their relationship and the best interests of each child.

(4) Consideration of the placement of children together as a sibling group shall not delay the efforts for expedited permanency planning or permanency planning in order to achieve permanency for each child in the sibling group.

Source: L. 2000: Entire section added, p. 477, § 7, effective July 1. **L. 2003:** (2) and (3) amended, p. 2628, § 10, effective June 5. **L. 2021:** (1) and (3) amended, (SB 21-059), ch. 136, p. 735, § 89, effective October 1.

19-5-207.5. Legislative declaration - standardized home studies - adoptive family resource registry - rules.

(1) **Legislative declaration.**

(a) (I) The general assembly finds that there are a growing number of children in the legal custody of the county departments of human or social services who are the victims of physical or sexual abuse, neglect, or abandonment and who are awaiting permanent placement in safe, loving, and nurturing adoptive homes. The general assembly further finds that with the expedited permanency procedures that have been established and with the enactment of legislation implementing the federal "Adoption and Safe Families Act of 1997", Pub.L. 105-89, it is anticipated that the number of children available for adoption will continue to increase dramatically and that there will be a corresponding increased need to identify statewide those families that are willing and qualified to adopt these needy children.

(II) The general assembly finds that, although the county departments of human or social services have made admirable efforts in assessing and reporting on the qualifications of families interested in adopting, there is a need to make the valuable resource of such qualified families more available and accessible to all counties in the state in order to satisfy the growing need for suitable adoptive families.

(b) Accordingly, the general assembly determines that it is appropriate and desirable for the state department to aid the county departments of human or social services in their efforts to achieve permanency for children in their legal custody who are available for adoption by making accessible to such county departments a statewide adoptive family resource registry of families who are qualified for and desirous of adopting children with special needs. Toward that end, the general assembly further determines that it would be beneficial to such children and families for the state department to develop an approved vendor list of qualified home study providers by region, standardized investigation criteria, and minimum uniform adoptive home study report standards in order to achieve more timely adoptive placements, to reduce the burden associated with the adoption process, and to avert the possibility of failed adoptions.

(2) **Approved vendor lists for home studies.**

(a) In order to achieve greater access to qualified families seeking to adopt children, to expedite permanency placement for children available for adoption, and to obtain reliable, high-quality assessments of families that can result in permanent and healthy placements, the state department shall develop an approved vendor list of county departments, individuals, and child placement agencies qualified to prepare the home study reports in public adoptions as required by section 19-5-207 (2).

(b) (I) On or before January 1, 2000, the state department shall issue a public request for applications from county departments of human or social services, individuals, and child placement agencies desirous of conducting investigations and preparing written home study reports for prospective public adoptions in specified counties or geographic regions. The state department shall review the applications it receives and shall determine which applicants meet the qualifying criteria identified by the state board of human services pursuant to subsection (2)(b)(II) of this section. Each county department of human or social services, individual, or child placement agency that meets the qualifying criteria must be placed on the approved vendor list of home study report providers.

(II) The state board of human services shall promulgate rules identifying the qualifying criteria that county departments of human or social services, individuals, and child placement agencies must meet in order to qualify as an approved vendor pursuant to this subsection (2)(b) for the purpose of conducting adoptive investigations and preparing home study reports. All county departments of human or social services, qualified individuals, and child placement agencies that submit applications to the state department and that meet the qualifying criteria must be selected to perform home studies and, once such county departments, individuals, or agencies have been approved by the state department pursuant to this subsection (2)(b), they shall be available to perform home studies in the specified county or region.

(c) All qualified county departments of human or social services, individuals, and child placement agencies approved by the state department to conduct home studies pursuant to subsection (2)(b) of this section shall prepare their home study reports in compliance with the minimum uniform standards prescribed by rule of the state board as described in subsection (3) of this section and any other additional criteria and standards established by a particular county pursuant to subsection (3)(b) of this section.

(d) Each qualified county department of human or social services, individual, or child placement agency approved by the state department may promote the adoption of available children through a public information campaign directed at educating and informing the public about the need for safe and healthy adoptive families. Regional educational campaigns are encouraged.

(e) All qualified county departments of human or social services, individuals, and child placement agencies approved by the state department pursuant to this subsection (2) may participate in the statewide training provided by the state department.

(3) **Standards for home studies.**

(a) The state board of human services shall promulgate rules identifying the criteria for the investigation and the minimum uniform standards for the home study reports with which the qualified county departments of human or social services, individuals, or child placement

agencies approved by the state department must comply. The criteria must include, but are not limited to:

(I) The quality standards that the county department of human or social services, the individual, or the child placement agency must achieve;

(II) The time frames within which the county department of human or social services, the individual, or the child placement agency must complete the investigations and home study reports; and

(III) The capacity of the county department of human or social services, the individual, or the child placement agency to assess the abilities of prospective adoptive families to meet the needs of a child with special needs.

(b) Nothing in this section prohibits a county department of human or social services from establishing additional criteria and standards that a county department of human or social services, an individual, or a child placement agency must meet in preparing a home study report.

(4) **Fees for investigations and home studies.**

(a) (I) Any person who, by his or her own request or by order of the court as provided in section 19-5-209, is the subject of a home study report and investigation conducted pursuant to section 19-5-207 by a county department of human or social services, an individual, or a child placement agency is required to pay, based on an ability to pay, the cost of such report and investigation.

(II) In public adoptions, the state board of human services shall promulgate rules establishing the maximum amount that a county department of human or social services, an individual, or a child placement agency may charge a prospective adoptive family for the investigation, fingerprint-based criminal history record checks, and home study report required pursuant to section 19-5-207.

(III) The county department of human or social services may waive the fee established pursuant to this subsection (4) if the fee poses a barrier to the adoption of a child for whom a county department of human or social services has financial responsibility.

(b) (I) In addition to the fee specified in subsection (4)(a) of this section, if the county department of human or social services has not placed a child available for a public adoption with a family who is the subject of an investigation and home study report after six months, then the county shall refer the family and the home study report for such family to the adoptive family resource registry established pursuant to subsection (5) of this section if there is written consent pursuant to subsection (5)(c)(I) of this section. Prior to referral of a prospective adoptive family to the adoptive family resource registry, the prospective adoptive family must be assessed and shall pay a nonrefundable administrative fee in an amount to be determined by rule of the state

board of human services. A family must not be assessed the fee described in this subsection (4)(b) if the family is not referred to the adoptive family resource registry.

(II) The department or the contractor selected by the department to administer the adoptive family resource registry shall collect the administrative fee established by rule of the state board of human services pursuant to subparagraph (I) of this paragraph (b) and apply the revenue from said fees to offset the costs incurred for the administration of the adoptive family resource registry.

(III) Nothing in this paragraph (b) shall be construed to prevent a county from referring a family to the adoptive family resource registry before the six month period has lapsed.

(5) **Adoptive family resource registry.**

(a) Subject to available funds as specified in subsection (5)(b)(III) of this section, the state department shall establish a statewide adoptive family resource registry that county departments of human or social services may access to determine the availability of qualified families seeking to adopt a child in the custody of a county department of human or social services. The state department is authorized to contract with a public or private entity for the provision of this service.

(b) (I) The executive director of the department is authorized to accept and expend on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of establishing the statewide adoptive family resource registry; except that no gift, grant, or donation shall be accepted if the conditions attached thereto require the expenditure thereof in a manner contrary to law.

(II) The executive director of the department is authorized to apply for a federal waiver, if necessary, to authorize the use of federal grant moneys to implement this section.

(III) No general fund moneys shall be expended for the establishment of the adoptive family resource registry. The adoptive family resource registry shall be established only upon the receipt of sufficient grants, gifts, and donations pursuant to subparagraph (I) of this paragraph (b).

(c) (I) No home study report, or any other information concerning a person interested in a public adoption shall be submitted to the adoptive family resource registry without such person's written consent.

(II) The state board of human services shall promulgate rules specifying the limited amount of nonidentifying data concerning a person interested in a public adoption that is available to county departments of human or social services on the internet through the adoptive family resource registry.

(III) The state board of human services shall promulgate rules identifying the standards and procedures with which the department or the contractor selected by the department to administer

the adoptive family resource registry shall comply in order to preserve the confidentiality and privacy of the prospective adoptive family as much as possible.

Source: L. 99: Entire section added, p. 1019, § 2, effective May 29. **L. 2018:** (1), (2), (3), (4)(a), (4)(b)(I), (5)(a), and (5)(c)(II) amended, (SB 18-092), ch. 38, p. 429, § 73, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "Achieving Safe, Permanent Homes for Colorado Children", see 31 Colo. Law. 37 (Oct. 2002).

19-5-208. Petition for adoption - open adoption - post-adoption contact agreement.

(1) The petition for adoption shall be filed not later than thirty-five days after the date on which the child is first placed in the home of the adoptive applicants for the purpose of adoption unless the court finds that there was reasonable cause or excusable neglect for not filing the petition. The court shall then fix a date for the hearing.

(2) Every petition for adoption of a child shall be verified by the petitioner and shall be entitled substantially as follows: "In the matter of the petition of ..... for the adoption of a child." It shall contain:

(a) The name, date and place of birth, race, and place of residence of each petitioner, including the maiden name of the adopting mother, and the date of marriage, if any, of the petitioners;

(b) The name, date and place of birth, and place of residence, if known by the petitioner, of the child to be adopted;

(c) The relationship, if any, of the child to the petitioner;

(d) The full name by which the child shall be known after adoption;

(e) The full description of the property, if any, of the child;

(f) The names of the parents of the child, and the address of each living parent, if known to the petitioner;

(g) The names and addresses of the guardian of the person and the guardian of the estate of the child, if any have been appointed;

(h) The name of the agency or person to whom the custody of the child has been given by proper order of court;

(i) The length of time the child has been in the care and custody of the petitioner;

(j) Names of other children, both natural and adopted and both living and dead, of the adopting parents;

(k) The residence and occupation of each petitioner at or about the time of the birth of the child.

(2.5) (a) Pursuant to article 1.2 of this title 19, the petition for adoption must:

(I) Include a statement indicating what continuing inquiries the county department of human or social services or child placement agency has made in determining whether the child who is the subject of the proceeding is an Indian child;

(II) Identify whether the child is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the Indian child's parent or Indian custodian and to the Indian child's tribe pursuant to article 1.2 of this title 19, the postal receipts, or copies thereof, must be attached to the petition for adoption and filed with the court or filed within fourteen days after the filing of the petition for adoption, as specified in article 1.2 of this title 19.

(3) If the adoption placement is made by the county department of human or social services or a child placement agency, the information required in subsections (2)(b) and (2)(f) of this section must not be included in the petition but transmitted to the court as part of the home study report required in section 19-5-207.

(4) The petition shall be accompanied by a standardized affidavit form prescribed by the judicial department disclosing any and all fees, costs, or expenses charged or to be charged by any person or agency in connection with the adoption.

(4.5) (a) An agreement entered into pursuant to this subsection (4.5) is considered an open adoption.

(b) Only the petitioner may request a post-adoption contact agreement for contact between a child or youth and the birth parent or parents; a birth relative, as set forth in section 19-3-605 (1);

or an Indian tribe if the child or youth is a member of the Indian tribe. A post-adoption contact agreement may include provisions for contact, family time, or the exchange of information, and the grounds, if any, on which the adoptive parent may decline to permit contacts or cease providing contact or information. If a child or youth is available for adoption through an expedited relinquishment pursuant to section 19-5-103.5, the contact agreement must be limited to contact between the child or youth and the birth parents and the child's or youth's biological siblings.

(c) If a child is twelve years of age or older, the court shall not order a post-adoption contact agreement unless the child consents to all terms of the contact agreement.

(d) The court shall include the post-adoption contact agreement in the adoption decree if the court finds the contact agreement is in the child's best interests, after considering the child's wishes and any other relevant information.

(e) A parent who has relinquished parental rights pursuant to section 19-5-104, or whose parental rights have been terminated pursuant to section 19-3-604 or 19-5-105, or any birth relative, as set forth in section 19-3-605 (1), must not be a party to the adoption. Access to the adoption file, with the exception of the post-adoption contact agreement and any pleadings or orders made pursuant to this section to enforce the contact agreement, is governed by part 3 of this article 5.

(f) A post-adoption contact agreement entered into pursuant to this subsection (4.5) must be submitted to the court on a standardized affidavit form prescribed by the judicial department that contains the following warnings acknowledged by all parties to the contact agreement:

(I) After the entry of a decree for adoption, an adoption, relinquishment, or termination of parental rights cannot be set aside due to the failure of the adoptive parent, biological parent, a birth relative, or the child to follow the terms of the contact agreement or any subsequent modifications of the agreement; and

(II) A disagreement between the parties or litigation brought pursuant to section 19-5-217 to enforce or terminate the contact agreement does not affect the validity of the adoption, relinquishment, or termination of parental rights and is not a basis for orders affecting the custody of the child.

(g) Nothing in this subsection (4.5) permits the court to order ongoing contact or other duties for the petitioner when the petitioner does not request a post-adoption contact agreement as set forth in this subsection (4.5).

(h) In any case where a post-adoption contact agreement is being considered by the court and a guardian ad litem or counsel for youth is currently appointed for the child or youth pursuant to section 19-3-203, the court shall appoint the guardian ad litem to represent the best interests of the child or youth, or the counsel for youth to represent the position and objectives that the child

or youth want, with respect to the contact agreement. The guardian ad litem's or counsel for youth's representation in these proceedings is limited solely to making a recommendation as to whether the agreement proposed by the petitioner is in the best interests of the child and should be adopted as proposed. The court shall not make additions or modifications to the agreement in accordance with the recommendations of the guardian ad litem or counsel for youth unless the petitioner consents to the additions or modifications. The duties of the guardian ad litem or counsel for youth terminate upon the entry of the decree of adoption.

(5) In all stepparent, second parent, custodial, and kinship adoptions, the petition shall contain a statement informing the court 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 following areas: Child abuse or neglect; spousal abuse; any crime against a child; any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.; violation of a protection order, as described in section 18-6-803.5, C.R.S.; any crime involving violence, rape, sexual assault, or homicide; or any felony physical assault or battery. In addition, the petitioner shall attach to the petition a current criminal history records check paid for by the petitioner.

(6) In all custodial and kinship adoptions, the petition must contain a statement that the petitioner has consulted with the appropriate local county department of human or social services concerning the possible eligibility of the petitioner and the child for temporary assistance for needy families (TANF), medicaid, subsidized adoption, and other services or public assistance administered by the county department of human or social services.

Source: L. 87: Entire title R&RE, p. 808, § 1, effective October 1. **L. 97:** (4) amended, p. 1165, § 9, effective July 1. **L. 99:** (3) amended, p. 1025, § 8, effective May 29; (5) and (6) added, p. 1063, § 5, effective June 1. **L. 2002:** (2.5) added, p. 788, § 9, effective May 30. **L. 2004:** (5) amended, p. 328, § 1, effective July 1. **L. 2007:** (5) amended, p. 838, § 2, effective August 3. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 880, § 141, effective July 1. **L. 2018:** IP(2.5)(a), (2.5)(a)(I), (3), and (6) amended, (SB 18-092), ch. 38, p. 432, § 74, effective August 8. **L. 2021:** (4.5) added, (HB 21-1101), ch. 481, p. 3427, § 3, effective September 1. **L. 2022:** (4.5)(h) amended, (HB 22-1038), ch. 92, p. 443, § 28, effective January 9, 2023. **L. 2023:** (4.5)(b) amended, (HB 23-1027), ch. 284, p. 1685, § 23, effective June 1. **L. 2025:** IP(2.5)(a) and (2.5)(b) amended, (HB 25-1204), ch. 338, p. 1818, § 11, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (2.5), see section 1 of chapter 217, Session Laws of Colorado 2002. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1957 (1983). For article, "Colorado Moves Toward Full Compliance With Federal Indian Child Welfare Act", see 31 Colo. Law. 77 (Nov. 2002).

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

Trial court may reduce claimed attorney fees when they are excessive. People in Matter of K.M.K., 780 P.2d 43 (Colo. App. 1989).

The status of the record at the time the petition for adoption is filed determines the steps to be taken, the consents required, and the persons to be served with citation or notice. Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955) (decided under former CSA, C. 4, § 11).

19-5-209. Petition - written home study reports.

(1) Except for stepparent adoptions, kinship adoptions, custodial adoptions, and those cases in which placement for adoption has been made by the court, if a petition for the adoption of a child is not accompanied by the written consent and home study report of the qualified county department of human or social services, individual, or a licensed child placement agency approved by the state department of human services pursuant to section 19-5-207.5 (2), the court shall order the county department of human or social services, individual, or licensed child placement agency to make an investigation and file a written home study report substantially in the form outlined in section 19-5-207 (2), including a recommendation as to whether the adoption should be decreed.

(2) In adoptions where a child placement agency or county department has legal guardianship during the interval between initial placement and the final order of adoption, the child placement agency or county department shall supervise the placement with prospective adoptive parents and the child. The court, after notice to all parties in interest and hearing

thereon, may, for good cause, terminate said placement if, at any time prior to the final decree of adoption, it appears to the court that said adoption is not in the best interest of the child.

Source: L. 87: Entire title R&RE, p. 809, § 1, effective October 1. **L. 99:** (1) amended, p. 1023, § 3, effective May 29; (1) amended, p. 1064, § 6, effective June 1. **L. 2018:** (1) amended, (SB 18-092), ch. 38, p. 432, § 75, effective August 8.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (1) by House Bill 99-1218 and House Bill 99-1299 were harmonized.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "Substantive Changes in Adoption and Relinquishment Law in Colorado", see 16 Colo. Law. 2183 (1987).

19-5-210. Hearing on petition.

(1) A hearing on the petition for adoption shall be held on the date set or the date to which the matter has been regularly continued.

(1.5) Except in stepparent, second parent, custodial, or kinship adoptions, the court shall issue a certificate of approval of placement, placing the child's custodial care with prospective adoptive parents pending final hearing on the petition for adoption, if it appears to the court that the placement for adoption is in the best interest of the child.

(2) In stepparent, custodial, or kinship adoptions, the court shall hold a hearing on the petition as soon as possible. In all other adoptions, the court shall hold a hearing on the petition no sooner than one hundred eighty-two days after the date the child begins to live in the prospective adoptive parent's home, unless for good cause shown that time is extended or shortened by the court. At the hearing held on the petition, the court shall enter a decree setting forth its findings and grant to the petitioner a final decree of adoption if it is satisfied as to:

(a) The availability of the child for adoption;

(b) The good moral character, the ability to support and educate the child, and the suitableness of the home of the person adopting such child;

(b.5) The fingerprint-based criminal history record checks of the prospective adoptive parent as reported to the court by the county department of human or social services or the child placement agency pursuant to section 19-5-207 (2.5) or the information provided to the court pursuant to section 19-5-208 (5) does not reveal a criminal history described in section 19-5-207 (2.5)(a);

(c) The mental and physical condition of the child as a proper subject for adoption in said home;

(d) The fact that the best interests of the child will be served by the adoption; and

(e) If the child is part of a sibling group, whether it is in the best interests of the child to remain in an intact sibling group. If the county department or child placement agency locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children. The judge shall review the family services plan document regarding placement of siblings.

(3) The former name of the child shall not be stated in the final decree of adoption.

(4) If, after the hearing, the court is not satisfied as to the matters listed in subsection (2) of this section, the petition for adoption may be either continued or dismissed in the discretion of the court. The court shall not grant the decree of final adoption if it determines that the prospective adoptive parent was convicted at any time by a court of competent jurisdiction of a felony in one of the following areas: Child abuse or neglect; spousal abuse; any crime against a child; or any crime involving violence, rape, sexual assault, or homicide, excluding other physical assault or battery. For stepparent, kinship, or custodial adoptions, in addition to not granting a decree of final adoption in circumstances involving the felony convictions listed in this subsection (4), the court shall not grant the decree of final adoption if it determines that the prospective adoptive parent was convicted of a felony for physical assault or battery that was committed within the past five years.

(5) (a) Except as otherwise provided in paragraph (b) of this subsection (5), all hearings with reference to adoption shall be closed to the public and, in the discretion of the court, to any child who is the subject of adoption and who is under twelve years of age, but the court may interview the child whenever it deems it proper.

(b) Upon motion by any party to an adoption or upon the court's own motion, the court may order that an adoption hearing be opened to the public or to the child who is, or the children who are, the subject of the adoption if the court finds that opening the hearing is in the best interests of the child who is, or the children who are, the subject of the adoption hearing and the court finds that the potential adoptive parents have consented to an open hearing.

(6) In a stepparent adoption, in addition to issuing a final decree of adoption, the court shall enter an order terminating the other parent's parental rights. In a custodial or kinship adoption, in addition to issuing a final decree of adoption, the court shall enter an order terminating the parental rights of the child's parents.

(7) In cases involving the adoption of a child or youth who is part of a sibling group but who is not being adopted with the child's siblings, in addition to issuing a final decree of adoption, if the adoptive parents are willing, the court may encourage reasonable family time among the siblings when family time is in the best interests of the child, youth, or children. The court shall review the record and inquire as to whether the adoptive parents have received counseling regarding children or youth in sibling groups maintaining or developing ties with each other.

Source: L. 87: Entire title R&RE, p. 809, § 1, effective October 1. **L. 97:** IP(2) amended, p. 1165, § 10, effective July 1. **L. 98:** (2) and (4) amended, p. 1423, § 12, effective July 1. **L. 99:** Entire section amended, p. 1064, § 7, effective June 1. **L. 2000:** (2) amended and (7) added, p. 478, § 8, effective July 1. **L. 2003:** (2)(e) amended, p. 2628, § 11, effective June 5. **L. 2005:** IP(2) and (5) amended, p. 94, § 4, effective March 31. **L. 2007:** (1.5) amended, p. 838, § 3, effective August 3. **L. 2012:** IP(2) amended, (SB 12-175), ch. 208, p. 880, § 142, effective July 1. **L. 2018:** (2)(b.5) amended, (SB 18-092), ch. 38, p. 432, § 76, effective August 8. **L. 2023:** (7) amended, (HB 23-1027), ch. 284, p. 1686, § 24, effective June 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (Oct. 2008).

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

Substantial compliance with statutory requirements necessary. These proceedings are statutory and as they affect substantial rights there must be a substantial compliance with the provisions of the legislative enactment. Such a compliance must appear of record and before acting on a petition in adoption the trial court should ascertain that the consents and notices necessary to confer jurisdiction were filed. Storey v. Shumaker, 131 Colo. 131, 279 P.2d 1057 (1955) (decided under former CSA, C. 4, § 15).

Standard for determining custody, guardianship, and adoption is "best interests and welfare" of the child. People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

Weight to be accorded to testimony and opinions of child psychiatrist and social worker is within sound discretion of the trier of fact. People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

Concerns of unmarried parents who relinquished their rights are relevant to the court's consideration of placement with the grandparents. People in Interest of A.D., 706 P.2d 7 (Colo. App. 1985).

