

### Federal Law

- Reasonable efforts required to “preserve and reunify families **prior to placement to prevent or eliminate need for removing child from his or her home** and **to make it possible for the child to return safely to his or her home.**” 42 U.S.C. §671 (a)(15).
  - ✓ Health and safety of child shall be paramount concern.
  - ✓ Exceptions to the reasonable efforts at 42 U.S.C. § 671(a)(15)(C)-(E).
- **Active Efforts** required under Indian Child Welfare Act. See 25 U.S.C. §1912(d). See also §7.309.1.A.

### State Statutes

- Reasonable efforts are defined as the exercise of diligence and care for children who are in out-of-home placement or are at imminent risk of out-of-home placement. See C.R.S. §19-1-103(89).
- Reasonable efforts are deemed to be met when county/city provides services, including placement services, according to the following principles. C.R.S. § 19-3-100.5 (referring to C.R.S. §19-3-208).
  - ✓ Serve immediate health, safety, and well-being of children
  - ✓ Avoid unnecessary placement of children into foster care
  - ✓ Facilitate, if appropriate, speedy reunification
  - ✓ Promote best interests of child
  - ✓ Examples of services that must be provided “based upon the state’s capacity to increase federal funding or any other moneys . . . and as determined necessary and appropriate by individual case plans:” (**argue capacity to increase!**)
    - Child care
    - In-home supportive homemaker services
    - Financial services
    - Family preservation services
- Procedural requirements related to reasonable efforts:
  - ✓ Petition seeking removal of child. C.R.S. §19-3-502(2.5).
  - ✓ Order of legal custody to department. C.R.S. §19-1-115(6)(a), (b), (7).
  - ✓ Continuation of out-of-home placement. C.R.S. §19-1-115(6).
  - ✓ Report of RE required at dispositional hearing. C.R.S. §19-3-507(1)(b).

### State Regulations

- IV-E eligibility requires court order within 60 days of placement finding reasonable efforts were made to prevent the removal (or exception to requirement). §7.001.41.B.3.
- Reasonable efforts to prevent out-of-home placement/maintain family unit. §7.202.52.N.
- Service plan must document reasonable efforts to prevent removal/reunite. §7.301.24.M.
- Consideration of safety plans other than placement required, including but not limited to:
  - ✓ In-home/Core Services, if appropriate and available,
  - ✓ Possibility of removing the maltreating adult from the home,
  - ✓ Possibility of safe placement for non-maltreating parent and child,
  - ✓ Availability of kinship placement. §7.202.52.N.

### State Cases

- ***People ex rel T.M.W.*, 208 P.3d 272 (Colo. App. 2009); *In the Interest of M.S.*, 129 P.3d 1086 (Colo. App. 2005)**
  - ✓ Failure to raise issue of perceived deficiency of department’s reasonable efforts to reunite the family in district/ juvenile court results in waiver of right to raise reasonable efforts on appeal.
- ***People ex rel. S.N.-V*, 300 P.3d 911 (Colo. App. 2011)**
  - ✓ Court of Appeals declines to follow precedent of *M.S.*, holding that estoppel doctrines do not bar parent from raising reasonableness of efforts on appeal.

➤ **Multi-Ethnic Placement Act**

- ✓ Prohibits states and other entities receiving federal assistance from delaying or denying a child foster care or adoptive placement on basis of race, color, or national origin of child or the prospective parent
- ✓ Prohibits denial of opportunity to become a foster or adoptive parent on basis of race, color, or national origin of potential parent or child
- ✓ Requires, for continued eligibility for federal funding, diligent recruitment of foster and adoptive parents reflecting the racial and ethnic diversity of children in the state who need such parents

*For more info, see Administration for Children and Family Services Guide at <http://www.nrcadoption.org/webcasts-2/mepa-2/>*

➤ **Indian Child Welfare Act** (See 25 U.S.C. § 1901 *et seq.*)

- ✓ Requires **active efforts** instead of reasonable efforts. See 25 U.S.C. §1912(d); §7.309.1.A.
- ✓ Defines children to whom ICWA applies. See 25 U.S.C. §1903.
- ✓ Sets forth specific placement priorities. See 25 U.S.C. § 1915.
  - “extended family member” may be defined by child’s tribe. See 25 U.S.C. §1903.
- ✓ Requires counties to make “every effort” to place child:
  - in most appropriate, least restrictive setting that most approximates a family and that best meets the needs of the child,
  - within a reasonable distance from the child’s home. See §7.309.5
- ✓ Requires consideration of preference of Native American Children/parents “where appropriate.” See §7.309.6.

