

SWEET FREEDOM!

ADVOCATING FOR THE LEAST
RESTRICTIVE PLACEMENT

“LEAST RESTRICTIVE” IS NOT IN THE CHILDREN’S CODE! BUT COURTS FOLLOW IT BASED ON WHAT IS IN THE CHILDREN’S CODE

CITY OF NORTHGLENN V. IBARRA, 62 P.3D 151, FN. 11 (COLO. 2003) (EN BANC)

- TO ORDER OUTSIDE PLACEMENT, THE COURT MUST CONSIDER THE LEAST RESTRICTIVE ALTERNATIVE WHILE BEARING IN MIND THE ISSUE OF PUBLIC SAFETY. SPECIFICALLY, UNDER ONE CRITERION FOR PLACEMENT, THE COURT MUST FIND THAT: (1) THE JUVENILE DOES NOT REQUIRE A SECURE SETTING AND IS APPROPRIATE FOR COMMUNITY-BASED OUT-OF-HOME PLACEMENT; (2) THE JUVENILE HAS COMMITTED AN OFFENSE WHICH MAY PLACE THE PUBLIC AT RISK; (3) COMMUNITY RESOURCES THAT ARE APPROPRIATE AND NECESSARY TO MAINTAIN THE YOUTH IN HIS/HER HOME ARE ABSENT; AND (4) THE FAMILY HOME REPRESENTS AN IMMEDIATE AND CONTINUING THREAT TO THE YOUTH. *CRITERIA FOR COMMUNITY-BASED OUT-OF-HOME PLACEMENT WITH THE COUNTY DEP'TS. OF HUMAN/SOCIAL SERVICES, PURSUANT TO SECTION 19-2-212, C.R.S., ADOPTED OCT. 10, 2002, COLORADO DEP'T OF HUMAN SERVICES.*

LEGISLATIVE DECLARATIONS

19-1-102 CHILDREN'S CODE GENERAL PROVISIONS

- ❖ TO SECURE EACH CHILD, **PREFERABLY IN HIS OWN HOME**, AS WILL BEST SERVE HIS WELFARE AND THE INTERESTS OF SOCIETY
- ❖ TO PRESERVE AND STRENGTHEN FAMILY TIES WHEREVER POSSIBLE, **INCLUDING IMPROVEMENT OF THE HOME ENVIRONMENT**
- ❖ TO REMOVE A CHILD FROM PARENT'S CUSTODY **ONLY** WHEN:
 - ❖ HIS WELFARE AND SAFETY **OR** THE PROTECTION OF THE PUBLIC REQUIRES

LEGISLATIVE DECLARATIONS

19-1-102 CHILDREN'S CODE GENERAL PROVISIONS

- ❖ IF A CHILD IS REMOVED FROM HOME, COURTS **MUST**:
 - ❖ PROCEED **WITH ALL POSSIBLE SPEED** TO LEGAL DETERMINATION OF CHILD'S BEST INTEREST
 - ❖ SECURE NECESSARY CARE, GUIDANCE AND DISCIPLINE TO ASSIST CHILD IN BECOMING A RESPONSIBLE & PRODUCTIVE MEMBER OF SOCIETY

LEGISLATIVE DECLARATIONS

19-1-102 CHILDREN'S CODE GENERAL PROVISIONS

- ❖ (1.5)(A) IT IS IN THE BEST INTEREST OF A CHILD REMOVED FROM THE HOME TO HAVE THE FOLLOWING GUARANTEES:
 - ❖ TO BE PLACED IN A SECURE AND STABLE ENVIRONMENT
 - ❖ TO NOT BE INDISCRIMINATELY MOVED FROM FOSTER HOME TO FOSTER HOME
 - ❖ "FOSTER CARE" INCLUDES ANY DHS PLACEMENT 19-1-103(51.3)
 - ❖ TO HAVE ASSURANCE OF LONG-TERM PERMANENCY PLANNING

LEGISLATIVE DECLARATIONS

19-2-102 CHILDREN'S CODE JUVENILE JUSTICE SYSTEM

❖ INTENT OF ARTICLE:

❖ TO PROTECT, RESTORE AND IMPROVE PUBLIC SAFETY

❖ APPROPRIATELY SANCTION JUVENILES

❖ PROVIDE RESTORATIVE JUSTICE WHEN POSSIBLE

LEGISLATIVE DECLARATIONS

19-2-102 CHILDREN'S CODE JUVENILE JUSTICE SYSTEM

❖ THINGS JUVENILE JUSTICE SYSTEM **SHALL** TAKE INTO
CONSIDERATION

❖ BEST INTERESTS OF THE JUVENILE, THE VICTIM AND THE COMMUNITY
IN:

❖ PROVIDING APPROPRIATE TREATMENT TO REDUCE RECIDIVISM AND TO
ASSIST JUVENILE IN BECOMING A PRODUCTIVE MEMBER OF SOCIETY

REASONABLE EFFORTS REQUIRED

19-2-906.5 ORDERS—COMMUNITY PLACEMENT

- ❖ SPECIFIC FINDINGS REQUIRED TO PLACE CHILD WITH DHS:
 - ❖ WHETHER OUT OF HOME PLACEMENT IS IN THE JUVENILE'S AND THE COMMUNITY'S BEST INTERESTS
 - ❖ WHETHER REASONABLE EFFORTS HAVE BEEN MADE TO PREVENT OR ELIMINATE THE NEED FOR REMOVAL FROM THE HOME
- ❖ IF A CHILD IS REMOVED FROM THE HOME, COURT MUST CONDUCT REVIEW AT LEAST EVERY 6 MONTHS

SENTENCING

19-2-907 SENTENCING SCHEDULE--OPTIONS

- ❖ (5)(A) IF COURT PLACES CHILD OUT OF HOME, THEY MUST USE CRITERIA FOR PLACEMENT FOUND IN 19-1-107 AND 19-1-115(8)(E)
 - ❖ 19-1-107 AFTER ADJUDICATION IS ENTERED, PROBATION OR OTHER AGENCY SHALL MAKE A WRITTEN SOCIAL STUDY REPORT
 - ❖ 19-1-115(8)(E) EVALUATION FOR PLACEMENT MUST BE PREPARED

SENTENCING

19-1-115(8)(E) EVALUATION FOR PLACEMENT MUST BE PREPARED BY DEPARTMENT OR AGENCY RECOMMENDING PLACEMENT AND MUST INCLUDE:

- ❖ ASSESSMENT OF PHYSICAL AND MENTAL HEALTH, DEVELOPMENTAL STATUS, FAMILY & SOCIAL HISTORY, EDUCATIONAL STATUS
- ❖ RECOMMENDED PLACEMENTS, COST, GOALS OF PLACEMENT
- ❖ INTENSITY, DURATION AND PROVIDER OF SERVICES
- ❖ EXPLANATION OF OTHER ALTERNATIVES EXPLORED AND REASON REJECTED

DHS IS SOLELY RESPONSIBLE FOR SERVICES

19-2-202 RESPONSIBLE AGENCIES

- ❖ THE DEPARTMENT OF HUMAN SERVICES IS THE SINGLE STATE AGENCY RESPONSIBLE FOR OVERSIGHT OF THE ADMINISTRATION OF JUVENILE PROGRAMS AND THE DELIVERY OF SERVICES FOR JUVENILES AND THEIR FAMILIES IN THIS STATE
- ❖ SO—DON'T LET DHS OFF THE HOOK!