Trial court's findings supported by evidence binding on appeal. Where the record contains evidence which supports the findings of the trial court that it is not in the best interest of the child to proceed with adoption, those findings are binding on appeal. In re J.A.A. v. C.R., 618 P.2d 742 (Colo. App. 1980).

In determining whether termination and adoption would be in the best interests of the child, the court may consider, among other factors: Family stability; the present and future effects of adoption, including the detrimental effects of termination; the child's emotional ties to and interaction with the parties; the child's adjustment to the living situation; the child's age; and the mental and physical health of the parties, and where trial court's factual determinations concerning these factors are supported by the evidence, they will not be disturbed. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

19-5-211. Legal effects of final decree.

(1) After the entry of a final decree of adoption, the person adopted is, for all intents and purposes, the child of the petitioner. He or she is entitled to all the rights and privileges and is subject to all the obligations of a child born to the petitioner.

(1.5) An employer who permits paternity or maternity time off for biological parents following the birth of a child shall, upon request, make such time off available for individuals adopting a child. If the employer has established a policy providing time off for biological parents, that period of time shall be the minimum period of leave available for adoptive parents. Requests for additional leave due to the adoption of an ill child or a child with a disability shall be considered on the same basis as comparable cases of such complications accompanying the birth of such a child to an employee or employee's spouse. Any other benefits provided by the employer, such as job guarantee or pay, shall be available to both adoptive and biological parents on an equal basis. An employer shall not penalize an employee for exercising the rights provided by this subsection (1.5). The provisions of this subsection (1.5) shall not apply to an adoption by the spouse of a custodial parent or to a second-parent adoption.

(2) The parents shall be divested of all legal rights and obligations with respect to the child, and the adopted child shall be free from all legal obligations of obedience and maintenance with respect to the parents.

(2.5) The child shall be eligible for enrollment and coverage by any medical or dental insurance held by the prospective adoptive parents if, and on such a basis as, such coverage would be available to a child naturally born to the prospective adoptive parents.

(3) Nothing in this part 2 shall be construed to divest any natural parent or child of any legal right or obligation where the adopting parent is a stepparent and is married to said natural parent.

Source: L. 87: Entire title R&RE, p. 810, § 1, effective October 1. **L. 88:** (1.5) added, p. 759, § 1, effective April 13. **L. 93:** (1.5) amended, p. 1638, § 26, effective July 1. **L. 97:** (2.5) added, p. 1165, § 11, effective July 1. **L. 99:** (2) amended, p. 1065, § 8, effective June 1. **L. 2007:** (1.5) amended, p. 838, § 4, effective August 3. **L. 2018:** (1) amended, (SB 18-095), ch. 96, p. 754, § 12, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

ANNOTATION

I. General Consideration.

II. Inheritability of Adopted Child.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Ten Years of Domestic Relations in Colorado — 1940-1950", see 27 Dicta 399 (1950). For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For case comment, "Adoptive Sibling Marriage in Colorado: Israel v. Allen (195 Colo. 263, 577 P.2d 762 (1978))", see 51 U. Colo. L. Rev. 135 (1979). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (Oct. 2008).

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

Purpose of section. The legislative intent is to make the law affecting adopted children in respect to equality of inheritance and parental duties in pari materia with that affecting natural children. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

The general assembly intended to give an adopted child the legal status of a lineal descendant of the adopting parent or parents, and a child by adoption has the same legal status as a natural child. People ex rel. Dunbar v. White, 144 Colo. 212, 355 P.2d 963 (1960); Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961); People v. Estate of Murphy, 29 Colo. App. 195, 481 P.2d 420 (1971).

In passing the adoption statutes, the general assembly intended to place the adopted child in the family in the same position as a natural child. In re Ashlock, 629 P.2d 1108 (Colo. App. 1981).

Section liberally construed. While courts were formerly inclined to regard adoption statutes as in derogation of the common law and therefore to be strictly construed, the humanitarian purposes of such statutes came to be recognized, and courts afford them a more liberal construction. Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961).

Definition of adoption. Adoption has been defined as the act by which relations of paternity and affiliation are recognized as legally existing between persons not so related by nature. Graham v. Francis, 83 Colo. 346, 265 P. 690 (1928).

Adoption, in legal contemplation, is an act by which the parties thereto establish the relationship of parent and child between persons not so related by nature, and which, in many respects, severs the natural relations existing between the child and its parents, although in a narrower sense it is restricted to the act of the person taking the child.

Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Change of custody follows from valid adoption decree. One of the legal effects of an adoption is to divest the natural parents of their custodial rights and to grant such rights to the adoptive parents. This change of custody follows as a natural consequence of a valid adoption decree. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

The contesting natural parent is by a decree of adoption divested of all parental rights and obligations. Clerkin v. Geisendorfer, 137 Colo. 139, 323 P.2d 633 (1958).

The adoption statute deprives the natural parents of their rights and obligations to their natural children after adoption. People v. Estate of Murphy, 29 Colo. App. 195, 481 P.2d 420 (1971).

After decree of adoption, natural parents are under no legal obligation to support child. Truitt v. Indus. Comm'n, 31 Colo. App. 166, 499 P.2d 621 (1972).

Where termination of father's parental rights was based on mother's fraudulent failure to disclose his identity, the father was denied his constitutional due process rights. Therefore, the adoption decrees that were made assuming that both mother's and father's parental rights had been properly terminated were void. Accordingly, the adoptive parents could not be considered to have the full liberty interest in the children that they would have if the adoption decrees were valid. M.C. v. Adoption Choices of Colo., Inc., 2014 COA 161, 369 P.3d 659, rev'd on other grounds, 2015 CO 72, 363 P.3d 193.

General rule as reflected in this section is that an adoption decree terminates the parental rights and duties of child's natural parents and grants those rights and duties to adoptive parents. Singular exception to general rule as set forth in section applies only in cases when adopting parent is married to natural parent. Thus, express statements of limitation must be read to exclude from adoption statute's reach all other possible exceptions not listed. Adoption of T.K.J., 931 P.2d 488 (Colo. App. 1996).

A stepparent adoption proceeding, like all other adoption proceedings, is concluded by a final decree of adoption. It is only when the final decree is entered that a natural parent is divested of all rights and obligations with respect to the child. People in Interest of S.M.O., 931 P.2d 572 (Colo. App. 1996).

Husband's obligation to his adopted children rests upon him in no different way than if the children were of his own blood. In re Ashlock, 629 P.2d 1108 (Colo. App. 1981).

Parent was not divested of child support obligation based on payments that accrued prior to a final adoption decree. In addition, father was denied equitable relief from child support obligation where record did not reflect evidence of representations upon which the father relied or that an evidentiary hearing was requested. In re Murray, 790 P.2d 868 (Colo. App. 1989).

II. INHERITABILITY OF ADOPTED CHILD.

Law reviews. For note, "The Right of Inheritance of Adopted Children in Colorado", see 23 Rocky Mt. L. Rev. 191 (1950). For note, "Adoption and Intestacy in Colorado", see 26 Rocky Mt. L. Rev. 65 (1953).

Inheritance is a statutory and not a vested right. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

A legally adopted child is to all intents and purposes the child and legal heir of the person so adopting him or her, entitled to all the rights and privileges, and subject to all the obligations of a child of such person begotten in lawful wedlock; but upon the decease of such person and the subsequent decease of such adopted child without issue, the property of such adopting parent shall descend to his or her next of kin, and not to the next of kin of such adopted child. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

This section clearly declares a child by adoption to have the same legal status as a natural child born to the adopting parent or parents. People ex rel. Dunbar v. White, 144 Colo. 212, 355 P.2d 963 (1960); Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961).

After adoption the adopted child becomes the heir of his adoptive parents as though born to them in lawful wedlock, and his natural parents are cut off and neither they nor their lineage may inherit from the adopted child. As to his adoptive parents, the child becomes subject to all rights and obligations of a child born in lawful wedlock. The relation thus established can be nothing less than that of parent and child. To say that such status is less or different from the parent and child relationship would do violence to the clear legislative intent to create unity in the family. Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961).

Section confers ordinary rights of inheritance. The laws permitting the adoption of children confer on them simply the ordinary rights of inheritance. In re Schmidt's Will, 85 Colo. 28, 273 P. 21 (1928).

Legally adopted children are entitled to inherit as fully as children of the foster parents begotten in lawful wedlock. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

It does not affect the power of the adoptive parent to dispose of his property by will, but the adoptive parent may deprive himself of the power thus to dispose of his property by a contract binding him to give the adopted child a certain share of his property. In re Schmidt's Will, 85 Colo. 28, 273 P. 21 (1928).

A testator cannot by will disinherit an adopted child contrary to the specific prohibition of the decree of adoption. Neville v. Bracher, 94 Colo. 550, 31 P.2d 911 (1934).

An agreement not to disinherit is supported by the consideration of the acquirement by the adoptive parents of the child's love and affection, her filial obligations to them, a change in domestic

relationship, the consent of the surviving natural parent to forever relinquish his paternal rights, and the child's forfeiture of her rights which she enjoyed before the adoption proceedings. In re Schmidt's Will, 85 Colo. 28, 273 P. 21 (1928).

The right of inheritance conferred by statute is a reciprocal one, because it depends upon a relation that is created by the adoption under our statute. The adopted child inherits from the adoptive parent. The relation of parent and child having been thus created, the right of the adoptive parent to inherit is the same as was or would have been that of the natural parent. Wright v. Wysowatcky, 147 Colo. 317, 363 P.2d 1046 (1961).

Adoption decree which incorporated statutory language similar to language in this section terminated only the adopted child's obligations to her natural father but not her right to inherit from him; therefore, the child was the heir of her intestate natural father regardless of the validity of her adoption. Matter of Estate of Bomareto, 757 P.2d 1135 (Colo. App. 1988).

A twice adopted child cannot inherit from his first adoptive parents unless such parents have died prior to the second adoption or unless he is readopted by his own natural parents where there is a second adoption by strangers. A child cannot logically be the adopted child of more than one set of adoptive parents at a time. Quintrall v. Goldsmith, 134 Colo. 410, 306 P.2d 246 (1957).

19-5-212. Copies of order of adoption - to whom given.

(1) If the court enters an order of adoption, certified copies shall be given to the adopting parents, the person or agency consenting to the adoption, and the state registrar.

(2) The court or the adopting parents or their legal representative shall send to the state registrar an application for a birth certificate, signed by the adoptive parents. The state registrar shall thereupon issue a new birth certificate to the child, as provided in section 25-2-113, C.R.S.

(3) If the child was born outside of Colorado, copies of the order of adoption and application for birth certificate shall be sent to the state registrar of the state of birth and to the registrar of vital statistics in this state. If the application for a birth certificate is denied by the state registrar in the state of birth, the adopting parents may return to the registrar in this state and apply to him to issue a new certificate of birth. The state registrar shall issue a birth certificate upon satisfactory evidence that the adopting parents, after good-faith effort, were unable to obtain a new certificate of birth from the state of birth.

Source: L. 87: Entire title R&RE, p. 810, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law. 1057 (1983).

19-5-213. Compensation for placing child prohibited.

(1) (a) No person shall offer, give, charge, or receive any money or other consideration or thing of value in connection with the relinquishment and adoption, except attorney fees and such other charges and fees as may be approved by the court.

(b) 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; except that physicians and attorneys may charge reasonable fees for professional services customarily performed by such persons.

(c) A child who is placed by a county department in a foster care home operated by a child placement agency shall be deemed, for purposes of payment to the child placement agency, to remain in foster care status for purposes of payment of consideration to the child placement agency until the date that the final decree of adoption is entered or until the date that the child is returned to his or her biological parent's home, unless otherwise negotiated in the contract between the child placement agency and the county department.

(2) Any person who violates the provisions of this section commits a class 2 misdemeanor.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 2005:** (1) amended, p. 970, § 4, effective June 2. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3221, § 391, effective March 1, 2022.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-115 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Law reviews. For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For article, "Adoption Procedures of Minor Children in Colorado", see 12 Colo. Law, 1057 (1983).

Trial court may reduce claimed attorney fees when they are excessive. People in Matter of K.M.K., 780 P.2d 43 (Colo. App. 1989).

19-5-213.5. Unauthorized advertising for adoption purposes - exceptions - penalty - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Advertise through a public medium" means to communicate by any public medium, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio, or television or by computerized communication system, which includes an internet site, an internet profile, or any similar medium of communication provided via the internet. "Advertising through a public medium" does not include communicating through personal or work electronic mail, text, or telephone.

(b) "Another jurisdiction" means the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a state of the United States other than Colorado.

(c) "Child" means a person less than eighteen years of age.

(2) Except as described in subsection (3) of this section, it is unlawful to advertise through a public medium for one of the following purposes:

(a) To find a child to adopt or to otherwise take permanent physical custody of a child;

(b) To find an adoptive home or any other permanent physical placement for a child or to arrange for or assist in the adoption, adoptive placement, or any other permanent physical placement of a child; or

(c) To offer to place a child for adoption or in any other permanent physical placement with another person.

(3) Subsection (2) of this section does not apply to:

(a) An employee of the state department of human services, a county department of human or social services, or a child placement agency that is licensed pursuant to part 9 of article 6 of title 26 who is acting within the scope of the employee's employment to place a child for adoption or in foster care;

(b) An individual or agency that provides adoption information through the statewide adoption resource registry as provided in section 26-1-111 (4), C.R.S.;

(c) An adoption exchange whose membership includes county departments and licensed child placement agencies that provide information and referral services to find adoptive homes and to promote adoption;

(d) An individual who contacts and has entered into an agreement with or is actively working with any of the agencies or entities described in paragraph (a), (b), or (c) of this subsection (3) to place his or her child for adoption;

(e) A person who advertises fertility-related services;

(f) An individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent in this state from the state department of human services, a county department of human or social services, or a child placement agency licensed in this state or in another jurisdiction from an entity authorized by that jurisdiction to conduct studies of potential adoptive homes; or

(g) An attorney who is licensed to practice in Colorado who advertises his or her availability to practice or provide services relating to the adoption of children.

(4) Unauthorized advertising of a child, as described in subsection (2) of this section, is a class 2 misdemeanor.

Source: L. 2014: Entire section added, (HB 14-1372), ch. 262, p. 1053, § 1, effective July 1. **L. 2018:** (3)(a) and (3)(f) amended, (SB 18-092), ch. 38, p. 433, § 77, effective August 8. **L. 2022:** (3)(a) amended, (HB 22-1295), ch. 123, p. 837, § 44, effective July 1. **L. 2023:** (4) amended, (HB 23-1293), ch. 298, p. 1796, § 60, effective October 1.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-5-214. Limitation on annulment of adoption - best interests standard.

(1) No final decree of adoption shall be attacked by reason of any jurisdictional or procedural defect after the expiration of ninety-one days following the entry of the final decree; except that, in cases of stepparent adoption, no final decree of adoption shall be attacked by reason of fraud upon the court or fraud upon a party, whether or not there is a jurisdictional or procedural defect, after the expiration of one year following the entry of the final decree of adoption.

(2) When a final decree of adoption is attacked on any basis at any time, the court shall consider the best interests of the child, taking into account the factors set forth in section 14-10-124, C.R.S. The court shall sustain the decree unless there is clear and convincing evidence that the decree is not in the best interests of the child.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 94:** Entire section amended, p. 752, § 5, effective April 20; entire section amended, p. 1198, § 2, effective May 19. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 880, § 143, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section in House Bill 94-1042 and Senate Bill 94-5 were harmonized.

ANNOTATION

Law reviews. For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For comment on White v. Davis (163 Colo. 122, 428 P.2d 909 (1967)), see 40 U. Colo. L. Rev. 151 (1967).

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

Purpose of section. This section serves the beneficial purpose of curing technical defects which do not affect the basic rights of the parties and guaranteeing to adopting parents the undisturbed relationship with the child, which was one of its legislative intents. White v. Davis, 163 Colo. 122, 428 P.2d 909 (1967).

Parties assuming the responsibilities of adoptive parents are entitled to assurance that upon adopting a child they are not also adopting a law suit. Smith v. Welfare Dept., 144 Colo. 103, 355 P.2d 317 (1960).

Sufficiency of notice. Where a father was serving in the Navy and had notice of a dependency proceeding, his right to contest

adoption decrees is barred by this section which limits the right to challenge a valid decree to two years after entry. Olsen v. Davidson, 142 Colo. 205, 350 P.2d 338 (1960).

Although the record reveals service by publication, where the adequacy or sufficiency of such notice was strongly challenged by motion to vacate which alleged that in support of an order authorizing service by publication the procurer of the order made a false representation that he was unaware of the whereabouts of the natural father, it was a proper matter for evidentiary hearing by the lower court to determine whether the due process requirements in the adoption proceedings were met. White v. Davis, 163 Colo. 122, 428 P.2d 909 (1967).

In termination of parental rights case, omission of the process server's verified signature is insufficient to cause prejudice to father's case where father acknowledged he received the notices and petitions. Allowing an amendment to cure the defect serves the best interests of the children. In re Petition of Taylor, 134 P.3d 579 (Colo. App. 2006).

Validity of consent. Where the record is devoid of any evidence of fraud, coercion, undue influence, misrepresentation, or misconduct on the part of the adopting parents or their attorney, and there is nothing to indicate that the mother was lacking in understanding as to the consequences of her consent to the adoption of her children, a finding by the trial court that at the time of signing the consent the mother did not realize the seriousness and finality of her act was insufficient to set aside the decrees of adoption. Batton v. Massar, 149 Colo. 404, 369 P.2d 434 (1962).

No inherent right exists to rescind an adoption. When there is no provision made for the annulment of a valid decree of adoption, the right does not exist. In re S.D., 251 P.3d 1188 (Colo. App. 2010).

Plaintiff who sought to rescind adoption after 35 years failed to bring an action to set aside the adoption within a reasonable time, barring the court from finding the adoption to be legally void. In re S.D., 251 P.3d 1188 (Colo. App. 2010).

Applied in In re Adoption of P.H.A., 899 P.2d 345 (Colo. App. 1995).

19-5-215. Records. (Repealed)

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 89:** Entire section amended, p. 943, § 4, effective March 27. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-5-216. Increased access for adoption - study.

(1) (a) The state department shall examine and evaluate the process of adoptive placements of children in the legal custody of the county departments of human or social services and identify those aspects of the process that may be improved to achieve the ultimate goal of permanency for the greatest number of children in safe and healthy adoptive homes. In conducting this analysis, the state department should consider, but need not be limited to, the following:

(I) The best means by which to increase county accessibility to qualified families seeking to adopt and the best means by which to achieve placement of children available for adoption with such families;

(II) Whether further automation would be conducive to the achievement of permanency of children;

(III) The need for centralization of information;

(IV) The benefits of additional standardization;

(V) The resources of other interested entities or foundations that may be available to support public adoptions;

(VI) The programs and systems developed by other states to achieve maximum access and expedited permanency for children in safe and healthy adoptive homes; and

(VII) The methods used to reduce the number of disruptions in adoptive homes.

(b) (I) The executive director of the department is authorized to accept and expend on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of implementing this section; except that no gift, grant, or donation shall be accepted if the conditions attached thereto require the expenditure thereof in a manner contrary to law.

(II) The executive director of the department is authorized to apply for a federal waiver, if necessary, to authorize the use of federal grant moneys to implement this section.

(2) Repealed.

Source: L. 99: Entire section added, p. 1024, § 4, effective May 29. **L. 2002:** (2) repealed, p. 882, § 20, effective August 7. **L. 2018:** IP(1)(a) amended, (SB 18-092), ch. 38, p. 433, § 78, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-5-217. Enforcement or termination of post-adoption contact agreement.

(1) If the decree of adoption contains a post-adoption contact agreement pursuant to section 19-5-208 (4.5), the court retains jurisdiction after the decree of adoption is entered to hear motions to enforce or terminate the contact agreement, or to enter stipulated agreements of the parties to modify the contact agreement.

(2) The court may appoint a guardian ad litem for the adopted child, or a counsel for youth for an adopted child twelve years of age or older, at the time of any action for the enforcement or termination of the post-adoption contact agreement if the court determines that consideration of the factors set forth in section 19-5-103 (9)(a) require the appointment of a guardian ad litem or a counsel for youth. In all adoptions other than those in which the child is placed by the county department, a party or parties shall pay reasonable fees for the services of the guardian ad litem or counsel for youth unless a party is indigent, in which case the office of the child's representative shall pay the fees.

(3) If there is a post-adoption agreement for contact established pursuant to section 19-5-208 (4.5), only a party to the contact agreement, even if he or she is not a party to the adoption, may file a motion to enforce or terminate the contact agreement as set forth in this section.

(4) Prior to filing a motion seeking the enforcement or termination of a post-adoption contact agreement established pursuant to section 19-5-208 (4.5), the party seeking enforcement or termination shall show that the party attempted in good faith to resolve the disputed matters through mediation or other method of dispute resolution. This requirement is waived if the party's whereabouts are unknown and the party cannot be located despite diligent efforts to do so.

(5) The court shall not terminate a post-adoption contact agreement established pursuant to section 19-5-208 (4.5) unless the moving party establishes that there has been a change in circumstances and that the contact agreement is no longer in the adopted child's best interests. Following the adoption, the court shall presume that the adoptive parent's judgement is in the best interests of the child in any action seeking to enforce or terminate the contact agreement, and such presumption may only be overcome by clear and convincing evidence. A post-adoption contact agreement may not limit the adoptive parent's ability to move out of state.

(6) At any time after the entry of a post-adoption contact agreement pursuant to section 19-5-208 (4.5), the parties to the agreement may file with the court a signed, modified post-adoption contact agreement. The court shall not modify the terms of the initial post-adoption contact agreement absent the consent of all parties to the agreement, but the court may enforce or terminate the agreement over the objection of a party to the agreement. An adopted child twelve years of age or older at the time of the adoption must consent to any modification or termination of the contact agreement.

(7) The court may consider documentary evidence and offers of proof in determining motions to enforce or terminate a post-adoption contact agreement established pursuant to section 19-5-208 (4.5), or may, in its discretion, hold a hearing on the motion.

(8) The court shall not order further investigation or evaluation by any public or private agency or individual relating to a post-adoption contact agreement established pursuant to section 19-5-208 (4.5).

Source: L. 2021: Entire section added, (HB 21-1101), ch. 481, p. 3428, § 4, effective September 1. **L. 2022:** (2) amended, (HB 22-1038), ch. 92, p. 443, § 29, effective January 9, 2023.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

PART 3

ACCESS TO ADOPTION INFORMATION

19-5-301. Legislative declaration.