➤ **Interstate Compact on Placement of Children** (See C.R.S §24-60-1801, *et seq*; §7.307 *et seq.*)

- ✓ Sets forth requirements & responsibilities for interstate placement of children.
- ✓ Sets forth specific definitions for “sending agency” and “placement.”

### State Statutes

- “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” unless commitment to CDHS. *See generally* C.R.S §19-1-115(3)(a).

### State Cases

- ***People in the Interest of T.W.*, 642 P.2d 16 (Colo. App. 1981), cert. denied (1982).**
  - ✓ District court rejected Fort Logan as placement option for child adjudicated dependent, neglected, and delinquent, and, upon motion by GAL, ordered CDHS to pay its allocation of funding for placement.
  - ✓ It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent.
  - ✓ While the State Department has the authority to prescribe procedures for handling requests and applications for social services through its rules and regulations, it may not encroach upon that authority exclusively placed with the court.
  - ✓ Executive director of state agency may not, ex parte, second-guess trial court's determination of placement.
- ***People in the Interest of J.H.*, 770 P.2d 1355 (Colo. App. 1989), cert. denied (1989).**
  - ✓ Department of social services appealed district court's order placing legal and physical custody of child in private home and directing department to reimburse costs of that placement.
  - ✓ Courts have authority to direct that local social services departments provide child welfare services, including reimbursement for costs of private placement, when necessary to protect welfare of children.
  - ✓ Such authority exists even when legal custody is not granted to the department.
- ***City and Co. of Denver v. Denver Juvenile Court*, 182 Colo. 157, 511 P.2d 898 (1973)**
  - ✓ Supreme Court held that court had jurisdiction to order specific placement at Brockhurst Boys Ranch upon CHINS adjudication, dismissing county department's rule to show cause.
  - ✓ 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.
  - ✓ Children's Code should be construed favorably to the best interests of the child and society. It is the *juvenile court's* responsibility to determine what that may be on a case-by-case basis.
- ***Denver v. Brockhurst Boys Ranch*, 195 Colo. 22, 575 P.2d 843 (1978)**
  - ✓ Court did not err in denying county department's motion to make state department party in seeking reimbursement of state's 80% share of Brockhurst Placement costs ordered in *Denver v. Juvenile Court* (see above).

### Court's Authority to Order Specific Placements

### State Statutes

- “Stability and preservation of the families of this state and the safety and protection of children are matters of statewide concern.” C.R.S. §19-3-100.5.
  - ✓ In order for court to order disposition other than placement with parent, must be established by preponderance of evidence that separation from parents is in child’s best interests. C.R.S. §19-3-508(2).
- Permanency hearings. C.R.S. §19-3-702(3).
  - ✓ First question is to determine whether/when child should be returned home and whether reasonable efforts have been made to find permanent home.
  - ✓ If child is not returned, court must determine whether there is substantial probability that child will be returned within six months.
  - ✓ At every PPH, court must determine whether procedural safeguards to preserve parental rights have been applied in connection with any change in child’s placement or any determination affecting parental visitation with child.

### State Regulations

- §7.202.62(B) – Services shall be provided to:
  - ✓ Protect the child(ren) or youth from further abuse or neglect **through building parental capabilities and increasing parental involvement.**
  - ✓ Must be **accomplished in a manner that preserves the family when this can safely be done.**
  - ✓ When safe family preservation is not possible, services shall be provided that preserve the child(ren)’s or youth’s continuity **within the extended family and/or home community when feasible.**
- Family Services plan must incorporate the following principles:
  - ✓ Child safety is paramount,
  - ✓ Children belong in families,
  - ✓ Families need support of communities,
  - ✓ Community partners are key to achieving strong outcomes. §7.301.2.
- Initial permanency goal is to return home with few exceptions. §7.301.24(N)(1).
- Safety concerns should drive out of home placement decision.
  - ✓ Safety threshold criteria, fifteen standardized safety concerns, and safety intervention analysis: §7.202.533.
  - ✓ Colorado Safety Assessment Instrument. §7.202.533.
    - Requires specific and observable threat that could result in severe harm to child; determination that caregiver is unable to control conditions & behavior that threaten child safety; & imminent potential of severe harm.
    - Specifically requires consideration of whether in home safety plan can sufficiently manage concerns.
  - ✓ Safety Planning and Documentation. §7.202.534. Among other things, includes:
    - Identification of each family member & safety management provider participation in the plan.
    - Parental acknowledgement of safety concerns & willingness to participate in the safety plan.