(1) The general assembly hereby finds and declares that adult adoptees, adoptive parents, biological parents, and biological siblings should have a right of access to certain records regarding their or their child's adoption or the adoption of their offspring or siblings as outlined in section 19-5-305 and that such a right must coexist with the right of such parties to privacy and confidentiality. The general assembly also finds that an adult adoptee, his biological or adoptive parent, or his biological sibling may desire to obtain information about each other at different points in time. Furthermore, the general assembly finds that confidentiality from the general public is essential to the adoption process and that any procedure to access information which relates to an adoption to search for unknown relatives through a confidential intermediary or a licensed child placement agency must be designed to maintain confidentiality and to respect the wishes of all involved parties.

(2) (a) It is the purpose of this part 3 to establish a confidential process whereby adult adoptees and adoptive parents who desire information concerning their or their child's adoption and biological parents and siblings who desire information concerning an adult adoptee may pursue access to such information.

(b) The general assembly further finds and declares that the purpose of establishing the confidential process set forth in this part 3 is to create a pool of individuals who the courts and

interested parties may call upon to initiate a search for a biological relative. It is not the intent of the general assembly that such process shall be construed as the regulation of an occupation or profession.

Source: L. 89: Entire part added, p. 940, § 1, effective March 27. **L. 2014:** (1) amended, (SB 14-051), ch. 260, p. 1048, § 4, effective July 1.

ANNOTATION

Actual controversy between adverse parties must exist if a court is to sua sponte address the constitutionality of a statute. Juvenile court's ruling that this part 3 is unconstitutional was impermissible exercise of judicial authority since the issue was raised on behalf of unidentified parties that were not before the court on court's own motion in order to create a controversy that it then proceeded to decide. In re Tomlinson, 851 P.2d 170 (Colo. 1993).

19-5-302. Definitions. (Repealed)

Source: L. 89: Entire part added, p. 941, § 1, effective March 27. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-5-303. Commission created - duties.

(1) There is created in the department the adoption intermediary commission, referred to in this section as the "commission", which consists of thirteen members. The commission is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs the duties and functions specified by this part 3 under the department. Representation and appointment of such members shall be as follows:

(a) Three members shall represent the judicial department and shall be appointed by the chief justice or his or her designee;

(b) Two members shall represent the department and shall be appointed by the executive director of such department or his or her designee;

(c) Three members shall represent licensed adoption agencies and shall be appointed by a representative of a private adoption agency. Such representative shall be selected by the executive director of the department.

(d) Three members shall represent either adoptees, adoptive parents, biological parents of adoptees, or biological siblings of adoptees and shall be selected by the executive director of the department;

(e) Two members shall represent confidential intermediaries and shall have completed training as confidential intermediaries. Such members shall be appointed by the executive director of the department.

(2) The commission shall have responsibility for:

(a) Drafting a manual of standards for training confidential intermediaries and licensed child placement agencies that perform searches and contact persons pursuant to section 19-5-305 (3)(b)(III);

(b) Monitoring confidential intermediary training programs and child placement agencies with search and consent programs to ensure compliance with the standards set forth in the manual, with authority to approve or deny such programs based upon compliance with such standards;

(c) Maintaining an up-to-date list of persons who have completed training as confidential intermediaries or as persons who conduct searches for child placement agencies and communicating such list to the judicial department.

(3) The commission shall adopt its own rules of procedure, shall select a chairman, a vice-chairman, and such other officers as it deems necessary, and shall keep a record of its proceedings. The commission shall meet as often as necessary to carry out its duties, but in no instance shall it meet less than annually. The commission may seek input from confidential intermediary organizations in carrying out its duties.

(4) The commission shall be voluntary and shall not receive per diem payments.

Source: L. 89: Entire part added, p. 941, § 1, effective March 27. **L. 91:** IP(1) amended, p. 890, § 14, effective June 5. **L. 93:** (4) amended, p. 657, § 3, effective July 1. **L. 94:** IP(1) and (1)(b) to (1)(d) amended, p. 2689, § 213, effective July 1. **L. 97:** (1) amended, p. 1166, § 12, effective July 1. **L. 2000:** (1) and (2) amended, p. 1373, § 5, effective July 1. **L. 2005:** (2)(c) amended, p. 767, § 31, effective June 1; (2)(c) amended, p. 993, § 5, effective July 1. **L. 2022:** IP(1) amended, (SB 22-162), ch. 469, p. 3376, § 67, effective August 10. **L. 2023:** IP(1) amended, (HB 23-1301), ch. 303, p. 1822, § 25, effective August 7.

Editor's note: The introductory portion to subsection (1) was amended by SB 22-162, but the introductory phrase, "Representation and appointment of such members shall be as follows:", at the end of the provision was inadvertently deleted during the drafting of the bill. The introductory portion to subsection (1) is shown to reflect how the provision appeared in SB 22-162 when acted on by the Governor.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of Colorado 2022.

19-5-304. Confidential intermediaries - confidential intermediary services.

(1) (a) Any person who has completed a confidential intermediary training program that meets the standards set forth by the commission shall be responsible for notifying the commission that his or her name should be included on the list of confidential intermediaries to be maintained by the commission and made available to the judicial department. The commission shall adopt rules to determine when and under what conditions the name of a confidential intermediary shall be removed from the list available to the judicial department.

(b) Once a person is included on the list of confidential intermediaries, he or she shall be:

(I) Authorized to inspect confidential relinquishment and adoption records, post-adoption records, and dependency and neglect records, including but not limited to court files, within forty-five days after a motion to the court is filed by the following persons:

(A) An adult adoptee;

(B) An adoptive parent, custodial grandparent, or legal guardian of a minor adoptee;

(C) A biological parent or an adult biological sibling or half-sibling of an adult adoptee;

(D) An adult descendant of the adoptee or the adoptive parent, spouse of an adoptee, adult stepchild, or adopted adult sibling of an adoptee with the notarized written consent of the adult adoptee;

(E) A biological grandparent of an adoptee with the notarized written consent of the biological parent. No written consent is required if the biological parent is deceased.

(F) The legal representative of any of the individuals listed in sub-subparagraphs (A) to (E) of this subparagraph (I);

(G) A former foster child who may or may not have been adopted, who is eighteen years of age or older, and who is searching for a birth sibling who is also eighteen years of age or older,

who may or may not have been adopted, and who may or may not have been in the foster care system;

(II) Available, subject to time constraints, for appointment by the court to act as a confidential intermediary for any of the parties listed in subparagraph (I) of this paragraph (b).

(2) (a) Any of the parties listed in subparagraph (I) of paragraph (b) of subsection (1) of this section, any of whom are eighteen years of age or older, may file a motion, with supporting affidavit, in the court where the adoption took place, to appoint one or more confidential intermediaries for the purpose of determining the whereabouts of such individual's unknown relative or relatives; except that no one shall seek to determine the whereabouts of a relative who is younger than eighteen years of age. The court may rule on said motion and affidavit without hearing and may appoint a trained confidential intermediary.

(b) The court-appointed confidential intermediary shall make a diligent search of the adoption records and post-adoption records in an effort to find the sought-after relative. If the confidential intermediary successfully locates the relative sought, the confidential intermediary shall provide that relative with the opportunity to:

(I) Consent to or to refuse to allow contact by the person seeking contact;

(II) Fill out a contact preference form and updated medical history statement as prescribed in section 19-5-305 (1.5);

(III) Repealed.

(2.5) For purposes of paragraph (b) of subsection (1) of this section, "legal guardian" shall not include a governmental entity of any foreign country from which a child has been adopted or any representative of such governmental entity.

(3) Any information obtained by the confidential intermediary during the course of his or her investigation shall be kept strictly confidential and shall be utilized only for the purpose of arranging a contact between the individual who initiated the search and the sought-after biological relative or for the purpose of obtaining consent for the release of adoption records.

(4) (a) When a sought-after biological relative is located by a confidential intermediary on behalf of the individual who initiated the search, the confidential intermediary shall obtain consent from both parties that they wish to personally communicate with one another.

(b) Contact shall be made between the parties involved in the investigation only when consent for such contact has been received by the court.

(c) If consent for personal communication is not obtained from both parties, all relinquishment and adoption records and any information obtained by any confidential intermediary during the course of his or her investigation shall be returned to the court and shall remain confidential.

(5) All confidential intermediaries shall inform both the requesting biological relative and the sought-after biological relative of the existence of the voluntary adoption registry set forth in section 25-2-113.5, C.R.S.

(6) Any person acting as a confidential intermediary who knowingly fails to comply with the provisions of subsections (3) and (4) of this section commits a civil infraction.

Source: L. 89: Entire part added, p. 942, § 1, effective March 27. **L. 97:** (1) and (2) amended, p. 1166, § 13, effective July 1. **L. 99:** (1)(b), (2), (3), and (4)(c) amended and (2.5) added, p. 1131, § 3, effective July 1. **L. 2000:** (1) and (2) amended, p. 1368, § 2, effective July 1. **L. 2005:** (2) amended, p. 984, § 1, effective July 1. **L. 2009:** IP(1)(b) and IP(1)(b)(I) amended and (1)(b)(I)(G) added, (SB 09-079), ch. 59, p. 214, § 1, effective March 25. **L. 2014:** (2)(b)(III) repealed, (SB 14-051), ch. 260, p. 1049, § 5, effective July 1. **L. 2021:** (6) amended, (SB 21-271), ch. 462, p. 3221, § 392, effective March 1, 2022. **L. 2022:** (2.5) amended, (SB 22-212), ch. 421, p. 2973, § 43, effective August 10.

ANNOTATION

Actual controversy between adverse parties must exist if a court is to sua sponte address the constitutionality of a statute. Juvenile court's ruling that this part 3 is unconstitutional was impermissible exercise of judicial authority since the issue was raised on behalf of unidentified parties that were not before the court on court's own motion in order to create a controversy that it then proceeded to decide. In re Tomlinson, 851 P.2d 170 (Colo. 1993).

19-5-305. Access to adoption records - contact with parties to adoption - contact preference form and updated medical history statement - definitions.

(1) **Confidentiality.** All adoption records are confidential from the general public and must remain confidential except as described in subsections (1.5) and (2) of this section or upon demonstration of good cause pursuant to section 19-1-309 or as otherwise provided by law.

(1.5) **Contact preference forms and updated medical history statements from birth parents.**

(a) The state registrar shall prescribe and make available to a birth parent named on an original birth certificate in the records of the state registrar a contact preference form on which the birth parent may indicate a preference regarding contact by the adult adoptee, an adult descendant of the adoptee, or a legal representative of the adoptee or descendant. The purpose of the contact preference form is to allow the birth parent the opportunity to indicate a preference to

be contacted directly, to be contacted through a third party, or not to be contacted by other parties.

(b) The form must also include space for a written statement by the birth parent, which may include updated medical history about the birth parent or other biological relatives, an explanation for the stated contact preference, or other information for the party seeking records. The medical history statement form must indicate that the birth parent is waiving confidentiality of any medical information supplied in the statement with respect to the adoptee, an adult descendant of the adoptee, or a legal representative of such individual, and to the state registrar or his or her designees.

(c) The state registrar shall maintain the contact preference form and the medical history statements, if any, and make them accessible to an individual who is an eligible party allowed to receive adoption records as described in subparagraph (I) of paragraph (b) of subsection (2) of this section and who submits a written application form, proof of identity, and an explanation of the individual's relationship to the adoptee, if applicable. The state registrar is authorized to verify the submission of a contact preference form or an updated medical history statement and to provide a copy of a contact preference form to a confidential intermediary appointed pursuant to section 19-5-304 or to a designated employee of a child placement agency who is searching pursuant to subparagraph (III) of paragraph (b) of subsection (3) of this section. The state registrar shall maintain and make available to the public accurate statistics about the number of contact preference forms on file with the state registrar and how many of the forms state a preference for contact, no contact, or contact through a third party.

(d) (I) As used in this section, "eligible party" means a person who is eligible under subparagraph (I) of paragraph (b) of subsection (2) of this section to have access to adoption records.

(II) The option on the contact preference form that allows a birth parent to authorize or not authorize the release of the original birth certificate to eligible parties expires on January 1, 2016. The state registrar shall revise the contact preference form to eliminate this option, effective January 1, 2016, and shall neither distribute nor accept contact preference forms on or after January 1, 2016, that contain an option regarding such release. On and after January 1, 2016, contact preference forms shall only address a birth parent's preferences regarding contact and the ability to submit an explanation for the stated contact preference and to submit or update medical history. A child placement agency is not liable to any person for the failure of a birth parent to submit a contact preference form to the state registrar. On and after July 1, 2014, the state registrar shall post a notice on the website of the office of the state registrar of vital statistics stating that the contact preference form will be revised to eliminate the option to authorize or object to the release of the original birth certificate and that birth parents may exercise this option prior to January 1, 2016.

(III) Prior to allowing access to and providing a copy of an original birth certificate to an eligible party, the state registrar must perform a diligent search for a contact preference form executed prior to January 1, 2016, to ascertain if either birth parent had stated a preference authorizing or not authorizing the release of the original birth certificate to eligible parties. If both birth parents have filed a contact preference form executed prior to January 1, 2016, stating a preference to authorize the release of the original birth certificate, then the state registrar must release the original birth certificate to the eligible party. If there is no contact preference form on file prior to January 1, 2016, from a birth parent named on the original birth certificate, or if a contact preference form executed prior to January 1, 2016, is on file that states a preference that the original birth certificate not be released, then the state registrar may not release the original birth certificate to the eligible party prior to January 1, 2016, unless the birth parent rescinds the contact preference form, upon mutual consent of two or more reunited parties, the birth parent is deceased, or the eligible party obtains a court order pursuant to section 19-1-309. When one birth parent has authorized the release of the birth certificate and the other birth parent has filed a contact preference form prior to January 1, 2016, not authorizing release, the state registrar shall issue the original birth certificate to the eligible party with the name of the nonconsenting parent redacted.

(2) **Legislative declaration - access to adoption records.**

(a) The general assembly takes note that the law in Colorado regarding access to adoption records has treated persons differently depending upon the law in effect upon the date of the adoption of the adoptee and that the statutory scheme has been confusing, complicated, and ambiguous. By repealing and reenacting provisions of this section to remove those varying time periods and varying levels of access or nonaccess to adoption records by an adult adoptee or by a birth parent, it is the intent of the general assembly that access to adoption records no longer be dependent upon the law in effect on the date of the finalization of adoption. The general assembly declares that the purpose of the revision of this subsection (2) is to make the access to adoption records by members of the adoption triad more uniform as outlined in this subsection (2). The general assembly further declares that it is the intent of the general assembly to not abrogate, limit, or change the holding in or affect any rights created under *In re J.N.H.*, 209 P.3d 1221 (Colo. App. 2009) with respect to access by an adult adoptee to the names of his or her birth parents and to all court records and papers regarding the adoption of the adult adoptee. The general assembly further declares that in construing this section, the courts should liberally construe this section in favor of releasing the records.

(b) Subject to subsection (4) of this section and in addition to information exchanged in a designated adoption or inspection authorized by a court upon good cause shown pursuant to section 19-1-309, access to adoption records by certain parties is governed by the following provisions:

(I) (A) **Adult adoptees, their descendants, and adoptive family members.** Upon request, the custodian of records shall provide direct access, without redaction, to all adoption records, as defined in section 19-1-103, for inspection and copying by an adult adoptee, an adoptive parent of a minor adoptee, a custodial grandparent of a minor adoptee, or the legal representative of any such individual. In addition, the custodian of records shall provide direct access to adoption records for inspection and copying by a spouse of an adult adoptee, an adult descendant of an adoptee, an adult sibling or half-sibling of an adult adoptee, an adoptive parent or grandparent of an adult adoptee, or the legal representative of any such individual, if the individual requesting access has the notarized written consent of the adult adoptee or if the adult adoptee is deceased.

(B) **Access by an adult adoptee or descendant to the original birth certificate and amended birth certificate of a sibling with a common birth parent.** Upon proof of evidence of at least one common birth parent between an adult adoptee and a sibling or half-sibling, the custodian of records shall provide, without redaction, to an adult adoptee, a descendant of the adult adoptee, or a legal representative of the adult adoptee or descendant direct access to a noncertified copy of the unaltered original birth certificate and the amended birth certificate of an adult sibling or half-sibling who was born, relinquished, or adopted in the state of Colorado, subject to the provisions of subsection (4) of this section.

(II) **Access by a birth parent to the original birth certificate.** A birth parent who relinquished a child for adoption, whose termination of the parent-child legal relationship was not the result of a dependency and neglect action, and who signed or is named on the original birth certificate may apply to the state registrar for and obtain a noncertified copy of the unaltered original birth certificate of the child he or she relinquished if the child was born in this state, or if the child's adoption was finalized in this state, or both.

(III) (A) **Access to death certificates of deceased parties.** Upon request of an eligible party or a birth parent as described in subparagraph (II) of this paragraph (b), the state registrar shall conduct a search of death certificates to determine whether an adoptee or a birth parent is deceased. If the state registrar finds a death certificate for the adult adoptee or the birth parent, then the state registrar shall provide a copy to the eligible party. The state registrar may collect a fee for conducting a search and for making a copy of the death certificate.

(B) **Access to records pertaining to a deceased party.** If an eligible party or a birth parent as described in subparagraph (II) of this paragraph (b) applies to a custodian of records for access to records about an adult adoptee or a birth parent and the custodian of records determines that the person whose records are being sought is deceased or can reasonably be presumed to be deceased based on the known or estimated date of birth of the sought party, the custodian of records shall provide direct access to the records for inspection and copying by the eligible party.

(IV) **Proof of identification and fees.** Prior to releasing any records to any eligible party allowed to receive records pursuant to this subsection (2), the custodian of records must require the eligible party requesting access to provide proof of identification. The custodian of records

may charge reasonable fees for providing copies of records. The state registrar shall transmit all moneys collected pursuant to subparagraph (III) of this paragraph (b) and this subparagraph (IV) to the state treasurer, who shall credit the same to the vital statistics records cash fund created in section 25-2-121, C.R.S.

(V) **Release of records by child placement agencies and prior written statements of birth parents.** Notwithstanding subsection (2)(b)(I) of this section, the adoption records, as defined in section 19-1-103, in the possession of a child placement agency are not open for inspection or available for copying with respect to any identifying information concerning a birth parent if the birth parent has previously provided the court and the child placement agency, if applicable, with a signed and notarized written statement, within three years after the final order of relinquishment or termination of the parent-child legal relationship, specifying that such parent wishes the identifying information concerning that parent to remain confidential; except that the adoption records in the possession of a child placement agency may be open for inspection and made available for copying with respect to identifying information concerning a birth parent if a birth parent provides a consent form, as defined in section 19-1-103, to the child placement agency consenting to the release of identifying information and the release of identifying information is consistent with the provisions of subsection (3) of this section. A written statement specifying that a birth parent wishes the identifying information concerning that parent on file with a child placement agency to remain confidential must remain in the court's and the child placement agency's relinquishment or termination file unless later withdrawn by the parent or superceded by a consent form. A child placement agency is not liable to any individual for the failure of a birth parent to submit such a written statement to the court. In addition to such a statement, the birth parent may also submit to the court and to the child placement agency a letter of explanation that the court and the child placement agency must release to the adoptee at the time that the adoptee makes a request for inspection of the adoption records. This subsection (2)(b)(V) applies only to adoption records in the possession of child placement agencies and does not apply to adoption records in the possession of the court or any other agency, entity, or person.

(3) **Access to identifying information through child placement agencies.**

(a) Upon proof of identity of the person submitting the consent form, a licensed child placement agency shall accept and may seek a consent form, as that term is defined in section 19-1-103, from an adult adoptee or from either adult adoptee's birth parent or from an adoptive parent of a minor adoptee or from the legal representative of a minor adoptee authorizing the release of identifying information, as that term is defined in section 19-1-103, concerning the person submitting the consent form, to the extent such information is available to the child placement agency. If only one birth parent has filed a consent form with the child placement agency, the child placement agency or any succeeding custodian of the records shall provide a copy of the identifying information without the name of and without identifying information about the nonconsenting birth parent.

(b) (I) Upon inquiry by an adult adoptee or an adult adoptee's birth parent or an adoptive parent of a minor adoptee seeking information about another party from a licensed child placement agency, the child placement agency shall be authorized to release identifying information to the inquiring person, upon proof of identity by the inquiring person, if the licensed child placement agency is in possession of a consent form from the party about whom information is sought authorizing such release.

(II) In those circumstances in which a child placement agency has released identifying information pursuant to paragraph (a) of this subsection (3), the child placement agency may attempt to locate at the last-known address the person who had originally submitted the consent form and, upon locating such person, advise him or her of the release and provide him or her with the opportunity to fill out a contact preference form and updated medical history statement as prescribed in subsection (1.5) of this section. If the inquiring person also submitted a consent form authorizing the release of identifying information about him or her, the child placement agency may provide such identifying information to the person located.

(III) A child placement agency that accepts a consent form may perform a search for the sought party, subject to the requirement that an employee designated by the child placement agency to perform a search and to contact the sought party shall have completed training that meets the standards set forth by the adoption intermediary commission.

(c) A licensed child placement agency that accepts a consent form may charge a reasonable fee to cover the direct and indirect costs associated with the services provided pursuant to this subsection (3), if a written fee agreement has been signed by the agency and the party submitting the consent form prior to the provision of any service. If a child placement agency charges a fee, then the child placement agency shall make reasonable efforts to locate the person being sought and to release the information the child placement agency obtained to the person located. The licensed child placement agency shall be required to provide a list of names, addresses, and telephone numbers of organizations performing similar services prior to signing any fee agreement with any party submitting a consent form. Information in the post-adoption record is confidential and shall not be disclosed by a licensed child placement agency or any succeeding custodian of the records, or a court except as specifically permitted in this part 3, or as otherwise permitted by law.

(d) The release of any information by a licensed child placement agency pursuant to this subsection (3) shall be subject to the provisions of subsection (4) of this section.

(4) **Access to information and contact concerning sibling groups.** Notwithstanding the provisions set forth in subsections (1.5), (2), and (3) of this section authorizing access to adoption records and contact with an adoptee, in those circumstances in which one family has adopted two or more siblings, access to the adoption records concerning an adoptee and contact with an adoptee shall not occur until all of the siblings adopted by the family have attained eighteen years of age.

(5) **Adult adoptee's restriction on access to records.** Notwithstanding the provisions of subsection (2) of this section, an adult adoptee may, at any time, provide the court that finalized the adoption and the child placement agency with a signed and notarized written statement specifying that such adult adoptee wishes to maintain identifying information concerning that adoptee, other than the original birth certificate, confidential. The written statement shall remain in the court's adoption file unless later withdrawn by the adoptee. Nothing in this subsection (5) shall be construed to affect access to records through the confidential intermediary process.

(6) **Contact between the parties.** Subject to the provisions of subsection (2) of this section, any party may seek to make direct contact with another party or to use the services of a confidential intermediary as provided in section 19-5-304, a licensed child placement agency as provided in subsection (3) of this section, or the voluntary adoption registry maintained by the state registrar as provided in section 25-2-113.5, C.R.S.

Source: L. 99: Entire section added, p. 1132, § 4, effective July 1. **L. 2000:** (2)(a)(I)(A), (2)(a)(I)(B), (2)(b)(I)(A), (2)(b)(I)(B), (2)(b)(I)(C), (2)(b)(II), (2)(c), (3), and (5) amended, p. 1369, § 3, effective July 1. **L. 2005:** Entire section amended, p. 985, § 2, effective July 1. **L. 2014:** (1), (1.5), and (2) R&RE and (6) added, (SB 14-051), ch. 260, p. 1043, § 1, effective July 1. **L. 2015:** (2)(b)(I) amended, (HB 15-1106), ch. 59, p. 142, § 2, effective March 30; (2)(b)(I) amended, (HB 15-1355), ch. 311, p. 1273, § 2, effective June 5. **L. 2021:** IP(2)(b), (2)(b)(I)(A), (2)(b)(V), and (3)(a) amended, (SB 21-059), ch. 136, p. 736, § 90, effective October 1.

Cross references: (1) For the provisions referring to confidential intermediaries formerly found in subsection (2)(a)(II), see § 19-5-304 (2)(b). (See L. 2005, p. 984.)

(2) For the short title ("Heritage Act") and the legislative declaration in HB 15-1355, see section 1 of chapter 311, Session Laws of Colorado 2015.

ANNOTATION

For adoptions finalized after July 1, 1951, but before July 1, 1967, an adoptee may have access to the names of his or her birth parents and to all court records and papers regarding the adoption and shall not be required to utilize the confidential intermediary process in order to gain access to that information. In re J.N.H., 209 P.3d 1221 (Colo. App. 2009).

19-5-305.5. Access to personal records relating to a former ward of the state home for dependent and neglected children - other eligible parties - definitions.

(1) As used in this section:

(a) "Eligible party" means:

(I) A former ward, regardless of adoption status;

(II) A spouse of a former ward;

(III) An adult descendant of a former ward;

(IV) An adult sibling or half-sibling of a former ward; or

(V) The legal representative of any individual described in subparagraphs (I) to (IV) of this paragraph (a), if the individual requesting access has the notarized written consent of the former ward or if the former ward is deceased.

(b) "Former ward" means a person who as a minor child was in the custody of the state home for dependent and neglected children, regardless of the person's adoption status.

(c) (I) "Personal records" means the following documents and information pertaining to the custody, relinquishment, or adoption of a former ward, without redaction:

(A) The original birth certificate;

(B) The amended birth certificate;

(C) The temporary waiver of custody;

(D) The final order of relinquishment;

(E) The order of termination of parental rights;

(F) The final decree of adoption;

(G) The name of the former ward before placement in adoption; the name and address of each birth parent as they appear in the birth records or other documents, including other information that might personally identify a birth parent; and the name and address of each adoptive parent; and

(H) The physical description of the birth parents; the educational background of the birth parents; the occupation of the birth parents; genetic information about the birth family; medical information about the former ward's birth; social information about the birth parents; whether the former ward has siblings or half-siblings, and, if so, the names and addresses of the siblings and half-siblings; and the placement history of the former ward.

(II) "Personal records" does not include prerelinquishment counseling records, which records shall remain confidential.

(2) Upon proof of identification and upon request, the custodian of records, as defined in section 19-1-103, shall provide direct access, without redaction, to all personal records for inspection and copying by an eligible party relating to a former ward who, regardless of adoption status, as a minor was in the custody of the state home for dependent and neglected children.

(3) Prior to releasing any personal records to an eligible party allowed to receive personal records pursuant to this section, the custodian of records must require the eligible party requesting access to provide proof of identification. The custodian of records may charge reasonable fees for providing copies of records.

Source: L. 2015: Entire section added, (HB 15-1355), ch. 311, p. 1273, § 3, effective June 5. **L. 2021:** (2) amended, (SB 21-059), ch. 136, p. 737, § 91, effective October 1.

Cross references: For the short title ("Heritage Act") and the legislative declaration in HB 15-1355, see section 1 of chapter 311, Session Laws of Colorado 2015.

19-5-306. Public information campaign.

The executive directors of the department of human services and the department of public health and environment, or such executive directors' designees, shall work together to design and implement efforts within existing appropriations to assist in informing the public about the existence and availability of the confidential intermediary process established in this part 3 and the voluntary adoption registry established pursuant to section 25-2-113.5, C.R.S., to inform the public about the change in the availability of adoption records, including birth certificates, and other records related to the adoption process as set forth in section 19-5-305, and to inform birth parents about the opportunity to complete contact preference forms and submit updated medical history statements as set forth in section 19-5-305. Such efforts shall be implemented within existing appropriations on and after July 1, 2005, by disseminating information to the public through child placement agencies and through the use of public service announcements and such other additional means of communication as the executive directors or their designees determine appropriate. The public information campaign shall also provide referral information on community resources that may be available to the adoption triad to assist them in dealing with issues that arise in searches and reunifications with relatives or in deciding not to seek contact or information about relatives. Such resources shall include a variety of sources, including child placement agencies, social workers, therapists and faith-based counselors, and organizations designed to provide support to members of the adoption triad.

Source: L. 99: Entire section added, p. 1132, § 4, effective July 1. **L. 2005:** Entire section amended, p. 993, § 6, effective July 1.

19-5-307. Child placement agency - transfer of records.

If a child placement agency terminates its child placement activities, prior to termination of services, the child placement agency shall microfilm or preserve with state-of-the-art record storage methods as prescribed by the department of human services any relevant files on adoptions and transfer them to the division in the department of human services responsible for child care licensing. The state board of human services shall promulgate rules to require child placement agencies to scan adoption records for purposes of transferring them upon termination of child placement activities to the division in the department of human services responsible for child care licensing.

Source: L. 2000: Entire section added, p. 1372, § 4, effective July 1. **L. 2005:** Entire section amended, p. 970, § 5, effective June 2.

PART 4

ACCESS TO NONIDENTIFYING ADOPTION INFORMATION

19-5-401. Definitions. (Repealed)

Source: L. 93: Entire part added, p. 655, § 1, effective July 1. **L. 94:** (4) amended, p. 2689, § 214, effective July 1. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-5-402. Access to nonidentifying information.

Any adult adoptee or any adoptive parent may request nonidentifying information about the adoptee or the birth parents of the adoptee from the department. The department shall provide directly to the inquiring adult adoptee or adoptive parent or to the qualified agency selected pursuant to section 19-5-403 the nonidentifying information which is available to the

department. The department shall adopt rules governing the disclosure of nonidentifying information.

Source: L. 93: Entire part added, p. 656, § 1, effective July 1.

19-5-403. Authority for department to select agencies.

The department is authorized to select private, licensed child placement agencies authorized to handle adoptions for the disclosure of nonidentifying information pursuant to this part 4. The department shall, by rule, establish qualifying criteria by which the licensed child placement agencies authorized to handle adoptions shall be selected, which criteria shall include, but shall not be limited to, a requirement that the agencies maintain all information which identifies members of the birth family strictly confidential.

Source: L. 93: Entire part added, p. 656, § 1, effective July 1.

ARTICLE 5.5

Uniform Unregulated Child Custody Transfer Act

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19-5.5-401. Uniformity of application and construction.

19-5.5-402. Relation to electronic signatures in global and national commerce act.

19-5.5-403. Transitional provisions.

PART 1

GENERAL PROVISIONS

19-5.5-101. Short title.

This article 5.5 may be cited as the "Uniform Unregulated Child Custody Transfer Act".

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 299, § 1, effective April 17.

19-5.5-102. Definitions.

In this article 5.5:

(1) "Child" means an unemancipated individual under eighteen years of age.

(2) "Child placement agency" has the meaning set forth in section 26-6-903.

(3) "County department" has the meaning set forth in section 19-1-103.

(4) "Custody" means the exercise of physical care and supervision of a child.

(5) "Intercountry adoption" means an adoption or placement for adoption of a child who resides in a foreign country at the time of adoption or placement. The term includes an adoption finalized in the child's country of residence or in a state.

(6) "Parent" has the meaning set forth in section 19-1-103.

(7) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(8) "Record" means information that is:

(a) Inscribed on a tangible medium; or

(b) Stored in an electronic or other medium and retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(10) "State department" means the state department of human services created in section 24-1-120.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 299, § 1, effective April 17.

19-5.5-103. Limitations on applicability.

This article 5.5 does not apply to custody of an Indian child, as defined in section 1903(4) of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1903(4), as amended, to the extent custody is governed by the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 to 1963, as amended.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 300, § 1, effective April 17.

PART 2

PROHIBITION OF UNREGULATED CUSTODY TRANSFER

19-5.5-201. Definitions.

In this part 2:

(1) "Custodian" has the meaning set forth in section 19-1-103.

(2) "Division" means the division of child welfare.

(3) "Facilitator" means a person, partnership, corporation, association, firm, agency, or institution, other than an adoption exchange, county department, or child placement agency, that offers, gives, charges, or receives money or other consideration or thing of value in connection with locating or identifying, for purposes of adoption, any child, birth parent, expectant natural parent, or prospective adoptive parent.

(4) "Guardian" means a person other than a parent who has the legal authority and duty to care for a child.

(5) "Intermediary" means a person who assists or facilitates a transfer of custody of a child, whether or not for compensation.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 300, § 1, effective April 17.

19-5.5-202. Applicability.

(1) This part 2 does not apply to a transfer of custody of a child by a parent, guardian, or custodian of the child to:

(a) A parent of the child;

(b) A stepparent of the child;

(c) An adult who is related to the child by blood, marriage, adoption, or other relationship recognized by other law of this state;

(d) An adult who, at the time of the transfer, had a meaningful and safe relationship with the child for a period of at least six months prior to the transfer, and whom the parent, guardian, or custodian reasonably believes, at the time of the transfer, to be a fit custodian of the child; or

(e) An Indian custodian, as defined in the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1903 (6), as amended, of the child.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 301, § 1, effective April 17.

19-5.5-203. Prohibited custody transfer.

(1) Except as provided in subsection (2) of this section, a parent, guardian, or custodian of a child or an individual with whom a child has been placed for adoption may not transfer custody of the child to another person with the intent, at the time of the transfer, to abandon the rights and responsibilities concerning the child.

(2) A parent, guardian, or custodian of a child, or an individual with whom a child has been placed for adoption, may transfer custody of the child to another person with the intent, at the time of the transfer, to permanently abandon the rights and responsibilities concerning the child only through:

(a) A legal adoption or guardianship proceeding;

(b) Judicial award of custody;

(c) Other judicial or tribal action; or

(d) Colorado's safe haven law as described in section 19-3-304.5.

(3) A person may not receive permanent custody of a child, or act as an intermediary if permitted under other law of this state, in a transfer of custody of a child if the person knows or reasonably should know the transfer violates subsection (1) of this section. This prohibition does not apply if the person, as soon as practicable after the transfer, notifies the state department of the transfer or takes appropriate action to establish custody under subsection (2) of this section.

(4) Violation of this section is a class 2 misdemeanor.

(5) Violation of subsection (1) of this section is not established solely because a parent, guardian, or custodian who transfers custody of a child does not regain custody.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 301, § 1, effective April 17.

19-5.5-204. Authority and responsibility of a county department of human or social services.

(1) If a county department receives a report that a person has transferred or intends to transfer custody of a child in violation of section 19-5.5-203 (1), the county department may conduct an assessment, and, as provided by other laws of this state, take appropriate action to protect the welfare of the child.

(2) If a county conducts an assessment for a child adopted or placed through an intercountry adoption, and determines that a person has transferred or intends to transfer custody of a child in violation of section 19-5.5-203, the county department shall forward the assessment to the state department. Upon receiving the assessment, the state department shall:

(a) Prepare a report on the welfare and plan for permanent placement of the child; and

(b) Provide a copy of the report to the United States department of state, bureau of consular affairs, office of children's issues.

(3) This article 5.5 does not prevent a county department from taking appropriate action under other law of this state.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 302, § 1, effective April 17.

19-5.5-205. Prohibited soliciting or advertising.

(1) Except as provided in section 19-5-213.5, a person may not solicit or advertise to:

(a) Identify a person to whom to make a transfer of custody in violation of section 19-5.5-203 (1);

(b) Identify a child for a transfer of custody in violation of section 19-5.5-203 (3); or

(c) Act as an intermediary or facilitator, if permitted under other law of this state, in a transfer of custody in violation of section 19-5.5-203 (3).

(2) A violation of this section is a class 6 felony.

(3) Nothing in this section prohibits the application of section 19-5-213.5.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 302, § 1, effective April 17.

19-5.5-206. Enforcement.

The state department may investigate a possible violation of this part 2 and take legal action as provided by other law of this state.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 302, § 1, effective April 17.

PART 3

INFORMATION AND GUIDANCE

19-5.5-301. Definitions.

In this part 3, "prospective adoptive parent" means an individual who has been approved or permitted under other law of this state to adopt a child.

Source: Entire article added, (HB 23-1157), ch. 86, p. 303, § 1, effective April 17.

19-5.5-302. Scope.

(1) This part 3 applies to placement for adoption of a child who:

(a) Has been or is in foster care or institutional care;

(b) Previously has been adopted in a state;

(c) Has been or is being adopted under the law of a foreign country; or

(d) Has come or is coming to a state from a foreign country to be adopted.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 303, § 1, effective April 17.

19-5.5-303. General adoption information.

(1) Within a reasonable time before a child placement agency places a child for adoption with a prospective adoptive parent, the child placement agency must provide or cause to be provided to the prospective adoptive parent general adoption information. The information must address:

(a) Possible physical, mental, emotional, and behavioral issues concerning:

(I) Identity, loss, and trauma that a child may experience before, during, or after adoption; and

(II) A child leaving familiar ties and surroundings;

(b) The effect that the access to resources, including health insurance, may have on the ability of an adoptive parent to meet the needs of a child;

(c) Causes of disruption of an adoptive placement or dissolution of an adoption and resources available to help avoid disruption or dissolution; and

(d) Prohibitions under sections 19-5.5-203 and 19-5.5-205.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 303, § 1, effective April 17.

19-5.5-304. Information about child.

(1) Except as prohibited by other law of this state, within a reasonable time before a child placement agency places a child for adoption with a prospective adoptive parent, the child placement agency must provide or cause to be provided to the prospective adoptive parent

information specific to the child that is known to the child placement agency and material to the prospective adoptive parent's informed decision to adopt the child. The information must include:

(a) The child's family, cultural, racial, religious, ethnic, linguistic, and educational background;

(b) The child's physical, mental, emotional, and behavioral health;

(c) The child's medical history, including immunizations;

(d) The medical history of the child's genetic parents and siblings;

(e) The history of an adoptive or out-of-home placement of the child and the reason the adoption or placement ended;

(f) The child's United States immigration status;

(g) Medical, therapeutic, and educational resources, including language-acquisition training, available to the adoptive parent and child after placement for adoption or adoption to assist in responding effectively to physical, mental, emotional, or behavioral health issues; and

(h) Available records relevant to the information in subsections (1)(a) to (1)(g) of this section.

(2) If, before an adoption is finalized, additional information under subsection (1) of this section that is material to a prospective adoptive parent's informed decision to adopt the child becomes known to or reasonably obtainable by a child placement agency, the child placement agency must provide the information to the prospective adoptive parent.

(3) If, after an adoption is finalized, additional information under subsection (1) of this section becomes known to or reasonably obtainable by a child placement agency, the child placement agency must make a reasonable effort to provide the information to the adoptive parent.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 303, § 1, effective April 17.

19-5.5-305. Guidance and instruction.

(1) A child placement agency must provide or cause to be provided to the prospective adoptive parent guidance and instruction specific to the child to help prepare the parent to respond effectively to the needs of the child that are known to or reasonably ascertainable by the child placement agency.

(2) The guidance and instruction under subsection (1) of this section must address, if applicable:

(a) The potential effect on the child of:

(I) A previous adoption or out-of-home placement;

(II) Multiple previous adoptions or out-of-home placements;

(III) Trauma, insecure attachment, fetal alcohol exposure, or malnutrition;

(IV) Neglect, abuse, drug exposure, or similar adversity;

(V) Separation from a sibling or significant caregiver; and

(VI) A difference in ethnicity, race, or cultural identity between the child and the prospective adoptive parent or other child of the parent;

(b) Information available from the federal government on the process for the child to acquire United States citizenship; and

(c) Any other matter a child placement agency considers material to the adoption.

(3) The guidance and instruction under subsection (1) of this section must be provided:

(a) For adoption of a child residing in the United States a reasonable time before the adoption is finalized; or

(b) For an intercountry adoption, in accordance with the federal law.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 304, § 1, effective April 17.

19-5.5-306. Information about adoption assistance and resources.

(1) On request of a child who was placed for adoption or the child's adoptive parent, the child placement agency or the county department shall provide information about how to obtain adoption assistance and resources:

(a) To assist the child or parent to respond effectively to adjustment, behavioral health, and other challenges; and

(b) To help preserve the placement or adoption.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 305, § 1, effective April 17.

19-5.5-307. Child placement agency compliance.

(1) The state department shall investigate an allegation that a child placement agency has failed to comply with this part 3 and commence an action for injunctive or other relief or initiate an administrative proceeding against the child placement agency to enforce this part 3.

(2) The state department may initiate a proceeding to determine whether a child placement agency has failed to comply with this part 3. If the state department finds that the child placement agency has failed to comply, the state department may suspend or revoke a child placement agency's license or take other action permitted by law of this state.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 305, § 1, effective April 17.

19-5.5-308. Rulemaking authority.

The state board of human services may adopt rules to implement sections 19-5.5-303 to 19-5.5-306.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 305, § 1, effective April 17.

PART 4

MISCELLANEOUS PROVISIONS

19-5.5-401. Uniformity of application and construction.

In applying and construing this uniform act, a court must consider the promotion of uniformity of the law among jurisdictions that enact it.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 306, § 1, effective April 17.

19-5.5-402. Relation to electronic signatures in global and national commerce act.

This article 5.5 modifies, limits, or supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., as amended, but does not modify, limit, or

supersede 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. sec. 7003(b).

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 306, § 1, effective April 17.

19-5.5-403. Transitional provisions.

(1) Part 2 of this article 5.5 applies to:

(a) A transfer of custody on or after April 17, 2023; and

(b) Soliciting or advertising on or after April 17, 2023.

(2) Part 3 of this article 5.5 applies to placement of a child for adoption more than sixty days after April 17, 2023.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 306, § 1, effective April 17.

ARTICLE 6

Support Proceedings

19-6-101. Initiation of proceedings - support - repayment of birth-related debt.
19-6-101.5. Amendments of proceedings - adding children.
19-6-102. Venue.
19-6-103. Summons.
19-6-104. Hearing - orders.
19-6-105. Failure to comply.
19-6-106. Child support - guidelines - schedule of basic support obligations.
19-6-107. Orders for allocation of parental responsibilities in support actions.

19-6-101. Initiation of proceedings - support - repayment of birth-related debt.

(1) (a) Proceedings to compel parents, or other legally responsible persons, to support a child or children may be commenced by any person filing a verified petition in the court of the county where the child resides or is physically present, or in the county where the obligor parent resides, or in any county where public assistance is or was being paid on behalf of the child.

(b) Repealed.

(2) A petition under this article may be filed at any time prior to the twenty-first birthday of the child.

(3) Once the court has acquired jurisdiction, such jurisdiction shall be retained regardless of the child's place of residence or physical presence.

(4) The minority of the petitioner or of the respondent shall in no way affect the validity of the proceedings.

(5) Actions brought under this article shall be entitled, "The People of the State of Colorado in the Interest of ....., children, upon the Petition of ....., petitioner, and concerning ....., respondent."

(6) A petition filed pursuant to this article shall contain the following advisements:

(a) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S.; and

(b) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 89:** (1) and (2) amended, p. 795, § 22, effective July 1. **L. 91:** (1) amended, p. 254, § 14, effective July 1. **L. 95:** (1) amended, p. 1398, § 3, effective July 1. **L. 2005:** (6) added, p. 379, § 6, effective January 1, 2006. **L. 2006:** (6)(b) amended, p. 516, § 3, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective June 30, 1999. (See L. 95, p. 1398.)

ANNOTATION

Law reviews. For note, "Enforcement of Support Duties in Colorado", see 33 Rocky Mt. L. Rev. 70 (1960).

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

This article provides for a simple civil proceeding requiring parents to support their children, as their means permit. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498 P.2d 1157 (1972).

This section, from the time it became a law, requires a defendant, as the father of a child, to contribute to its support and maintenance, thus relieving the mother or others upon whom the burden may chance to fall. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957) (decided under former § 22-1-1, CRS 53).

Juvenile court maintains jurisdiction in support cases where the child's parents are married or where the paternity of the child is not contested. Marital status is irrelevant and does not preclude a support action under this article. People ex rel. S.E.G., 213 P.3d 1033 (Colo. App. 2009).

Duty of support until 21 years or emancipation not abrogated. There is no general mandate in subsection (2) of this section or former § 19-1-103 (3) or § 13-22-101 which abrogates the duty of support a parent has toward his minor child until the age of 21 or emancipation. In re Weaver, 39 Colo. App. 523, 571 P.2d 307 (1977).

The language with regard to support is specifically not limited to parents. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Custodian with legal obligation to support can be compelled to pay. The custodian of an adjudicated child in need of supervision with a legal obligation to support that child is properly within the scope of the juvenile court jurisdiction and can be compelled to pay support for the maintenance of said child. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

And such person can intervene in child in need of supervision proceedings. Since the juvenile court has the power to compel legally responsible persons to support a child, it necessarily follows that a person furnishing support to a child in accordance with an order of the juvenile court has the right to intervene in a child in need of supervision proceeding as an interested party for the purpose of recovering the cost of that support. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Although the Colorado Children's Code is designed to primarily protect the welfare and safety of Colorado children, nothing in the code requires that the child to be supported reside in the state. Therefore, father's argument that the trial court lacked subject matter jurisdiction to enter a support order where the children to be supported lived in Russia was invalid. People ex rel. A.K., 72 P.3d 402 (Colo. App. 2003).

There is no ambiguity in the wording of former articles 6 and 7 (new articles 4 and 6) of the Colorado Children's Code. It is quite clear that paternity and support issues are to be determined under article 6 and article 7 is to be used only for the determination of support where paternity is not in dispute. It was error for the court to have conducted a paternity proceeding under the petition for support proceedings. People in Interest of L.B., 29 Colo. App. 101, 482 P.2d 1010 (1970), aff'd, 179 Colo. 11, 498

P.2d 1157 (1972); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

Determination of paternity precedes support obligation. The provision for support proceedings presupposes that paternity has been established either by a paternity proceeding or by acknowledgment of paternity by the father in writing or by furnishing support. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972).