- Orders of Protection. C.R.S. §19-1-114.
  - ✓ Can be used to require person to:
    - Stay away from child or residence
    - Permit parent to visit child at stated times
    - Abstain from offensive conduct against a child or child's parent
    - Give proper attention to care of home
- Core Services. §7.303.11
  - ✓ Goals include:
    - Focus on family strengths
    - Prevent out-of-home placement
    - Return children to own home or permanent families
  - ✓ To be eligible for core services, child must:
    - Meet criteria for Program Area 4, 5, or 6 target group, and
    - Meet CO out-of-home placement criteria, and
    - Require more restrictive level of care but may be maintained at a less restrictive out-of-home or in home with core services. §7.303.13.
  - ✓ State summary of Core Services program can be found on CDHS's website. See <http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251588683608>.
  - ✓ Counties must submit annual reports of program to state; however, they can change plan within 10% at any time without reporting amendment. Check w/ county department for most updated plan.
- Family Stabilization Services for families at risk of out-of home placement.
  - ✓ Services include, but not limited to:
    - Less than 24 hour respite care (CDHS reports that no county currently offers),
    - In-home services including kinship care and counseling,
    - Reintegration services. C.R.S. §19-1-125(3).
  - ✓ Shall be provided within context of support plan. Program goals are to assist in provision of appropriate and necessary short-term services to help stabilize families in order to preserve family unit, including kin and adoptive families, and reintegrate children with their families, including adoptive families. §7.310.
  - ✓ Eligibility criteria. §7.310.2.
    - Family must need services to stabilize home environment or have been reunited with children following out-of-home placement;
    - Family must voluntarily request such services;
    - Attempts to utilize existing resources/services must have been made but been unsuccessful/insufficient in addressing family's needs;
    - Services must have potential to stabilize the family environment
    - **Unlike core services, imminent risk of out-of-home/more restrictive placement not required**
    - CDHS reports that county Family Stabilization Services plan are submitted in annual Core Services report.
- Placement Alternative Commissions. See C.R.S. §19-1-116(2)(a).
  - ✓ Counties are allowed to develop these. CDHS reports that over 55 counties have them. Check to see if your county has one.

**State Statutes**

- “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.” C.R.S. §19-3-500.2(1)(a).
- “Sibling group” means “biological siblings who have been raised together or have lived together.” C.R.S. §19-1-103(98.5). *See also* §7.000.5
- County department must make “thorough efforts” to locate joint placement for sibling group being placed in foster care. C.R.S. §19-3-213(1)(c). *See also* §7.304.61(C).
- If “appropriate, capable, willing, and available joint placement” is located, presumption is that joint placement is in children’s best interests. *See also* §7.304.61(C).
  - ✓ Efforts should be made to place siblings together. C.R.S. §19-3-500.2(1)(c).
  - ✓ Placement criteria. C.R.S. §19-3-213(1)(c)(I).
  - ✓ Dispositional hearing. C.R.S. §19-3-508(1)(c).
  - ✓ Placement after termination. C.R.S. §19-3-605(2).
- Where sibling groups are involved, judge must review family service plan document regarding their placement. C.R.S. §19-3-213(1)(c)(III).
- Foster homes may exceed capacity for number of children and square footage requirement to accommodate joint placement of siblings. C.R.S. §19-3-215.
- Notwithstanding relative preference, joint sibling placement is presumed to be in children’s best interests when an “appropriate, capable, willing, and available” joint placement is located.
  - ✓ County placement, pre-temporary custody hearing. C.R.S. §19-3-402(2)(b).
  - ✓ At temporary custody hearing. C.R.S. §19-3-403(3.6)(b).
  - ✓ At dispositional hearing. C.R.S. §19-3-508(5)(b)(II).
  - ✓ After termination. C.R.S. §19-3-605(2).
- At dispositional hearing, caseworker is required to give a report regarding attempts to place siblings together. If child is not placed with sibling group, caseworker must submit a statement about whether it continues to be in the best interests of the children to be placed separately. C.R.S. §19-3-507(1)(b).