Under the present statutory scheme, where paternity is contested, a support order cannot be entered under this article absent a paternity determination made within the framework provided by the article 4 of this title. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

Article 4 of this title provides the procedures by which a paternity determination is to be made when paternity is disputed. In the absence of a paternity determination, no child support order can be made against a putative father pursuant to this article unless paternity is uncontested. This is so because, before any support order can be entered under this article, the court must find that the person from whom support is sought is a parent or other person legally obligated to support the child. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

In cases in which paternity is disputed, whether in a proceeding under this article or article 4, paternity must be determined according to the procedures outlined under this article before the legal obligation for support can be imposed. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

The issue of paternity may not be adjudicated as an adjunct of support proceedings since the exclusive means of adjudicating contested paternity is under the article concerning paternity proceedings. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972).

Limitations bar to paternity actions did not violate equal protection. A mother could bring actions to establish paternity for purposes of support only under article 6 of the Colorado Children's Code, as it existed prior to its 1977 repeal and reenactment, providing for paternity proceedings, and if she failed to bring them before the child reaches the age of five years, the actions were thereafter barred, and such a result did not violate the equal protection guaranty of the constitution. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972).

Nor did different limitations period for support actions. When a former statute provided that no proceeding to establish paternity or furnish support should be initiated after a child was five years old unless the father had acknowledged paternity in writing or by furnishing support, whereas proceedings to compel fathers of illegitimate children or other legally responsible persons to support a child might be filed any time before the child's eighteenth birthday, there was no violation of the equal protection clause. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972).

Where child was conceived and born during wedlock and is presumed legitimate until the presumption is rebutted, petitioner cannot be deprived of the right to

proceed under this article by the mere denial of paternity by respondent. People in Interest of R.M., 37 Colo. App. 209, 548 P.2d 1282 (1975); B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

Effect of presumption of legitimacy in support proceedings. A child born in wedlock who has the benefit of the strong presumption of legitimacy should reasonably be able to rely on that presumption in seeking support absent a judicial action by the presumed father challenging paternity. B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

Respondent's bare denial of paternity is insufficient to require termination of proceedings under this article. People in Interest of R.M., 37 Colo. App. 209, 548 P.2d 1282 (1975).

Effect of affirmative defense of nonaccess and denial of paternity. Where a proceeding for support is commenced within the statutory period allowed by subsection (2) and the respondent denies paternity and asserts the affirmative defense of nonaccess, the proceeding then becomes one under the Uniform Parentage Act to establish paternity and to compel support. People in Interest of S.K.H., 42 Colo. App. 126, 594 P.2d 594 (1979).

19-6-101.5. Amendments of proceedings - adding children.

(1) In any existing case commenced under this article, if it is alleged that another child has been conceived of the parents named in the existing case, that child shall be added to the existing case if at least one of the presumptions of paternity specified in section 19-4-105 applies for the purpose of establishing paternity and child support. The caption shall be amended to include the added child.

(2) The party amending the petition pursuant to subsection (1) of this section shall serve the amended petition with the new caption upon the other parties in the manner set forth in section 19-6-103 (2).

(3) Once the court has acquired jurisdiction over the proceedings, such jurisdiction shall be retained regardless of the added child's physical presence or place of residence.

(4) An amended petition filed pursuant to this article shall comply with the requirements set forth in section 19-6-101.

(5) Notwithstanding the provisions of subsection (1) of this section, in any case where there exists more than one alleged or presumed father for a child pursuant to section 19-4-105, a new case shall be commenced for that child to determine the child's paternity, establish child support, and address any other related issues. If it is determined that the child is the child of parents named in an existing case, the cases shall be consolidated into the initial action pursuant to rule 42 of the Colorado rules of civil procedure.

Source: L. 2008: Entire section added, p. 1349, § 5, effective January 1, 2009.

19-6-102. Venue.

A petition filed under this section shall be brought in the county in which the child resides or is physically present, or in any county where the obligor parent resides, or in any county where public assistance is or was being paid on behalf of the child.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 89:** Entire section amended, p. 795, § 23, effective July 1. **L. 91:** Entire section amended, p. 255, § 15, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-6-103. Summons.

(1) Upon filing of the petition, the clerk of the court, the attorney or licensed legal paraprofessional for the petitioner, or the delegate child support enforcement unit shall issue a summons stating the substance of the petition and requiring the respondent to appear at the time and place set for hearing on the petition.

(2) Service of the summons shall be by personal service as provided in the Colorado rules of civil procedure. In addition to any other method provided by rule or statute, including rule 4(e) of the Colorado rules of civil procedure, when there is a basis for personal jurisdiction over an individual living outside this state pursuant to section 14-5-201, C.R.S., service may be accomplished by delivering a copy of the summons, together with a copy of the petition upon which it was issued, to the individual served. Such service may be by private process server or by sending such copies to such individual by certified mail with proof of actual receipt by such individual.

(3) The hearing shall be set for a day not less than ten days after service is completed or on such later date as the court may order.

Source: L. 87: Entire title R&RE, p. 812, § 1, effective October 1. **L. 89:** (1) amended, p. 795, § 24, effective July 1. **L. 93:** (2) amended, p. 1564, § 15, effective September 1. **L. 96:** (1) amended, p. 613, § 16, effective July 1. **L. 2005:** (2) amended, p. 379, § 7, effective April 22. **L. 2024:** (1) amended, (HB 24-1291), ch. 131, p. 473, § 25, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

Denver department of social services not stranger to proceedings. Where the Denver department of social services was before the juvenile court when it was awarded and accepted custody of a minor and it initially recommended placement of the child, its contention that it was in effect a stranger to the proceedings, being neither served with a summons nor given a hearing, is totally without support. City & County of Denver v. Brockhurst Boys Ranch, Inc., 195 Colo. 22, 575 P.2d 843 (1978).

19-6-104. Hearing - orders.

(1) If the court or delegate child support enforcement unit finds that the obligor has an obligation to support the child or children mentioned in the petition or notice, the court or delegate child support enforcement unit may enter an order directing the obligor to pay such sums for support as may be reasonable under the circumstances, taking into consideration the factors found in section 19-4-116 (6). The court or delegate child support enforcement unit may also enter an order directing the appropriate party to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period that occurred prior to the month the child support obligation begins under this article 6.

(1.5) At the hearing, the court shall give a verbal advisement to the parties that a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S. The judge or magistrate shall further advise the parties that, if genetic tests are not obtained prior to the legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date.

(2) If, at or before the hearing, the respondent waives his right to a hearing and stipulates to the entry of a support order, such stipulation may be presented to the court. If the court finds that

the amount stipulated is reasonable under the circumstances, it may enter an order of support in accordance with the stipulation.

(3) The court may enter a temporary support order to remain effective pending a final disposition of the proceeding.

(3.5) Upon the filing of a proceeding under this article 6 or upon the filing of a proceeding originating under article 13.5 of title 26, the judge or magistrate shall advise the parties that subsequent to an adjudication of parentage, upon motion, the court shall enter an order allocating parental responsibilities pursuant to section 14-10-124 (1.5); except that, in matters involving a nonresident party, the court shall first determine whether it has authority to issue an order allocating parental responsibilities pursuant to article 13 of title 14. Nothing in this subsection (3.5) shall be construed to authorize a delegate child support enforcement unit to negotiate or mediate the allocation of parental responsibilities in any proceeding initiated under this article or article 13.5 of title 26.

(4) The court may modify an order of support only in accordance with the provisions of and the standard for modification in section 14-10-122, C.R.S.

(5) The court may order that the respondent initiate the inclusion of the child or children under a medical insurance policy currently in effect for the benefit of the respondent, purchase medical insurance for the child or children, or, in some other manner, provide for the current or future medical needs of the child or children. At the same time, the court may make a determination of whose responsibility it shall be to pay required medical insurance deductibles and copayments.

(5.5) All child support orders entered pursuant to this article 6 must include the dates of birth of the parties and of the children who are the subjects of the order and the parties' residential and mailing addresses.

(6) Any order made pursuant to this article shall not be exclusive.

(7) The court may assess the costs of the action as part of its order.

Source: L. 87: Entire title R&RE, p. 812, § 1, effective October 1. **L. 89:** (4) amended, p. 795, § 25, effective July 1. **L. 93:** (5.5) added, p. 1564, § 16, effective September 1. **L. 94:** (1) amended, p. 1542, § 17, effective May 31. **L. 97:** (5.5) amended, p. 1277, § 18, effective July 1. **L. 99:** (5.5) amended, p. 1087, § 6, effective July 1. **L. 2005:** (3.5) added, p. 379, § 9, effective July 1; (1.5) added, p. 379, § 8, effective January 1, 2006. **L. 2019:** (5.5) amended, (HB 19-1215), ch. 270, p. 2553, § 4, effective July 1. **L. 2023:** (3.5) amended, (SB 23-173), ch. 330, p. 1976, § 9, effective July 1; (1) amended, (SB 23-173), ch. 330, p. 1976, § 8, effective September 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (5.5), see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

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

This section, compelling the father to care for and support an unborn child and its mother, is constitutional. Cederquist v. Archuleta, 127 Colo. 41, 253 P.2d 431 (1953) (decided under former CSA, C. 33, § 1).

Article 4 of this title provides the procedures by which a paternity determination is to be made when paternity is disputed. In the absence of a paternity determination, no child support order can be made against a putative father pursuant to this article unless paternity is uncontested. This is so because, before any support order can be entered under this article, the court must find that the person from whom support is sought is a parent or other person legally obligated to support the child. People in Interest of R.T.L., 780 P.2d 508 (Colo. 1989).

Modification of a child support order entered in a parentage action is governed by the provisions of this section which requires a showing of a "change in relevant circumstances". M.H.W. by M.E.S. v. D.J.W., 757 P.2d 1129 (Colo. App. 1988).

Juvenile court acting under § 19-1-104 (6) may enter child support order, which order must follow the provisions of this article 6 and the child support guidelines set forth in § 14-10-115. Where delinquency court granted stipulation allocating parental responsibilities to mother, in determining support, court was required to follow the provisions of this article 6, including § 19-6-106, which in turn requires compliance with the child support guidelines. Court erred in failing to address the factors set forth in § 14-10-115. People in Interest of E.Q., 2020 COA 118, 472 P.3d 1115.

Juvenile court lacks authority to determine who a parent must designate as representative payee for parent's federal social security disability insurance (SSDI) benefits. No provision of the federal Social Security Act permits a state court to determine who should serve as representative payee. While SSDI benefits constitute income for child support purposes and may be withheld or garnished to enforce

child support orders, court erred in naming mother as father's representative payee. People in Interest of E.Q., 2020 COA 118, 472 P.3d 1115.

Trial court erred as a matter of law when it applied the standard for modification of a support order pursuant to the Uniform Dissolution of Marriage Act when the support order was entered under the Uniform Parentage Act and the standard for modification as set forth in this section should have been applied. Ashcraft v. Allis, 747 P.2d 1274 (Colo. App. 1987).

Unless an order specifically states that it is not subject to modification, a trial court may modify a lump-sum child support order. M.F. v. L.M., 780 P.2d 69 (Colo. App. 1989).

Juvenile court properly considered the father's earning ability and the parties' agreement to sell jointly owned house in determining whether an increase in child support was warranted for child born out of wedlock and the juvenile court did not abuse its discretion in ordering increased child support upon the sale of said house. M.H.W. by M.E.S. v. D.J.W., 757 P.2d 1129 (Colo. App. 1988).

The language with regard to support is specifically not limited to parents. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Court has wide discretion in determining awards of child support. People in Interest of W.M., 642 P.2d 794 (Colo. App. 1982).

Juvenile court has wide discretion in determining awards of child support and the court's decision will not be disturbed absent an abuse of discretion. M.H.W. by M.E.S. v. D.J.W., 757 P.2d 1129 (Colo. App. 1988).

Custodian with legal obligation to support can be compelled to pay. The custodian of an adjudicated child in need of supervision with a legal obligation to support that child is properly within the scope of the juvenile court jurisdiction and can be compelled to pay support for the maintenance of said child. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Rebuttal of presumption of legitimacy. Where the husband defended against a child support action on the grounds he was not the real father, the court held that the presumption that a child conceived in wedlock is the offspring of the husband is the strongest presumption known to law. It is not, however, conclusive and can only be overcome by clear and convincing proof that the husband is either impotent or had no access to the wife at any time when, according to the course of nature, conception could have occurred. People in interest of A.M.D. v. R.C.D., 29 Colo. App. 202, 481 P.2d 123 (1971).

Denver department of social services not stranger to proceedings. Where the Denver department of social services was before the juvenile court when it was awarded and accepted custody of a minor and it initially recommended placement of the child, its contention that it was in effect a stranger to the proceedings, being neither served with a summons nor given a hearing,

is totally without support. City & County of Denver v. Brockhurst Boys Ranch, Inc., 195 Colo. 22, 575 P.2d 843 (1978).

No authority to assess costs against state. Former subsection (6) (now subsection (7)) does not give the court of appeals the authority to assess costs against the state for a frivolous appeal. People in Interest of W.M., 643 P.2d 794 (Colo. App. 1982).

Applied in B.G. v. S.G., 199 Colo. 403, 609 P.2d 121 (1980).

19-6-105. Failure to comply.

(1) A person failing to comply with an order of the court entered under this article shall be found in contempt of court in accordance with section 14-14-110, C.R.S.

(2) The court shall have authority to issue writs of execution for the collection of accrued and unpaid installments of support orders.

Source: L. 87: Entire title R&RE, p. 812, § 1, effective October 1. **L. 89:** (1) amended, p. 796, § 26, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

ANNOTATION

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

The language with regard to support is specifically not limited to parents. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

Custodian with legal obligation to support can be compelled to pay. The custodian of an adjudicated child in need of supervision with a legal obligation to support that child is properly within the scope of the juvenile court jurisdiction and can be compelled to pay support for the maintenance of said child. People in Interest of R.J.G., 38 Colo. App. 148, 557 P.2d 1214 (1976).

19-6-106. Child support - guidelines - schedule of basic support obligations.

The provisions of section 14-10-115, C.R.S., shall apply to all child support obligations, established or modified, as a part of any proceeding under this article, whether filed on or subsequent to July 1, 1988.

Source: L. 88: Entire section added, p. 746, § 17, effective July 1.

ANNOTATION

Juvenile court acting under § 19-1-104 (6) may enter child support order, which order must follow the provisions of this article 6 and the child support guidelines set forth in § 14-10-115. Where delinquency court granted stipulation allocating parental responsibilities to mother, in determining support, court was required to follow the provisions of this article 6, which in turn requires compliance with the child support guidelines. Court erred in failing to address the factors set forth in § 14-10-115. People in Interest of E.Q., 2020 COA 118, 472 P.3d 1115.

19-6-107. Orders for allocation of parental responsibilities in support actions.

Upon the filing of any proceeding under this article 6 or under article 13.5 of title 26, the court shall, as soon as practicable, enter a temporary or permanent order allocating parental responsibilities that allocates decision-making responsibility and parenting time for the child until further order of the court. This section does not apply to any parentage determination made pursuant to section 14-5-402.

Source: L. 2023: Entire section added, (SB 23-173), ch. 330, p. 1977, § 10, effective July 1.

ARTICLE 7

Youth in Foster Care

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PART 1

PROTECTIONS FOR YOUTH IN FOSTER CARE

19-7-101. Rights of children and youth in foster care - written notice - reporting - legislative declaration.

(1) (a) The general assembly finds and declares that:

(I) Children and youth in foster care are temporarily or permanently separated from their parents and are the responsibility of the state of Colorado;

(II) These children and youth are in a unique situation that requires special safeguards, making it vital to establish rights for children and youth in foster care;

(III) The United States department of health and human services administration of children and families has stressed that every child and youth who is unable to live with the child's or youth's parents is entitled to a safe, loving, and affirming foster care placement, regardless of the child's or youth's sexual orientation, gender identity, or gender expression;

(IV) Approximately three thousand six hundred children or youth are currently in out-of-home foster placements in Colorado; and

(V) Children and youth in foster care, both in Colorado and nationwide, tend to have poorer outcomes than other children and youth, including:

(A) One-third of children or youth in foster care in Colorado who age out of foster care become homeless within three years;

(B) Children and youth in foster care in Colorado change schools an average of three-and-one-half times per year;

(C) Approximately thirty percent of youth in foster care in Colorado graduate from high school, compared to eighty-two percent of the general student population;

(D) In Colorado, youth in foster care have lower graduation rates than youth experiencing homelessness;

(E) Nationwide, more than half of children and youth in foster care receive a psychiatric or mental health diagnosis, compared to sixteen and sixty one-hundredths percent of income-eligible children and youth on medicaid;

(F) Nationwide, one out of four children and youth in foster care between the ages of six and seventeen are administered at least one psychotropic medication;

(G) Thirty percent of children and youth in foster care nationwide identify as LGBTQ+, and these children and youth have an additional layer of trauma that accompanies being rejected or mistreated because of their sexual orientation, gender identity, or gender expression;

(H) Research shows that children and youth in foster care who identify as LGBTQ+ are more than twice as likely to report being treated poorly by the foster care system;

(I) Approximately ten percent of children and youth in foster care nationwide are entitled to social security benefits, either because their parent or parents have died or because they have a physical or intellectual disability; and

(J) Children and youth who are in foster care are at an increased risk of incarceration, with twenty-six percent of youth who are twenty-one years of age and who were formerly in foster care in Colorado having been incarcerated within the past two years, while youth who are twenty-one years of age and who are in the general population have approximately a seventeen percent likelihood of having been incarcerated in the past two years.

(b) Therefore, the general assembly declares that to protect the children and youth who are the responsibility of the state, a statutory bill of rights is established for these children and youth, along with a system to notify children and youth of their rights and a mechanism to enforce those rights. The statutory rights established in this section are not intended to limit or supersede the constitutional rights of parents, nor do they limit any other constitutional or statutory rights afforded to children and youth. This bill of rights is intended to improve the health, well-being, and safety of children and youth in foster care by defining the rights of children and youth in foster care, clarifying the authority of the courts to enforce these rights, and providing children and youth with notice of their rights.

(2) A child or youth in foster care or participating in the foster youth in transition program, created in part 3 of this article 7, but excluding a child or youth detained by or committed to the care and physical custody of the division of youth services in the department of human services, has the following rights:

(a) Fair and equal access, including:

(I) Freedom from discrimination or harassment on the basis of actual or perceived race or ancestry, ethnic group, national origin, religion, sex, sexual orientation, gender identity, gender expression, disability, marital status, familial status, source of income, military status, or HIV status;

(II) Freedom of thought, conscience, cultural and ethnic practice, and religion, including the right to attend or refuse to attend cultural, ethnic, and religious services and activities;

(III) Expression of the child's or youth's gender identity and to be referred to by the child's or youth's preferred name and gender pronouns;

(IV) Freedom from threats, punishment, or retaliation for asking questions, stating concerns, or making complaints about a violation of the rights and protections established in this article 7;

(V) Access to services, placement, and state and federal programs and services for which the child or youth is eligible;

(VI) Developmentally appropriate notification of any benefits for which the child or youth is eligible or receiving, including written notification of who is serving as representative payee, when applicable; and

(VII) If there is a representative payee who accepts payments for a child or youth, an accounting of the use of those payments when requested by the child or youth and on an annual basis;

(b) Appropriate placement and care, including:

(I) Appropriate adult guidance, support, and supervision in a safe, healthy, and comfortable environment in which the child or youth is treated with fairness, respect, and dignity;

(II) Consideration of the child's or youth's preference regarding the child's or youth's placement;

(III) Freedom from physical, sexual, emotional, or other abuse; corporal punishment; neglect; or any other form of inhumane treatment, such as exploitation or trafficking;

(IV) Placement in the least restrictive setting that is appropriate to the child's or youth's needs, and receipt of the services and supports necessary to maintain that placement;

(V) Freedom from abandonment or being locked in a room, building, or premises, or being subjected to isolation or other physical or medical restraint, unless otherwise authorized by statute;

(VI) Placement with a foster care provider who is aware of and understands the child's or youth's unique history as it relates to the child's or youth's care and who possesses the appropriate knowledge and skills to provide for the child's or youth's needs;

(VII) Application of the reasonable and prudent parent standard as required by federal law;

(VIII) Return to the custody of a parent or legal guardian, consistent with applicable legal standards and considering the preferences of the child or youth;

(IX) Timely court proceedings and determinations about the child's or youth's placement;

(X) Effective case management and planning that prioritizes the safe return of the child or youth to the child's or youth's parents, legal guardians, relatives, or kin, or moving the child or youth to other forms of permanent placement, if necessary;

(XI) A requirement that the representative payee for the child or youth, including the department of human services if it is acting as the representative payee, use any benefits the child or youth receives to meet the child's or youth's individual needs after the representative payee meets with the child or youth to ascertain the child's or youth's current and foreseeable needs; and

(XII) Timely notification to the social security administration to initiate the transfer of benefits from a representative payee when a child or youth who is receiving benefits leaves the custody of the department of human services;

(c) Access and communication, in a setting that provides privacy for in-person or other methods of contact, with professionals and other supports, including:

(I) Persons working on the child's or youth's behalf, including, but not limited to, caseworkers, the child's or youth's guardian ad litem or counsel for youth and their legal teams, mental health professionals, tribe, foster youth advocates and supporters, court-appointed special advocates, education rights holders, and probation officers. The child's or youth's contact with the child's or youth's guardian ad litem, counsel for youth, other attorneys, and members of the child's or youth's legal team must protect the applicable legal privileges and confidentiality.

(II) The child's or youth's guardian ad litem or counsel for youth, the child protection ombudsman, county departments of human or social services, or the department of human services regarding any questions, concerns, or violations of the rights and protections established in this article 7; and

(III) Connections to the child's or youth's community and supports, including communication and contact with people outside the foster care system who are important to the child or youth, unless otherwise limited by law or court order;

(d) Confidentiality and privacy, including:

(I) Confidentiality of all juvenile court records, consistent with existing law;

(II) Freedom from unreasonable searches, limitation of use, or taking of personal belongings or other unreasonable invasions of privacy; and

(III) Reasonable expectations of privacy to make and receive telephone calls and send and receive text messages, email, and postal mail;

(e) Education, including:

(I) Receipt of a free and appropriate education, access to transportation to educational institutions, and an opportunity to participate in sports and extracurricular, cultural, personal enrichment, and social activities consistent with the child's or youth's age and developmental level, including access to computer technology and the internet as necessary for the child's or youth's education; and

(II) School stability that presumes the child or youth will remain in the school of origin, as defined in section 22-32-138, in which the child or youth is enrolled at the time of placement, unless remaining in that school is not in the child's or youth's best interests;

(f) Basic essentials, including:

(I) Adequate and gender- and culturally affirming food, clothing, hygiene products, and necessary hygiene services;

(II) Personal allowance or employment opportunities appropriate to the child's or youth's age and developmental level, including appropriate opportunities to experience the use and value of money by making purchases for items according to the child's or youth's choice; and

(III) Personal belongings, including wearing the child's or youth's own clothing, having a safe place to store personal belongings, and having personal belongings transported in appropriate luggage with the child or youth during or shortly after a change of placement. Personal belongings stored and transported after a change of placement must be maintained in the same or better condition.

(g) Health care, including:

(I) Adequate and appropriate medical, dental, vision, mental health, and substance use disorder services;

(II) Reproductive and sexual health care consistent with Colorado state law;

(III) Freedom from the administration of prescription medication or other chemical substances, unless authorized by a physician or, when necessary, court order, after an individualized assessment of the child or youth, including a consultation with the child or youth, and with the child's or youth's consent, consistent with Colorado state law;

(IV) Access to prescribed medications during a placement change or similar transition so the child or youth does not experience a disruption in the availability of necessary prescription medication; and

(V) Notification of the medications that were prescribed to the child or youth and the purpose for each medication for the child or youth;

(h) Participation in legal proceedings and case planning, including:

(I) Appointment of a guardian ad litem or counsel for youth pursuant to sections 19-3-203 and 19-7-308;

(II) Attending and fully participating in all hearings related to the child's or youth's case, including access to appropriate transportation for the child's or youth's court proceedings, and the opportunity to be heard separately when deemed necessary by the court pursuant to section 19-1-106 (5);

(III) At the child's or youth's request, allowing certain people to be present for the child's or youth's court proceedings that take place pursuant to section 19-1-106;

(IV) Consulting with the court regarding the child's or youth's permanency goals pursuant to section 19-3-702 (1)(a);

(V) As appropriate to a child's or youth's age and developmental level, being informed of and participating in the development of the child's or youth's case plan, consistent with state and federal law; and

(VI) As appropriate to the child's or youth's age and developmental level, participation in and accompaniment of supports to meetings about the child's or youth's court proceedings; and

(i) The necessities to be self-sufficient during the transition to adulthood, including:

(I) Consistent with the child's or youth's developmental level, assistance with establishing a bank account, including identifying institutions where a child or youth may open a bank account, obtaining documents necessary to open an account, learning how to spend a reasonable amount of money, and managing personal income. This subsection (2)(i)(I) does not create an obligation to fund the child's or youth's bank account if one is created.

(II) Having access to information regarding the work and educational options available to the child or youth, including, but not limited to, information regarding available financial aid and postsecondary education support consistent with state law;

(III) Being allowed to work and develop job skills, consistent with state law and the child's or youth's age and developmental level;

(IV) Obtaining or receiving a free annual credit report from the department of human services or a county department of human or social services and the additional credit-related and identity theft protections provided in section 19-7-102 if the child or youth is in the legal custody of a county department of human or social services and is fourteen years of age or older;

(V) When the youth is eighteen years of age or older and leaving foster care, being provided with the youth's birth certificate, social security card, immigration documents, health insurance information, medical records, education records, either a driver's license or a state-issued identification card, written information concerning the youth's family history and contact information for siblings, if appropriate, and proof of foster care pursuant to section 19-3-702 (4)(d);

(VI) Notifying a youth who is turning sixteen years of age of the youth's eligibility for the foster youth in transition program, created in part 3 of this article 7;

(VII) Assisting a youth in applying for benefits the youth is eligible for or currently receiving, to ensure that benefits continue once the youth turns eighteen years of age or

transitions out of foster care, including redetermination for the purposes of social security benefits; and

(VIII) Driving instruction for youth fifteen years of age and older pursuant to section 26-5-115.

(3) The office of the child's representative shall develop a written notice of the rights enumerated in subsection (2) of this section. The office of the child's representative shall develop the notice with input from youth with lived experience. The notice must include contact information for:

(a) The child's or youth's appointed attorney;

(b) The office of the child protection ombudsman;

(c) The appropriate county department of human or social services; and

(d) The department of human services.

(4) The county department of human or social services shall provide each child or youth who is five years of age or older with the written notice developed pursuant to subsection (3) of this section at the time of the child's or youth's initial placement in foster care, at each placement change, and at least annually. The notice must be in the child's or youth's primary language.

(5) Certified and licensed foster placements for children and youth shall post the written notice on the premises in a place where children and youth have access. The department of human services shall ensure compliance with this section as part of its oversight process of certified and licensed homes for youth.

(6) Sua sponte or upon motion, a juvenile court may issue any orders to any party to ensure the child or youth is provided the rights enumerated in subsection (2) of this section.

(7) A juvenile court shall not limit or deny the rights enumerated in subsection (2) of this section unless the court finds by clear and convincing evidence that there are extraordinary circumstances and the limitation or denial is necessary for the safety of the child or youth in foster care. This subsection (7) is applicable to only the rights enumerated in this section and does not alter the hearing requirements or standards otherwise established in this title 19.

(8) The rights enumerated in subsection (2) of this section are a broad expression of the rights of children and youth residing in foster care and are not exhaustive of all rights set forth in the United States constitution and the Colorado constitution, federal and state statutes, and case law.

(9) The office of the child protection ombudsman shall include in its annual report the number of complaints received related to the rights enumerated in this section, including the rights being violated or youth being unaware of the rights.

Source: L. 2011: Entire article added, (SB 11-120), ch. 102, p. 319, § 1, effective August 10. **L. 2013:** (1) amended, (HB 13-1300), ch. 316, p. 1677, § 41, effective August 7. **L. 2015:** (2) amended, (SB 15-087), ch. 263, p. 1020, § 14, effective June 2. **L. 2017:** IP(1) amended, (HB 17-1329), ch. 381, p. 1978, § 44, effective June 6. **L. 2018:** IP(1) and (1)(g) amended, (SB 18-092), ch. 38, p. 433, § 79, effective August 8. **L. 2019:** (1)(p) amended, (HB 19-1219), ch. 237, p. 2356, § 6, effective August 2. **L. 2021:** (1)(t) amended, (HB 21-1108), ch. 156, p. 892, § 21, effective September 7. **L. 2022:** (1)(bb) amended, (HB 22-1038), ch. 92, p. 443, § 30, effective January 9, 2023. **L. 2024:** Entire section R&RE, (HB 24-1017), ch. 122, p. 398, § 1, effective August 7.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of Colorado 2021. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

19-7-102. Protection against identity theft.

(1) The court shall ensure that each youth in foster care who is in the legal custody of a county department of human or social services or the department of human services and who is at least fourteen years of age obtains or receives free annual credit reports from the department of human services or a county department of human or social services. The county department of human or social services or the department of human services shall inform the court with jurisdiction over the youth, if any, of any inaccuracies in a report and refer the matter to a governmental or nonprofit entity on the referral list developed pursuant to subsection (2) of this section for assistance in interpreting and resolving any inaccuracies in a report if the credit report shows evidence of possible identity theft. The youth's counsel for youth shall advise the youth of possible consequences of and options to address the possible identity theft, including the right to report the matter to law enforcement and seek possible prosecution of the offender.

(2) (a) On or before July 31, 2012, the department of human services shall develop, in consultation with county departments of human or social services, a referral list of governmental and nonprofit entities that are authorized to assist a youth in foster care who has found evidence of possible identity theft on his or her credit report. An entity on the referral list developed pursuant to this subsection (2) is authorized to take any necessary remedial actions to clear the youth's credit record and shall report the results of its actions to the department of human services or the county department of human or social services with legal custody of the youth.

(b) In compiling the referral list pursuant to subsection (2)(a) of this section, the state department of human services, and any county departments of human or social services consulted therein, are not subject to liability pursuant to the extent provided by article 10 of title 24.

Source: L. 2011: Entire article added, (SB 11-120), ch. 102, p. 322, § 1, effective August 10. **L. 2013:** (1) and (2)(a) amended, (SB 13-047), ch. 359, p. 2107, § 1, effective May 28. **L. 2018:** (2)(b) amended, (SB 18-092), ch. 38, p. 434, § 80, effective August 8. **L. 2022:** (1) amended, (HB 22-1038), ch. 92, p. 444, § 31, effective January 9, 2023. **L. 2024:** (1) amended, (HB 24-1017), ch. 122, p. 406, § 2, effective August 7.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

19-7-103. Access to extracurricular activities - legislative declaration - rules.

(1) The general assembly finds and declares that it is important for youth in foster care, excluding those in the custody of the division of youth services or a state mental hospital, to have increased access to normative, developmentally appropriate extracurricular activities to help prepare them for independence. Foster parents and group home parents or group center administrators shall make a reasonable effort to allow a youth in their care to participate in extracurricular, cultural, educational, work-related, and personal enrichment activities. The department of human services shall promulgate rules for the implementation of this section. The rules must address policies, including but not limited to waiver of any fingerprint-based criminal history records checks for community entities, excluding all individuals required to obtain a fingerprint-based criminal history records check pursuant to section 26-6-912 or 26.5-5-316, providing extracurricular activities and guidelines for determining in what situations it is appropriate to waive fingerprint-based criminal history records checks, to allow youth in foster care, excluding those in the custody of the division of youth services or a state mental hospital, who are twelve years of age and older to participate in age-appropriate extracurricular enrichment, social activities, and activities designed to assist those youth to make the transition to independence, build life skills, and enhance opportunities to make positive connections.

(2) If the state department of human services or a county department of human or social services waives the fingerprint-based criminal history record checks pursuant to subsection (1) of this section, the state department of human services or county department of human or social services are not subject to liability pursuant to the extent provided by article 10 of title 24.

Source: L. 2011: Entire article added, (SB 11-120), ch. 102, p. 322, § 1, effective August 10. **L. 2017:** (1) amended, (HB 17-1329), ch. 381, p. 1979, § 45, effective June 6. **L. 2018:** (2) amended, (SB 18-092), ch. 38, p. 434, § 81, effective August 8. **L. 2022:** (1) amended, (HB 22-1295), ch. 123, p. 837, § 45, effective July 1.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

19-7-104. Subjects included within training for certified foster parents and kinship foster care - rules.

(1) Rules promulgated by the state department of human services that prescribe training for foster care parents prior to placement of a child or youth must include training on the following subjects:

(a) The effects of child abuse and neglect on child development;

(b) Health issues in foster care, including health services available to children and youth in foster care;

(c) The right of a child or youth in foster care to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, or any communicable disease, including HIV, of the child or youth;

(d) The rights of siblings in foster care, as set forth in section 19-7-203; and

(e) Understanding the role of a child welfare education liaison, as described in section 22-32-138 (2).

(2) Rules promulgated by the state department of human services that prescribe post-placement annual training for foster care parents must include training on the following subjects:

(a) Health issues in foster care;

(b) The importance of child and youth self-esteem;

(c) Emancipation and independent living skills, as appropriate;

(d) The rights of siblings in foster care, as set forth in section 19-7-203; and

(e) The right of a child or youth in foster care to have fair and equal access to all available services, placement, care, treatment, and benefits, and not be subjected to discrimination or harassment on the basis of actual or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, or any communicable disease, including HIV, of the child or youth.

(3) Nothing in this section precludes the state department of human services or a county department of human or social services from requiring foster parent training in excess of the requirements in this section.

(4) The state department of human services may promulgate rules to modify the requirements of this section for kinship foster care homes, including training topics for kinship foster care certification.

Source: L. 2021: Entire section added, (HB 21-1072), ch. 43, p. 184, § 2, effective April 19. **L. 2024:** (4) added, (SB 24-008), ch. 289, p. 1932, § 3, effective September 1.

19-7-105. Federal benefits for children and youth in foster care - rules - legislative intent - legislative declaration - definitions.

(1) (a) The general assembly finds and declares that:

(I) The federal government provides various benefits and resources to promote the well-being, education, health, and safety of children or youth in foster care;

(II) In addition to their needs and circumstances making them eligible for benefits, children or youth in foster care often face significant challenges, including instability in living arrangements, lack of financial resources, and limited access to long-term care and support;

(III) Individualized allocation of federal benefits is critical for addressing the specific needs and circumstances of each child or youth in foster care, providing them with the resources necessary to promote health, education, and long-term success; and

(IV) Individualized allocation of federal benefits is consistent with the policy of the state of Colorado to prioritize the needs of children or youth in foster care, particularly their financial security and independence, as they transition to adulthood or reunification with families.

(b) The general assembly further declares its intent to ensure that all federal benefits, including survivor benefits and disability benefits, provided to children or youth in foster care are set aside specifically for the use of individual children or youth in foster care, thereby:

(I) Enabling children or youth in foster care to access benefits directly for their personal care, education, and welfare;

(II) Helping to mitigate the effects of instability by giving children or youth in foster care access to the resources they need to thrive in their current foster care environment or transition to independence; and

(III) Providing transparency and accountability in the use of federal benefits, ensuring that children or youth in foster care receive the full support intended for their unique needs.

(c) It is the intent of the general assembly that federal benefits are not generalized or pooled for institutional purposes, but are individually allocated and protected for the direct use of each child or youth in the foster care system. Individual allocation and protection of federal survivor benefits is the first step toward addressing this issue more broadly. Therefore, it is further the intent of the general assembly that:

(I) Federal survivor benefits, which are the legal entitlement of individual children and youth, not be used to cover the costs of care for children or youth in foster care;

(II) Federal survivor benefit funds be managed and distributed with oversight to ensure that they are used solely for the benefit and advancement of an individual child or youth's well-being and development; and

(III) Federal survivor benefit resources be allocated to prioritize the personal rights and needs of individual children or youth in foster care, affording them the opportunities and stability necessary to succeed, regardless of their status in the foster care system.

(d) With respect to federal supplemental security income benefits for which a child or youth may qualify based on disability, it is the intent of the general assembly that:

(I) All children and youth entering the foster care system be screened for potential eligibility for federal benefits, including federal supplemental security income;

(II) Transparency regarding how federal supplemental security income is being spent and managed on behalf of children and youth in the foster care system be increased; and

(III) With support from the state department, county departments improve their capacity and capitalize on community resources to apply for and manage federal supplemental security income on behalf of children and youth in the foster care system.

(2) As used in this section, unless the context otherwise requires:

(a) "Cost of care" has the meaning set forth in section 19-1-103.

(b) "Federal supplemental security income" means benefits authorized pursuant to Title XVI of the federal "Social Security Act", 42 U.S.C. sec. 1381 et seq.

(c) "Federal survivor benefits" means survivor benefits that are administered by the United States social security administration, veterans benefits administration, or the railroad retirement board and that are based on the eligibility of an insured parent.

(d) "Interested party" means a child or youth; the child's or youth's counsel for youth; a parent and the parent's counsel, unless parental rights have been terminated or there is a court order restricting access; the individual with whom the child or youth is currently placed; the guardian ad litem; or other party who may have information about the child's or youth's eligibility for or receipt of federal survivor benefits or federal supplemental security income.

(3) (a) Beginning on or before July 1, 2027, within ninety days after a county department assumes legal custody of or authority over a child or youth, if the county department establishes that the child or youth has a deceased parent, the county department shall determine whether the child or youth may be eligible to receive federal survivor benefits.

(a.5) (I) Beginning on or before July 1, 2028, if the county department is granted custody of or authority for out-of-home placement of a child or youth who is under six years old, the county department shall refer the child or youth to the appropriate state or local agency for developmental screening within forty-five days after the child's or youth's out-of-home placement. If the child or youth is six years old or older, the initial medical intake must include an evaluation of the child's or youth's potential growth or development issues, physical or behavioral health issues, and other factors or conditions relevant to whether the child or youth meets the requirements for federal supplemental security income.

(II) If the county department determines that a child or youth may be eligible to receive federal supplemental security income and the United States social security administration is accepting applications for federal supplemental security income, the county department shall initiate the application process pursuant to subsection (3)(d) of this section within forty-five days after receiving:

(A) The information from a screening described in subsection (3)(a.5)(I) of this section that the county department used to determine the child or youth may be eligible to receive federal supplemental security income; and

(B) The documentation necessary to complete an application for federal supplemental security income on behalf of the child or youth.

(III) When a child is enrolled in the children's habilitation residential program waiver established pursuant to section 25.5-6-903 (4), the county department shall apply for federal supplemental security income on behalf of the child if an application for federal supplemental security income has not already been submitted on the child's behalf or the child has countable resources that exceed the threshold established by the United States social security administration.

(b) Beginning on or before July 1, 2027, if a county department makes an initial determination that the child or youth is not likely to be eligible for federal survivor benefits or, beginning on or before July 1, 2028, if a county department makes an initial determination that the child or youth is not likely to be eligible for federal supplemental security income, the county

department shall review the case of the child or youth when the county department receives new, relevant information, but at least annually as part of the child's or youth's annual medical exam, to determine whether circumstances have changed to make the child or youth potentially eligible for federal survivor benefits or federal supplemental security income.

(c) In conducting an initial benefit eligibility determination or an annual review pursuant to this subsection (3), the county department shall consult with interested parties as necessary to assess the child's or youth's eligibility for federal survivor benefits or federal supplemental security income and to determine, in accordance with applicable federal law, the most likely, appropriate representative payee or fiduciary.

(c.5) (I) The county department must document why a child or youth is not reasonably expected to meet the eligibility criteria for federal supplemental security income if:

(A) The county department makes an initial or subsequent determination pursuant to this subsection (3) that the child or youth is not likely to be eligible to receive federal supplemental security income; and

(B) The county department identifies a child or youth as having a disability for the purposes of compliance with applicable state or federal reporting requirements, including reporting required pursuant to section 26-5-119 or 45 CFR 1355.44.

(II) If the county department makes an initial or subsequent determination pursuant to this subsection (3) that a child or youth is likely to be eligible to receive federal supplemental security income, the county department must identify the child or youth as having a disability for the purposes of compliance with applicable state or federal reporting requirements, including reporting required pursuant to section 26-5-119 or 45 CFR 1355.44.

(d) If the county department determines that the child or youth may be eligible to receive federal survivor benefits or federal supplemental security income and that the county department is, consistent with the preferred representative payee order of selection in federal law or rule, the most appropriate representative payee or fiduciary, then the county department shall, in compliance with all applicable federal rules and regulations, apply for the federal survivor benefits or federal supplemental security income on behalf of the child or youth. If the county department determines that the child or youth may be eligible for federal survivor benefits or federal supplemental security income but that the county department is not the most appropriate representative payee or fiduciary, the county department shall provide information to the prospective representative payee or fiduciary that the county department has identified about how to apply for federal survivor benefits or federal supplemental security income on behalf of the child or youth and how to become the child's or youth's representative payee or fiduciary.

(e) Following a denial of federal survivor benefits or federal supplemental security income or other adverse benefit eligibility determination, the county department shall consult with interested parties and determine whether there are grounds to appeal. If there are grounds to

appeal and the county department was the original applicant, the county department shall appeal the denial or adverse determination.

(f) If a child or youth in noncertified kinship care may be eligible for federal survivor benefits or federal supplemental security income, the county department shall provide the noncertified kinship caregiver with information about how to apply for federal survivor benefits or federal supplemental security income on behalf of the child or youth.

(4) If the county department becomes the representative payee or fiduciary for a child's or youth's federal survivor benefits or federal supplemental security income, the county department shall annually reassess, in consultation with interested parties, whether a candidate other than the county department would be a preferable representative payee or fiduciary. If legal custody of the child or youth is transferring from the county department to another individual, the county department shall reassess, in consultation with interested parties, the designation of the representative payee or fiduciary. A decision regarding the most appropriate representative payee or fiduciary must be consistent with the preferred representative payee order of selection in federal law or rule.

(5) (a) Beginning on or before July 1, 2027, in the case of federal survivor benefits, and beginning on or before July 1, 2028, in the case of federal supplemental security income, if a county department is the representative payee or fiduciary for a child or youth, the county department shall:

(I) Not use any federal survivor benefits of a child or youth to pay for or reimburse the county department for care or services for the child or youth, including, but not limited to, foster care maintenance expenses as defined in the federal "Social Security Act", 42 U.S.C. sec. 675 (4)(A), and cost of care as defined in section 19-1-103.

(II) Establish and maintain, consistent with federal and state asset and resource limits, an account for deposit of the federal survivor benefits of a child or youth. The account may be an individual account or an approved collective account, if the representative payee maintains a separate ledger and accounting records for each child or youth beneficiary of an approved collective account. The contents of the account, including applicable interest or earnings, must be saved for the individual child or youth.

(II.5) If a child or youth is receiving federal supplemental security income, document in the state automated case management system all expenditures, including, but not limited to, expenditures from federal supplemental security income, made on behalf of the child or youth by need type and funding source. If the county department is the representative payee or fiduciary, the county department must comply with federal law and rules regarding meeting with the child or youth and interested parties to determine the child's or youth's reasonable and foreseeable needs.

(III) Provide an annual accounting of the accumulation of the child's or youth's federal survivor benefits or federal supplemental security income to the child or youth and the legal representative of the child or youth. If the child or youth receives federal supplemental security income, the county department shall provide the child or youth and the legal representative of the child or youth with an annual accounting of the expenditures documented pursuant to subsection (5)(a)(II.5) of this section. County department personnel shall annually share the accounting information with the child or youth and the legal representative of the child or youth. The annual accounting information must include:

(A) The amount and source of federal survivor benefits or federal supplemental security income collected by the county department and, if applicable, the amount credited to each account maintained on behalf of the child or youth;

(B) The balance of each account maintained on behalf of the child or youth;

(C) Information regarding the child's or youth's accounts and earnings related to those accounts, if applicable, and any additional assets and resources, including benefits, insurance, cash assets, trust accounts, and earnings, if the assets or resources are controlled by the county department; and

(D) For a child or youth receiving federal supplemental security income, information about the expenditures made on behalf of the child or youth by need type and funding source.

(b) If a county department is not the representative payee or fiduciary for a child's or youth's federal survivor benefits or federal supplemental security income, the county department is not responsible for establishing or maintaining an account for deposit of the federal survivor benefits or federal supplemental security income of the child or youth or providing related accounting information pursuant to subsection (5)(a) of this section.

(c) This section does not prevent or limit a court from ordering or a county department from voluntarily undertaking the conservation of federal survivor benefits for a child or youth or from using, in accordance with applicable federal and state law, the federal survivor benefits for purposes other than the cost of care.