***\*\*State Regulations language parallels language in Title 19 and is referenced above.***

### State Statutes

- Grandparents
  - ✓ Court **may** give placement preference to grandparent “appropriate, capable, willing, and available to care for the child” if in the child’s best interests. C.R.S. §19-1-115(1)(a).
  - ✓ Same preference **allowed** at emergency placements. C.R.S. §19-3-402(2)(a).
  - ✓ Grandparent placement **required** at dispositional hearing “if such placement is in the child’s best interests.” C.R.S. §19-3-508(5)(b)(1).
  - ✓ If grandparent has made timely request, **consideration required** of post-termination request that guardianship and legal custody of child be placed with grandparent. Grandparent preference **allowed** if in best interests of child. C.R.S. §19-3-605(1).
  - ✓ Agency with legal custody **may** give placement preference to “appropriate, capable, willing, and available” grandparent. C.R.S. §19-1-115(3)(a).
- Relatives
  - ✓ Court **required** to advise parents that child may be placed with relative if placement is “appropriate & in child’s best interests.” C.R.S. §19-3-403(3.6)(a)(III). *See also* §7.304.72.
  - ✓ Court **may** consider and give preference to giving temporary custody to “appropriate, capable, willing, and available” relative if in best interests. C.R.S. §19-3-403(3.6)(a)(V).
  - ✓ Court **may** authorize county department to place child with relative without hearing if county finds suitable relative & GAL agrees with placement. C.R.S. §19-3-403(3.6)(a)(V).
  - ✓ Relative placement **required** at dispositional hearing “if such placement is in the child’s best interests.” C.R.S. §19-3-508(5)(b)(1).
  - ✓ If specifically enumerated relative has made timely request, **consideration required** of post-termination request that guardianship and legal custody of child be placed with relative. Relative preference **allowed** if court determines that such placement is in best interests of child. C.R.S. §19-3-605(1). *See also* §7.304.72.

### State Regulations

- Kinship care. §7.304.21.
  - ✓ Kin are relatives, persons ascribed by the family as having a family-like relationship, or individuals that have a prior significant relationship with the child/youth. These relationships take into account cultural values & continuity of significant relationships.
  - ✓ Kinship care shall be used to: maintain children in families in order to provide meaningful emotional & cultural ties across the life span; minimize trauma of out-of-home placement; support & strengthen families’ ability to protect their children; & provide permanency.
  - ✓ Kinship providers shall be advised of “all support options available to them through the county department,” including family preservation, certification, & relative guardianship assistance program.
  - ✓ Authority to waive non-safety certification standards for kinship care. §7.708.7.
    - Lists which standards may be waived on a case-by-case basis, procedures for waiving the standards, & circumstances under which the standards may not be waived.
    - No right to appeal the decision.
- Family Services Plan must document initial & ongoing kinship placement efforts. §7.301.24(F)
- Family Services Plan must include description of services and resources needed by foster parents/ kinship providers to meet needs of child and plan for providing service. §7.301.24(I).
- Relative Guardianship Assistance Program: relatives must be through fifth degree of kinship and must be **certified** kinship family foster care parent. §7.311 *et seq.*
- Exception to training requirement for “child-specific” placements (child has a prior relationship to the applicant): applicant has 60 calendar days to complete training; also procedures for background checks, provisional licensing. §7.500.311(C).

*Colorado Office of the Child’s Representative*

July 2014

**State Statutes**

- Parental Advisement Form at Temporary Custody Hearing. C.R.S. §19-3-403(3.6).
  - ✓ Parent required to fill out affidavit listing info regarding specifically enumerated relatives.
  - ✓ Parents allowed to provide information regarding “other relatives and kin who have a specific relationship with the child.”
  - ✓ GAL must be provided copy of form.
  - ✓ Youth consultation required, as appropriate, regarding suggested relative caretakers.
- County Responsibilities to Exercise Due Diligence. C.R.S. §19-3-403(3.6).
  - ✓ Court required to order county to exercise due diligence to contact all grandparents and other adult relatives within 30 days of removal of child.
  - ✓ Good cause exception.
  - ✓ County department must notify relatives of:
    - Removal of child
    - Options to participate in child’s care or placement
    - Options that may be lost by failing to respond
    - Requirements to become foster parent
    - Available services and supports
    - Time sensitive nature of placement and potential time limitations