(6) (a) The county department shall provide timely, developmentally appropriate notice to the parties, unless prevented by a court order, of:

(I) Submission of an application for federal survivor benefits or federal supplemental security income on behalf of a child or youth;

(II) Submission of a request for the county department to become the representative payee or fiduciary for the child's or youth's federal survivor benefits or federal supplemental security income and identification of the representative payee or fiduciary ultimately selected;

(III) Receipt by the county department of a federal agency's decision regarding federal survivor benefits or federal supplemental security income, including denial, termination, or reduction of federal survivor benefits or federal supplemental security income;

(IV) A decision by the county department about whether or not to appeal an adverse determination, including the outcome of any appeal filed; and

(V) The establishment of a special account or trust on behalf of the child or youth.

(b) The notice must state that interested parties may submit information relevant to the selection of a representative payee or fiduciary for the child or youth, and that an individual may have the right to contest the selection of a representative payee or fiduciary before the relevant federal agency, including the social security administration or veterans administration.

(7) Once a child who is receiving federal survivor benefits leaves foster care, the county department shall release, pursuant to the requirements of the funding source, any funds that have accumulated in an account that the county department has established or maintains for deposit of the federal survivor benefits of the child or youth.

(8) On or before January 1, 2027, in the case of federal survivor benefits, and beginning on or before January 1, 2028, in the case of federal supplemental security income, the state department, in consultation with interested stakeholders, including, but not limited to, county departments, organizations that advocate on behalf of youth in foster care, organizations that represent court-appointed special advocates, organizations that advocate on behalf of disability rights, the office of respondent parents' counsel, and the office of the child's representative, shall adopt rules consistent with applicable state and federal law for the implementation of this section. The rules must include guidance to the county departments on:

(a) Screening processes for identifying whether a child or youth is already receiving federal survivor benefits or may be eligible to receive federal survivor benefits and screening processes for subsequent annual eligibility reviews;

(a.5) Screening processes for identifying whether a child or youth is already receiving federal supplemental security income or may be eligible to receive federal supplemental security income and screening processes for subsequent annual eligibility reviews.

(b) Best practices for consulting with the child or youth or other interested parties who may have information about the child's or youth's receipt of or eligibility for federal survivor benefits or federal supplemental security income;

(c) The application process for federal survivor benefits or federal supplemental security income for each child or youth, who, pursuant to screening, is likely to be determined eligible;

(d) The process for making a determination about whether it is appropriate to challenge a benefit denial or other adverse determination;

(e) The process for providing information to a noncertified kinship caregiver about applying for federal survivor benefits on behalf of a child or youth;

(f) The process for identifying, pursuant to applicable federal guidelines, an appropriate representative payee or fiduciary for a child or youth;

(g) The process for establishing and maintaining an account for deposit and accumulation of the federal survivor benefits of a child or youth while in the legal custody or under the legal authority of the county department and for providing related accounting information annually;

(h) Specifications for providing required notices regarding federal survivor benefit or federal supplemental security income applications, applications for a county department to become a representative payee or fiduciary, receipt of decisions regarding eligibility, appeals of denials, and establishment of accounts; and

(i) Informing a child or youth about rights and responsibilities regarding the continued receipt of federal benefits, the sources of assistance that may be available for resolving related problems, and the process for transferring accumulated federal survivor benefits.

(9) (a) The department of human services shall provide ongoing technical assistance and guidance to the county departments about how the county departments:

(I) Apply for federal survivor benefits or federal supplemental security income on behalf of a child or youth;

(II) Streamline disability screening processes to ensure that county departments accurately identify a child or youth with a disability in accordance with state and federal reporting requirements and eligibility requirements for state medical assistance program waivers and federal supplemental security income;

(III) Capitalize on community resources, including benefit planners, in federal supplemental security income application, benefit management, and planning on behalf of a child or youth;

(IV) Minimize county department risk in establishing and maintaining an account on behalf of a child or youth pursuant to this article 7; and

(V) Address saving federal survivor benefits in the best interests of a child or youth.

(b) In providing the technical assistance and guidance required pursuant to this subsection (9), the state department shall maximize efficiencies by coordinating staff support for both federal survivor benefits and federal supplemental security income obtained pursuant to this section.

Source: L. 2025: Entire section added, (HB 25-1271), ch. 262, p. 1339, § 1, effective May 28. **L. 2026:** IP(1)(b), (2), (3)(b), (3)(c), (3)(d), (3)(e), (3)(f), (4), IP(5)(a), (5)(a)(III), (5)(b),

(6)(a)(I), (6)(a)(II), (6)(a)(III), IP(8), (8)(b), (8)(c), (8)(h), and (9) amended and (1)(d), (3)(a.5), (3)(c.5), (5)(a)(II.5), and (8)(a.5) added, (HB 26-1347), ch. 275, p. 1547, § 1, effective August 12.

PART 2

YOUTH SIBLINGS IN FOSTER CARE

Editor's note: This part 2 was added with relocations in 2019. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

19-7-201. Short title.

The short title of this part 2 is the "Foster Youth Siblings Bill of Rights".

Source: L. 2019: Entire part added with relocations, (HB 19-1288), ch. 216, p. 2234, § 2, effective August 2.

19-7-202. Legislative declaration.

(1) The general assembly finds and declares that it is beneficial for a youth placed in foster care to be able to continue relationships with the youth's siblings, regardless of age, so that siblings may share their strengths and association in their everyday and often common experiences.

(2) The general assembly further finds and declares that it is the responsibility of all adults involved in a youth's life, including but not limited to county departments, parents, foster parents, guardians ad litem, counsel for youth, court-appointed special advocates, next of kin, treatment providers, and others, to seek opportunities to foster those sibling relationships to promote continuity and help to sustain family relationships.

(3) Because the number of family foster homes in Colorado is often insufficient to meet the needs of youth, including sibling groups, it is, therefore, Colorado's goal to continue to recruit foster families and build resources sufficient to meet this need.

Source: L. 2019: Entire part added with relocations, (HB 19-1288), ch. 216, p. 2234, § 2, effective August 2. **L. 2022:** (2) amended, (HB 22-1038), ch. 92, p. 444, § 32, effective January 9, 2023.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

ANNOTATION

This section does not broaden a juvenile court's personal jurisdiction to include nondependent siblings of a youth in foster care or require the siblings to attend therapeutic visitation with the youth. In re People in Interest of S.A., 2022 CO 27, 511 P.3d 597.

19-7-203. Foster care sibling rights.

(1) Sibling youth in foster care, except youth in the custody of the division of youth services created pursuant to section 19-2.5-1501 or a state hospital for persons with behavioral or mental health disorders, have the following rights, unless they are not in the best interests of each sibling, regardless of whether the parental rights of one or more of the foster youth's parents have been terminated:

(a) To be placed in foster care homes with the youth's siblings, when it is in the best interests of each sibling and when the county department locates an appropriate, capable, willing, and available joint placement for the youth siblings, in order to sustain family relationships, pursuant to sections 19-3-213 (1)(c), 19-3-500.2, 19-3-507 (1)(b), 19-3-508 (1)(c), 19-3-605 (2), and 19-5-207.3 (2);

(b) To be placed in close geographical distance to the youth's siblings in order to promote continuity in the siblings' relationship;

(c) To obtain temporary respite placements together, when possible;

(d) To be placed with foster parents, placed with potential adoptive parents, and assigned to child welfare caseworkers who have been provided with training on the importance of sibling relationships;

(e) To be promptly notified, as permitted pursuant to state or federal law, about changes in sibling placement, catastrophic events, or other circumstances, including but not limited to new placements, significant life events, and discharge from foster care;

(f) To be included in permanency planning discussions or meetings for siblings, if appropriate;

(g) To maintain frequent and meaningful contact with the youth's siblings pursuant to section 19-7-204 (2), if placement together is not possible;

(h) To be actively involved in each other's lives and share celebrations, if the siblings choose to do so, including but not limited to birthdays, graduations, holidays, school and extracurricular activities, cultural customs in the siblings' native language, and other milestones;

(i) To annually receive contact information for all siblings in foster care, which may include a telephone number, address, social media accounts, and email address, unless a foster parent has requested the foster parent's identifiable information not be disclosed pursuant to section 19-1-303 (2.7)(a), and to receive updated photos of siblings regularly by mail or email, as appropriate;

(j) To have more private or less restrictive communication with siblings as compared to communication with others who are not siblings;

(k) To be provided with an explanation if contact with a sibling is restricted or denied, as permitted pursuant to state or federal law;

(l) To expect that the youth's guardian ad litem advocate on behalf of the youth for frequent family time with siblings, unless the guardian ad litem determines through the guardian ad litem's independent investigation that the contact is not in the best interests of the youth;

(m) To have family time with siblings encouraged in any adoptive or guardianship placement; and

(n) To receive an age-appropriate and developmentally appropriate document from the department of human services setting forth the rights described in this section:

(I) Within thirty days of the date of any placement or any change in placement;

(II) On each occasion that a youth's case plan is modified;

(III) At each placement where the youth resides; and

(IV) On at least an annual basis.

(2) Adult siblings of youth in foster care have the right to be considered as foster care providers, adoptive parents, and relative custodians for their siblings, if they choose to do so.

Source: L. 2019: Entire part added with relocations, (HB 19-1288), ch. 216, p. 2235, § 2, effective August 2. **L. 2021:** IP(1) amended, (SB 21-059), ch. 136, p. 737, § 92, effective October 1. **L. 2023:** (1)(l) and (1)(m) amended, (HB 23-1027), ch. 284, p. 1686, § 25, effective June 1.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

ANNOTATION

This section does not broaden a juvenile court's personal jurisdiction to include nondependent siblings of a youth in foster care or require the siblings to attend therapeutic visitation with the youth. In re People in Interest of S.A., 2022 CO 27, 511 P.3d 597.

19-7-204. Foster care sibling family time - contact plan - rules - definition.

(1) The department of human services shall provide information on sibling contact in the family time plan for a youth. In doing so, the department shall ask the youth about the youth's wishes as to sibling contact.

(2) As written in the family time plan, the department shall, if it is in the best interests of each sibling:

(a) Promote frequent contact between siblings in foster care, which may include telephone calls, text messages, social media, video calls, and in-person family time;

(b) Clarify that sibling contact should not be limited in time or duration to periods of parental contact;

(c) Clarify that restriction of sibling family time should not be a consequence for behavioral problems. Family time should only be restricted if contrary to the best interests of a sibling.

(d) Ensure timing and regularly scheduled sibling family time are outlined in case plans based on individual circumstances and needs of the youth.

(3) If a youth in foster care requests an opportunity for family time with a sibling, the county department that has legal custody of the youth shall arrange the family time within a reasonable amount of time and document the family time.

(4) If a youth in foster care requests an opportunity for family time with a sibling on a regular basis, the county department that has legal custody of the youth shall arrange the family time and ensure that the family time occurs with sufficient frequency and duration to promote continuity in the siblings' relationship.

(5) If, in arranging sibling family time pursuant to this section, a county department determines requested family time between the siblings would not be in the best interests of one or both of the siblings, the county department shall deny the request, document its reasons for making the determination, and provide the siblings with an explanation for the denial, as permitted under state and federal law. In determining whether requested family time would be in the best interests of one or both of the siblings, the county department shall determine whether

there is pending in any jurisdiction a criminal action in which either of the siblings is either a victim or a witness. If such a criminal action is pending, the county department, before arranging any family time between the siblings, shall consult with the district attorney for the jurisdiction in which the criminal action is pending to determine whether the requested family time may have a detrimental effect upon the prosecution of the pending criminal action.

(6) Nothing in this section requires or permits a county department to arrange sibling family time if such visit would violate an existing protection order in any case pending in this state or any other state.

(7) As used in this section, "sibling" means:

(a) A biological sibling;

(b) A step-sibling or former step-sibling; or

(c) An adoptive sibling.

(8) The state board of human services, created in section 26-1-107, may promulgate rules for the implementation of this section.

Source: L. 2019: Entire part added with relocations, (HB 19-1288), ch. 216, p. 2236, § 2, effective August 2. **L. 2023:** (1), IP(2), (2)(a), (2)(c), (2)(d), (3), (4), (5), and (6) amended, (HB 23-1027), ch. 284, p. 1686, § 26, effective June 1.

Editor's note: This section is similar to former § 19-1-128 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of Colorado 2023.

ANNOTATION

This section does not broaden a juvenile court's personal jurisdiction to include nondependent siblings of a youth in foster care or require the siblings to attend therapeutic visitation with the youth. In re People in Interest of S.A., 2022 CO 27, 511 P.3d 597.

PART 3

FOSTER YOUTH IN TRANSITION PROGRAM

19-7-301. Legislative declaration.

(1) The general assembly finds and declares that:

(a) Each year, for a variety of reasons, more than two hundred youth, ages eighteen to twenty-one, exit Colorado's foster care system without an established permanent home or a stable support network;

(b) These youth typically do not have the same safety nets, supportive adults, and support networks as other youth their age;

(c) Many of these youth will face challenges as they search for affordable housing, pursue higher education or training, search for employment, manage tight budgets, take care of health needs, and more;

(d) Youth who are making the transition out of foster care into independent living face not only the typical developmental changes and new experiences that are common to youth but also the dramatic change from being under the county's care to being on their own, many without any support systems to help them succeed;

(e) Additionally, many of these youth are dealing with the long-term consequences of trauma related to their experience with abuse, neglect, removal, or overall lack of resources;

(f) The array of services and supports available to youth while they are in the foster care system, including housing, food, health care, and caseworker support, diminish when the youth exit the foster care system; and

(g) Available research shows that emancipating youth benefit from extended foster care services and supports until age twenty-one, and community-based supports through early adulthood, but for the benefits of such services and supports to last, youth in foster care need developmentally appropriate services, including freedom to test their independence and to make mistakes with proportional consequences and a reasonable safety net.

(2) Therefore, the general assembly declares that by establishing a voluntary transitional foster care program, allowing youth to reenter the state's foster care system through a foster youth in transition program, and ensuring equitable access to less restrictive supports in the community, the state can better meet the needs of those youth who are making the transition from foster care to successful adulthood.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2200, § 1, effective June 25.

ANNOTATION

Law reviews. For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023).

19-7-302. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Advisory board" means the foster youth successful transition to adulthood grant program advisory board created in section 19-7-314.

(1.3) "Case management agency" means an agency that meets criteria to provide case management services for the Colorado fostering success voucher program.

(1.7) "Colorado fostering success voucher program" or "voucher program" means the program established pursuant to section 19-7-314.5.

(2) "County department" has the same meaning as set forth in section 19-1-103.

(3) "Emancipation transition plan" means a plan developed pursuant to section 19-7-310 that addresses how the youth will meet the youth's needs upon the youth's imminent emancipation from foster care.

(4) "Evidence-based service" means a service that is eligible for reimbursement pursuant to the federal "Family First Prevention Services Act", 42 U.S.C. sec. 672, and that is trauma-informed, promising, supported, or well-supported.

(5) "Executive director" has the same meaning as set forth in section 19-1-103.

(6) "Foster care" has the same meaning set forth in section 19-1-103 (66).

(7) "Grant program" means the foster youth successful transition to adulthood grant program created in section 19-7-314.

(8) "Participating youth" means a youth who voluntarily agrees to participate in the transition program and meets the eligibility requirements set forth in section 19-7-304.

(9) "Reasonable efforts" has the same meaning as set forth in section 19-1-103 (114).

(10) "Roadmap to success" means a written description of a youth's goals, programs, and services provided during an open case that will assist youth who are fourteen years of age or older and in foster care to the youth's eventual transition from foster care to successful adulthood. The document is developed collaboratively with the youth.

(11) "Service provider" means an agency that applies for funding to provide services through the grant program.

(12) "State department" has the same meaning as set forth in section 19-1-103.

(13) "Supervised independent living placement" means a setting in which a youth is living independently with county department supervision. "Supervised independent living placement" is designed to promote and lead to a youth's successful emancipation.

(14) "Transition program" or "foster youth in transition program" means the program established pursuant to section 19-7-303 in which an eligible youth may voluntarily opt to continue or resume receiving child welfare services that may include but are not limited to foster care maintenance payments.

(15) "Voluntary services agreement" means a standardized voluntary services agreement entered into by a participating youth pursuant to section 19-7-306.

(16) "Voucher" means a voucher that provides rental assistance to a voucher recipient through the Colorado fostering success voucher program.

(17) "Voucher recipient" means a youth who is eligible for and receiving a voucher through the Colorado fostering success voucher program.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2201, § 1, effective June 25. **L. 2023:** (1.3), (1.7), (16), and (17) added, (SB 23-082), ch. 346, p. 2074, § 1, effective June 5.

19-7-303. Foster youth in transition program - established.

The foster youth in transition program is established in the state department to be implemented in county departments throughout the state to provide extended child welfare services to eligible youth eighteen years of age or older but less than twenty-one years of age, or such greater age of foster care eligibility as required by federal law. Each county department shall make the transition program available to eligible youth on a voluntary basis. The child welfare services provided through the transition program must be client-directed and developmentally appropriate, as set forth in a voluntary services agreement developed and entered into pursuant to section 19-7-306 and, when required, overseen by the juvenile court in a youth in transition proceeding brought pursuant to this part 3. The state department is encouraged to submit, as part of the annual budget process, a request for increased appropriations to fund the increased caseload for the transition program.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2202, § 1, effective June 25.

ANNOTATION

Law reviews. For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023).

19-7-304. Eligibility and enrollment.

(1) An eligible youth is an individual who:

(a) Is at least eighteen years of age or older, but less than twenty-one years of age, or such greater age of foster care eligibility as required by federal law;

(b) Has a current dependency and neglect case or has current or recent prior foster care or kinship care involvement in at least one of the following ways:

(I) The youth was in foster care, as defined in section 19-1-103, on or after the youth's sixteenth birthday;

(II) The youth was in noncertified kinship care, as defined in section 19-1-103, on or after the youth's sixteenth birthday and was adjudicated dependent and neglected pursuant to article 3 of this title 19; or

(III) The youth turned eighteen years of age when the youth was a named child or youth in a dependency and neglect case open through article 3 of this title 19;

(c) (I) Except as provided in subsection (1)(c)(II) of this section, or except as such requirements may be waived by federal law, is engaged in, or intends to engage in, at least one of the following:

(A) Completing secondary education or an educational program leading to an equivalent credential;

(B) Attending an institution that provides postsecondary or career and technical education;

(C) Working part- or full-time for at least eighty hours per month; or

(D) Participating in a program or activity designed to promote employment or remove barriers to employment.

(II) The requirement described in subsection (1)(c)(I) of this section does not apply to a youth who is incapable of engaging in any of the activities described in subsection (1)(c)(I) of this section as a result of a medical condition that is supported by regularly updated documentation in the youth's case plan; and

(d) Seeks to enter into or has entered into and is substantially fulfilling the youth's obligations pursuant to a voluntary services agreement with the appropriate county department.

(2) An individual who is no longer under the jurisdiction of the juvenile court and believes he or she may be an eligible youth may request to participate in the transition program by making a request to the county department where the youth self-attests that the youth resides. The youth shall provide documentation of the youth's legal name and date of birth, if available. If the youth does not have such documentation, the youth may attest to the youth's legal name and date of birth. The youth shall provide current contact information.

(3) The county department shall determine whether a youth is eligible within three business days of the youth's request and, if so, explain the transition program and provide the voluntary services agreement to the eligible youth. Within three business days of an eligible youth's decision to enter the program, the county department shall prepare and execute, in collaboration with the eligible youth, a voluntary services agreement, as described in section 19-7-306; provide a copy of the voluntary services agreement to the eligible youth; and, within ninety days of a voluntary services agreement remaining in effect, file a petition with the juvenile court pursuant to section 19-7-307 that includes the voluntary services agreement. If the county department determines that the youth is not eligible, the county department shall notify the youth of the county department's determination, the reasons for such determination, how to appeal a denial of eligibility, and provide contact information for the office of the child's representative.

(4) An eligible youth may voluntarily participate in the transition program for any length of time until the last day of the month of the individual's twenty-first birthday, or such greater age of foster care eligibility as required by federal law.

(5) A participating youth retains all the rights and responsibilities the individual would normally have, including but not limited to consenting to the youth's own medical care; entering into contracts, including but not limited to leasing contracts, employment contracts, and contracts for purchase; and obtaining and maintaining accounts with financial institutions.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2203, § 1, effective June 25. **L. 2022:** (1)(b) amended, (HB 22-1245), ch. 88, p. 419, § 6, effective August 10. **L. 2024:** (1)(c)(I)(B) amended, (HB 24-1450), ch. 490, p. 3412, § 30, effective August 7.

ANNOTATION

Law reviews. For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023).

19-7-305. Available services and supports.

(1) Each county department shall offer, at a minimum, the following services and supports to participating youth in the transition program:

(a) Assistance with enrolling in the appropriate category of medicaid for which the participating youth is eligible;

(b) Assistance with securing safe, affordable, and stable housing in the following ways:

(I) The participating youth's living expenses are fully or partially funded through foster care maintenance payments, in addition to any other housing assistance the youth is eligible to receive. Any expectations for the youth to contribute to the youth's own expenses must be based upon the youth's ability to pay.

(II) With the participating youth's consent, the participating youth's housing may be in any placement approved by the county department or the court for which the participating youth is otherwise eligible, including a host home, as defined in section 26-5.7-110, or a supervised independent living placement that is the least restrictive option to meet the participating youth's needs; or

(III) If the participating youth needs placement in a qualified residential treatment program, then such placement must follow all relevant procedures pursuant to section 19-1-115 concerning the placement of a child or youth in a qualified residential treatment program.

(c) Case management services, including the development of a case plan with a roadmap to success for the participating youth, as well as assistance in the following areas, as appropriate, and with the agreement of the participating youth:

(I) Provision of resources to assist the participating youth in the transition to adulthood;

(II) Obtaining employment or other financial support and enhancing financial literacy;

(III) Obtaining a driver's license or other government-issued identification card;

(IV) Obtaining appropriate community resources and public benefits, including applying for federal benefits as defined in section 19-7-105, conserving or managing federal benefits obtained pursuant to section 19-7-105, or obtaining related financial literacy training;

(V) Upon request, and if services are available, referral to services satisfying any juvenile or criminal justice system requirements and assisting with expunging the participating youth's court records, as appropriate, pursuant to section 19-1-306;

(VI) Pursuing educational goals and applying for financial aid, if necessary;

(VII) Upon request, and if services are available, referral to services for obtaining the necessary state court findings and applying for special immigrant juvenile status pursuant to

federal law, as applicable, or applying for other immigration relief for which the participating youth may be qualified;

(VIII) Obtaining copies of health and education records;

(IX) Maintaining and building relationships with individuals who are important to the participating youth, including searching for individuals with whom the participating youth has lost contact; and

(X) Accessing information about maternal and paternal relatives, including any siblings.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2204, § 1, effective June 25. **L. 2022:** (1)(b) amended, (HB 22-1245), ch. 88, p. 419, § 7, effective August 10. **L. 2024:** (1)(b)(II) amended, (SB 24-191), ch. 221, p. 1384, § 2, effective August 7. **L. 2025:** (1)(c)(IV) amended, (HB 25-1271), ch. 262, p. 1344, § 2, effective May 28.

19-7-306. Voluntary services agreement.

(1) A voluntary services agreement entered into pursuant to this part 3 is a binding standardized agreement, written in a client-driven and developmentally appropriate manner, between the county department and a participating youth. The agreement specifies the terms of the youth's participation in the transition program, including, at a minimum:

(a) The participating youth's retention of all rights and responsibilities the youth would otherwise have, as described in section 19-7-304 (5);

(a.5) Establishing the legal authority for placement with the county department;

(b) The participating youth's rights and obligations while the agreement is in effect, including the right to counsel. Upon entering into a voluntary services agreement with an eligible youth, the county department shall make a referral in writing to the office of the child's representative and provide the youth with the contact information for the office of the child's representative. Nothing in this section limits the power of the court to appoint counsel or the power of the office of the child's representative to assign counsel prior to the filing of a petition.

(c) A statement concerning the voluntary nature of the transition program and the participating youth's right to terminate the agreement at any time and the procedures for such termination and the right to begin receiving services again, if needed, up to the youth's twenty-first birthday, or such greater age of foster care eligibility as required by federal law;

(d) The county department's rights and obligations while the agreement is in effect;

(e) The services that will be available to the participating youth through the transition program, as specified in the roadmap to success; and

(f) The circumstances under which a county department may request that the court terminate the agreement and the court's jurisdiction over the objection of the participating youth.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2206, § 1, effective June 25. **L. 2022:** (1)(a) amended and (1)(a.5) added, (HB 22-1245), ch. 88, p. 420, § 8, effective August 10.

19-7-307. Petition - form and content.

(1) A youth or a participating youth may file a petition on the youth's own behalf at any time. Or, if such a petition has not yet been filed and a voluntary services agreement remains in effect after ninety days, a county department shall file a petition with the court initiating a proceeding pursuant to this part 3 titled "The people of the state of Colorado, in the matter of _____, a youth in transition". The petition must be verified and the statements may be made upon information and belief.

(1.5) For a youth who is entering the foster youth in transition program directly from a case through this title 19, at the youth's option, the petition must be filed in either the county where the youth self-attests to reside or a county that is currently serving the eligible youth. For a youth who does not have a current case pursuant to this title 19, the petition must be filed in the county where the youth self-attests to reside.

(2) The petition must plainly set forth the facts that bring the participating youth under the court's jurisdiction. The petition must also state the participating youth's name, age, and why venue in this court is proper pursuant to subsection (1.5) of this section. The petition must state that the youth is voluntarily entering foster care and one of the following, whichever is applicable:

(a) The youth was removed from home prior to the youth reaching eighteen years of age pursuant to a judicial determination that it was contrary to the youth's welfare to remain in the home, that reasonable efforts were made to keep the youth in the home, and that because the youth has remained in foster care continuously, a new court-ordered removal is not required; or

(b) Reasonable efforts to prevent removal were not required because a youth who is eighteen years of age or older may enter into the voluntary services agreement on the youth's own behalf.

(3) Repealed.

(4) Each petition filed for a foster youth in transition pursuant to this part 3 must include the following statements:

(a) That the participating youth retains all the adult rights and responsibilities that the participating youth would otherwise have, as described in section 19-7-304 (5); and

(b) That by consenting to the facts set forth in the petition and the jurisdiction of the court, the participating youth may be required to attend court at least once every six months pursuant to section 19-3-702. The participating youth may request that the case be dismissed at any time, forgoing the benefits and obligations of the transition program.

(5) In addition to providing notice to the participating youth, the court shall ensure that notice of all hearings and reviews held regarding the participating youth is provided to licensed foster parents with whom a participating youth is placed, not including adults with whom a participating youth lives through a supervised independent living placement. Licensed foster parents have the right to be heard at such hearings and reviews but must not be made a party to the action solely on the basis of notice and the right to be heard.

(6) The petition must be accompanied by a copy of the voluntary services agreement executed pursuant to section 19-7-306; except that when the youth files the petition on the youth's own behalf, the voluntary services agreement need only be executed by the youth and does not require a signature by the county department at the time the petition is filed. For a participating youth entering the transition program directly from an open case pursuant to article 3 of this title 19, the petition must also include a current copy of the participating youth's roadmap to success.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2206, § 1, effective June 25. **L. 2022:** (1.5) added, (2) and (6) amended, and (3) repealed, (HB 22-1245), ch. 88, p. 420, § 9, effective August 10.

19-7-308. Right to counsel - guardian ad litem - representation of petitioner.

(1) A participating youth has a right to counsel. If the youth accepts the publicly provided counsel, counsel must be assigned by the office of the child's representative or approved by the court from a list of attorneys appointed by the office of the child's representative. The office of the child's representative shall develop practice standards and guidelines for representing participating youth in proceedings brought pursuant to this part 3.

(2) When a court determines a guardian ad litem is necessary for a participating youth due to the youth's diminished capacity, the court shall appoint a guardian ad litem from the list of attorneys approved by the office of the child's representative. The court shall not deem a guardian ad litem to be a substitute for counsel for youth.

(3) In all proceedings brought pursuant to this part 3, the county department must be represented by a county attorney, a special county attorney, or an attorney of a city or city and county.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2207, § 1, effective June 25. **L. 2022:** (2) amended, (HB 22-1245), ch. 88, p. 421, § 10, effective August 10.

ANNOTATION

Law reviews. For article, "House Bill 22-1038: Colorado Continues its History of Expanding Children's Voice and Representation in D&N Proceedings", see 52 Colo. Law. 34 (Apr. 2023).

19-7-309. Supervised independent living placements - background checks not required.

A county department is not required to conduct background checks for other residents of a supervised independent living placement as a condition of approving a participating youth's independent living setting.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2208, § 1, effective June 25.

19-7-309.5. Initial hearings.

(1) The court shall set the matter for an initial hearing within fifty-six days of receipt of a petition filed pursuant to this section, and the court shall appoint counsel for youth for the petitioning youth. If the office of the child's representative has already assigned counsel, the court shall appoint the same attorney.

(2) At the initial hearing, the court shall advise the youth that:

(a) Services provided through the transition program are voluntary for the youth, and the youth may remain in the transition program until the last day of the month in which the youth turns twenty-one years of age, or such greater age of foster care eligibility as required by federal law, so long as the youth meets all other program eligibility requirements pursuant to section 19-7-304;

(b) If the youth chooses to leave the transition program but later decides support is needed, the youth has the right to begin receiving child welfare services again through the transition program; and

(c) The youth has the right to counsel.

(3) At the initial hearing, the court shall determine:

(a) Whether the youth has voluntarily entered foster care and that the county department has legal authority for placement;

(b) Whether it is in the best interest of the youth to be voluntarily placed in foster care; and

(c) If one of the following applies:

(I) The youth was removed from home prior to the youth reaching eighteen years of age pursuant to a judicial determination that it was contrary to the youth's welfare to remain in the home, that reasonable efforts were made to keep the youth in the home, and that because the youth has remained in foster care continuously, a new court-ordered removal is not required; or

(II) Reasonable efforts to prevent removal were not required because a youth who is eighteen years of age or older may enter into the voluntary services agreement on the youth's own behalf.

(4) If the court determines that the requirements of subsection (3) of this section are met, the court shall follow procedures for a periodic review hearing as described in section 19-7-312, as applicable.

(5) (a) When a youth has been adjudicated dependent and neglected pursuant to section 19-3-102, or when there is sufficient evidence that the youth has been subjected to child abuse or neglect, as defined in section 19-1-103 (1), the court shall enter a finding that the youth is dependent on the court, as defined in section 19-1-103 (53.5). The court may enter special findings establishing the youth's eligibility for designation as a special immigrant juvenile pursuant to federal law, including:

(I) Declaring the youth dependent;

(II) Determining that reunification of the youth with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found pursuant to state law. For purposes of this subsection (5)(a)(II), "abandonment" includes, but is not limited to, the death of one or both parents.

(III) Determining that it is not in the best interests of the youth to be returned to the youth's or parents' previous country of nationality or country of last habitual residence.

(b) The order may be entered at any time following the filing of the petition or at the hearing.

Source: L. 2022: Entire section added, (HB 22-1245), ch. 88, p. 421, § 11, effective August 10. **L. 2024:** (5) amended, (SB 24-119), ch. 33, p. 104, § 6, effective August 7.

19-7-310. Emancipation discharge hearings - emancipation transition plan.

(1) At the direction of a participating youth, with assistance and support from a county department, an emancipation transition plan that is personalized for the participating youth must be developed and finalized no more than ninety days prior to the participating youth's emancipation discharge hearing. The emancipation transition plan includes specific options concerning housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services. The emancipation transition plan must also include information concerning the importance of designating another individual to make health-care treatment decisions on the participating youth's behalf if the youth becomes unable to participate in such decisions and the participating youth does not have, or does not want, a relative or legal guardian who would otherwise be authorized to make such decisions. The emancipation transition plan must provide the participating youth with the option to execute a health-care power of attorney and include details at the participating youth's discretion.

(2) If a participating youth remains in the transition program until the participating youth turns twenty-one years of age, or such greater age of foster care eligibility as required by federal law, at least ninety days prior to the participating youth's last day of eligibility for the transition program, the county department shall provide the participating youth with:

(a) A clear and developmentally appropriate written notice of the date that the participating youth's voluntary services agreement will terminate;

(b) Repealed.

(c) Information about and contact information for community resources that may benefit the participating youth, specifically including information regarding programs that have been established pursuant to section 19-7-314 or to federal law that provide transitional foster care assistance to young adults.

(3) Prior to a participating youth's emancipation, the court shall:

(a) Review the participating youth's emancipation transition plan and consult with the participating youth on the participating youth's readiness;

(b) Determine whether the county department has made reasonable efforts toward the participating youth's permanency goals and to prepare the participating youth for a successful transition to adulthood;

(c) Determine whether the participating youth has been provided with all necessary records and documents as described in subsection (4)(b) of this section;

(d) Determine whether the participating youth has been enrolled in medicaid and advise the participating youth on the participating youth's eligibility for former foster care medicaid up to the participating youth's twenty-sixth birthday pursuant to section 25.5-5-101 (1)(e); and

(e) Advise the participating youth that if the youth chooses to emancipate but later decides support is needed, the youth has the right to begin receiving child welfare services again through the foster youth in transition program, created in section 19-7-303, until the youth's twenty-first birthday, or such greater age of foster care eligibility as required by federal law; and advise the youth of the necessity of keeping the participating youth's contact information up to date with the department of health care policy and financing or the appropriate county department.

(4) At least seven days prior to a participating youth's emancipation discharge hearing, the county department shall file a report with the court that includes:

(a) A description of the county department's reasonable efforts toward achieving the participating youth's permanency goals and a successful transition to adulthood;

(b) An affirmation that the county department has provided the participating youth with all necessary records and documents, including copies of all documents listed in section 19-3-702 (4)(d), health records, education records, and written information concerning the participating youth's family history and contact information for siblings, if appropriate; and

(c) A copy of the participating youth's emancipation transition plan, finalized no more than ninety days prior to the participating youth's emancipation discharge hearing.

(5) With the participating youth's consent, the court may continue the emancipation discharge hearing for up to one hundred nineteen days, but not past the last day of the month in which the participating youth turns twenty-one years of age, or such greater age of foster care eligibility as required by federal law. The continuance must be to allow time to improve the participating youth's emancipation transition plan, gather necessary documents and records for the participating youth, or any other reason necessary to allow for the participating youth to have a successful transition to adulthood.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2208, § 1, effective June 25. **L. 2022:** (2)(b) repealed, (HB 22-1245), ch. 88, p. 422, § 12, effective August 10.

19-7-311. Permanency planning hearings - notice to parents.

A permanency planning hearing must be held for a participating youth under the court's jurisdiction pursuant to this part 3 in the same manner as provided in section 19-3-702; except that permanency hearings need only be held at least every twelve months. The youth's parent or parents are not parties in proceedings pursuant to this article 7 and therefore do not require notice of such hearings.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2210, § 1, effective June 25. **L. 2022:** Entire section amended, (HB 22-1245), ch. 88, p. 423, § 13, effective August 10.

19-7-312. Periodic reviews.

(1) The court shall hold a periodic review hearing for each participating youth at least once every six months. A review hearing not coinciding with a permanency hearing may be held on the court's administrative docket by written report upon agreement of the parties. The review hearing and permanency hearing must be held together in the same hearing when possible.

(2) The primary purpose of the review hearing is to ensure that the transition program is providing the participating youth with the necessary services and supports to help the participating youth move toward permanency and a successful transition to adulthood.

(3) Prior to a periodic review held pursuant to this section, the county department shall file a report with the court that includes:

(a) A copy of the participating youth's roadmap to success;

(b) A statement of the participating youth's progress on the participating youth's goals and whether the participating youth is meeting the participating youth's obligations pursuant to the voluntary services agreement, including any required activities;

(c) A statement of the county department's reasonable efforts to support the participating youth in meeting the participating youth's goals; and

(d) A statement of any barriers to the participating youth in meeting the participating youth's goals and any plans to address such barriers.

(4) The court may order the county department to provide additional services and supports to help the participating youth achieve the goals outlined on the participating youth's roadmap to success or comply with state or federal law.

(5) If the court finds the participating youth is not substantially fulfilling the participating youth's obligations pursuant to the voluntary services agreement, the court may enter orders for the participating youth to follow in order to continue to be eligible for the transition program.

(6) The court shall conduct a periodic review hearing in a manner that seeks the participating youth's meaningful participation, including offering remote options for participation to accommodate the participating youth's work, school, or treatment commitments.

(7) During the periodic review hearing, the court shall find whether:

(a) The county department made reasonable efforts to implement the participating youth's case plan, including the participating youth's roadmap to success; and

(b) The participating youth continues to need foster care and whether such placement is the least restrictive to meet the participating youth's needs.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2210, § 1, effective June 25.

19-7-313. Continuing jurisdiction.

(1) The court has continuing jurisdiction over the participating youth until any of the following occurs:

(a) The participating youth moves the court, at any time, to withdraw the youth's participation in the transition program and to terminate the court's jurisdiction. The court shall hold an emancipation discharge hearing within thirty-five days after receipt of the participating youth's motion to review the participating youth's emancipation transition plan and advise the participating youth as provided in section 19-7-310.

(b) A county department moves the court at least ninety days prior to a participating youth's twenty-first birthday, or such greater age of foster care eligibility as required by federal law, to request an emancipation discharge hearing be held prior to the last day of the month in which the participating youth turns twenty-one years of age. The court shall hold an emancipation discharge hearing to review the participating youth's emancipation transition plan and advise the participating youth as provided in section 19-7-310.

(c) A county department moves the court to terminate a participating youth's voluntary services agreement and the court's jurisdiction because the participating youth no longer meets the eligibility requirements described in section 19-7-304 for the transition program. The county department shall include in the motion its efforts to reengage the participating youth, including:

(I) The provision of written notice to the participating youth in a clear and developmentally appropriate manner that informs the participating youth of the county department's intent to request that the court terminate the participating youth's voluntary services agreement with an explanation of the reasons; and

(II) Documentation of the county department's reasonable efforts to meet in person with the participating youth to explain the information in the written termination notice and to assist the participating youth in reestablishing eligibility if the participating youth wishes to continue to participate in the transition program.

(2) The court shall hold the emancipation discharge hearing pursuant to subsection (1)(c) of this section at least thirty-five days after receipt of the county department's motion to determine whether the participating youth still meets the eligibility requirements for the transition program, including substantially fulfilling the participating youth's obligations set forth in the participating

youth's voluntary services agreement. If the participating youth no longer meets the requirements of the transition program and the county department has made reasonable but unsuccessful efforts to reengage the participating youth, then the court shall hold an emancipation discharge hearing to review the participating youth's emancipation transition plan and advise the participating youth as provided in section 19-7-310. The court may accomplish all of these elements in the same emancipation discharge hearing if all of the necessary information has been filed in a timely fashion.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2211, § 1, effective June 25. **L. 2022:** (2) amended, (HB 22-1245), ch. 88, p. 423, § 14, effective August 10.

19-7-314. Foster youth successful transition to adulthood grant program - creation - standards - application - fund - advisory board - duties.

(1) (a) The foster youth successful transition to adulthood grant program is created within the state department. The purpose of the grant program is to create and administer programs that support eligible youth in making a successful transition to adulthood and provide case management services for voucher recipients as described in section 19-7-314.5.

(b) The state department shall ensure that services are available to eligible youth throughout Colorado and, in order to do so, administer a merit-based application process to select service providers as follows:

(I) An application from a county department must receive preference over applications from other types of entities; and

(II) An application for a proposed program must receive preference if it includes the provision of evidence-based services.

(c) Youth who meet the following criteria are eligible for services from a program that has received a grant from the grant program:

(I) The youth is eighteen years of age or older but less than twenty-three years of age, or the upper age limit established in the federal "Social Security Act", 42 U.S.C. sec. 677 (a), whichever is greater;

(II) The youth was in foster care or adjudicated dependent and neglected on or after the youth's fourteenth birthday; and

(III) The youth voluntarily agrees to participate in the program that is receiving a grant from the grant program.

(2) There is created in the state treasury the Colorado foster youth successful transition to adulthood grant program fund, referred to in this section as the "fund". The fund consists of any money that the general assembly may appropriate to the fund. Money in the fund is subject to annual appropriation by the general assembly to the state department for the purpose of providing grants pursuant to this section and for the direct and indirect costs associated with the implementation of this section. Any money in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of money in the fund must be credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of a state fiscal year must remain in the fund and available for expenditure by the state department in the next fiscal year without further appropriation.

(3) (a) The state department shall convene an advisory board, which shall meet at least two times per year, to review the grant program and provide recommendations to the state department including the following items:

(I) Implementation of the grant program;

(II) Funding models and allocation methodologies, including consultation with the advisory board before the state department allocates funding received through the federal "John H. Chafee Foster Care Program for Successful Transition to Adulthood", 42 U.S.C. sec. 677, for the grant program;

(III) Content for grant program applications; and

(IV) Scoring methodology for grant program application review.

(b) The executive director shall appoint members of the advisory board for two-year terms. The board must include:

(I) Two directors of county departments of human or social services, or their designees;

(II) Two directors of runaway homeless youth providers, or their designees;

(III) One staff member from the state department with administrative responsibility for programming funded through the federal "John H. Chafee Foster Care Program for Successful Transition to Adulthood", 42 U.S.C. sec. 677;

(IV) The managing director of the Colorado workforce development council, or the director's designee;

(V) The executive director of the department of higher education or the director's designee; and

(VI) Two youth who have previously participated in the transition program or the federal "John H. Chafee Foster Care Program for Successful Transition to Adulthood", 42 U.S.C. sec. 677.

(c) The advisory board shall have its first meeting on or before October 1, 2022.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2212, § 1, effective June 25. **L. 2023:** (1)(a) amended, (SB 23-082), ch. 346, p. 2074, § 2, effective June 5.

19-7-314.5. Colorado fostering success voucher program - established - eligibility - administration - availability, standards, and services.

(1) The Colorado fostering success voucher program is established in the state department. The purpose of the voucher program is to provide vouchers to voucher recipients and provide developmentally appropriate case management for voucher recipients who are eligible for the voucher program.

(2) (a) To be eligible to provide services through the voucher program, a case management agency must:

(I) Be a current recipient of a grant from the foster youth successful transition to adulthood grant program created in section 19-7-314; or

(II) Be currently operating a program through funding received pursuant to the federal "John H. Chafee Foster Care Program for Successful Transition to Adulthood", 42 U.S.C. 677 (a).

(b) To be eligible for services through the voucher program, a voucher recipient must:

(I) Be at least eighteen years of age or older but less than twenty-six years of age;

(II) Have prior foster care or kinship care involvement in at least one of the following ways:

(A) Have been in foster care, as defined in section 19-1-103, on or after the youth's fourteenth birthday;

(B) Have been in noncertified kinship care, as defined in section 19-1-103, on or after the youth's fourteenth birthday and have been adjudicated dependent and neglected pursuant to article 3 of this title 19; or

(C) Have turned eighteen years of age when the youth was a named child or youth in a dependency and neglect case pursuant to article 3 of this title 19;

(III) Be currently experiencing homelessness or be at imminent risk of homelessness and have voluntarily agreed to participate in services offered and provided by a case management agency;

(IV) Reside in Colorado; and

(V) Have income that does not exceed a level determined by the state department of local affairs policies and procedures pursuant to subsection (3) of this section.

(3) The state department of human services and the state department of local affairs shall develop a joint implementation plan that delegates administrative responsibilities as follows:

(a) The state department of local affairs is responsible for the issuance of voucher payments to landlords, the maintenance of annual income verification, and the review of policies developed by the state department of human services to ensure compliance with all applicable fair housing laws;

(b) The state department of human services is responsible for establishing case management standards, the allocation of vouchers to eligible recipients, and the oversight of voucher selection plans; and

(c) Case management agencies are responsible for case management activities and services for voucher recipients.

(4) Availability, standards, and services for the Colorado fostering success voucher program include, but are not limited to, the following requirements:

(a) A voucher may be used at a dwelling that meets housing quality standards policies and procedures established by the state department of local affairs;

(b) The amount of financial assistance for each voucher must align with standards established by the state department of local affairs but may be increased on an individual basis if housing is not available in the county served by the case management agency that meets the cost standards. The state department of human services shall approve any variance from the standards set annually by the state department of local affairs.

(c) A youth who receives a voucher is required to contribute to the cost of housing, but that amount must not be more than thirty percent of the youth's income;

(d) A youth who receives a voucher is required to participate in case management services provided by the case management agency;

(e) A case management agency shall make case management available, as funding permits, to youth receiving federal housing choice vouchers and who are otherwise eligible for a voucher;

(f) A case management agency shall meet the minimum case management standards established by the state department of human services;

(g) A youth with prior adjudications in the juvenile court is eligible for a voucher; and

(h) A case management agency shall make reasonable efforts to engage a youth in case management activities and to support the youth into coming into compliance with voucher requirements prior to terminating the voucher or case management services.

Source: L. 2023: Entire section added, (SB 23-082), ch. 346, p. 2075, § 3, effective June 5.

19-7-315. Rules.

The state department shall promulgate rules for the implementation of this part 3, including, but not limited to, rules concerning eligibility determinations, administrative appeals of eligibility determinations, enrollment into the transition program, emancipation transition plans and roadmaps to success, expedited procedures for securing temporary shelter for youth who are currently homeless or at imminent risk of homelessness, and the Colorado fostering success voucher program.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2214, § 1, effective June 25. **L. 2023:** Entire section amended, (SB 23-082), ch. 346, p. 2077, § 4, effective June 5.