**State Regulations**

- Diligent search definition and requirements. §7.304.52.
  - ✓ Must be commenced within 3 working days for noncustodial parents.
  - ✓ Must be completed for grandparents or all other adult relatives within 30 days.
  - ✓ Must include consultation with parents, as well as children and youth when appropriate, regarding suggestions for relative caretakers and other appropriate caretakers.
  - ✓ Must occur at least every six months throughout until permanency is achieved
    - Exception when: placement is stable with a relative or kin a minimum of 6 consecutive months, the relative or kin has committed to the legal permanence of the child or youth, & there is an agreement among the parties that the relative or kin is the appropriate permanency option & that it is in the best interest of the child/youth that diligent search shall be discontinued.
  - ✓ Family Engagement Meeting shall occur within 30 days when:
    - Child/youth is in a family-like permanent setting without the provider expressing formal intent to provide legal permanence at the time when child/youth has been in out-of-home placement 15 of 20 months, has had 2+ unplanned moves within a 12 month period, or is assigned a permanency goal of OPPLA, except those children/youth participating in the unaccompanied refugee minor program. §7.304.52(E)(1)(a-c).
    - Child/youth is in out-of-home placement in a non-family-like setting without an approved permanency plan & any of the conditions in §7.304.52.E.1.a-c exist.
  - ✓ Must be documented in Family Services Plan and in the contact notes.

Colorado Office of the Child’s Representative

July 2014

Diligent Search



### **State Statutes**

- Proximity to Parents' Home
  - ✓ In making out of home placement recommendation to court, county department must consider proximity of proposed placement to child's parents' home, if parental rights have not been terminated. C.R.S. §19-1-115.5(2)(b)(II).
- Proximity to School
  - ✓ "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." C.R.S. §19-3-213(1)(d).
  - ✓ In placing a child out of home, court must "consider recommendations of 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." C.R.S. §19-1-115.5(2)(b),(c), (d).

### **State Regulations**

- Family Services Plan Out-of-Home Placement Documentation. 7.301.24(D),(E)
  - ✓ For children placed a substantial distance from the home of the parent(s) or in out-of-state placement "how the placement meets the best interests of the child."
  - ✓ Description of "how the home is in reasonable proximity to the home of parents or relative and to the school the child has attended."

<ul style="list-style-type: none"> <li>➤ Notice to GAL <ul style="list-style-type: none"> <li>✓ To the extent possible, county department should notify GAL prior to any change of placement. GAL can seek emergency hearing if disagrees. <i>See</i> C.R.S. §19-3-213(1)(a).</li> <li>✓ GAL must be notified within one business day of child’s placement in foster home. §7.304.62.L.</li> </ul> </li> <li>➤ Notice to Parents <ul style="list-style-type: none"> <li>✓ To the extent possible, county department should notify all parties prior to any change of placement. <i>See</i> C.R.S. §19-3-213(1)(a).</li> <li>✓ County file must document that court and parents are notified of any change in placement before the change unless child is in immediate danger. §7.304.53.B.4.</li> <li>✓ Parent/legal guardian must be notified within one business day of child’s placement in foster home. §7.304.62.L.</li> </ul> </li> </ul>	<b>Notice Provisions</b>
<ul style="list-style-type: none"> <li>➤ Minimization of Changes of Placement <ul style="list-style-type: none"> <li>✓ County department may not move child from one short-term emergency placement to another unless all reasonable efforts exhausted. §7.304.62 (J).</li> <li>✓ County department may not move a child more than two times unless such move results in permanent placement or is determined to be in best interests of the child and the reasons for the additional move are documented in FSP. §7.304.62 (K).</li> </ul> </li> <li>➤ Placement Criteria. C.R.S. §19-3-213(1)(b). <ul style="list-style-type: none"> <li>✓ Child may not remain in emergency, short-term, or shelter for more than 60 days.</li> <li>✓ Department may not move child from one emergency placement to another absent exceptional circumstances.</li> </ul> </li> </ul>	<b>Placement Stability</b>
<ul style="list-style-type: none"> <li>➤ Responsibilities of Foster Parents to Promote Family Connection <ul style="list-style-type: none"> <li>✓ Foster parents shall “work actively with families of origin as specified in each child’s Family Services Plan. §7.304.74.</li> </ul> </li> <li>➤ Religious Preference <ul style="list-style-type: none"> <li>✓ Court must take into consideration religious preferences of child or parents whenever practical when placing a child, but welfare of child is primary consideration for the court. C.R.S. §19-3-508(5)(a).</li> </ul> </li> <li>➤ When parent is minor and minor parent has been determined eligible for IV-E funding, child’s placement costs are reimbursable through Title IV-E foster funding as an extension of the minor parent’s cost of care. §7001.41(G).</li> </ul>	<b>Other Considerations</b>