

### **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 visiting services, according to 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”: **(C.R.S. §19-3-208(2)(d)- argue capacity to increase!)**
  - Transportation
- 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(6.5).
  - ✓ 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.

### **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.

### 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.
- County is required to provide visit services for parents and children if children in out-of-home placement as determined necessary and appropriate by individual case plans. C.R.S. §19-3-208(2)(b)(IV).
- Services must be designed to accomplish following goals. C.R.S §19-3-208(2)(a).
  - ✓ Promote immediate health, safety, and well-being
  - ✓ Reduce risk of maltreatment
  - ✓ Avoid unnecessary placement
  - ✓ Facilitate, if appropriate, speedy reunification of parents with children
  - ✓ Promote best interests of child
- Court may enter order of protection requiring custodian to permit a parent to visit a child during stated periods. C.R.S. §19-1-114(2)(b).

### State Regulations

- Treatment plan must include visiting plan which addresses frequency, type of contact and people who will visit. It must address the following factors. §7301.24(J).
  - ✓ Child’s growth and development
  - ✓ Child’s adjustment to placement
  - ✓ Ability of provider to meet child’s needs
  - ✓ Appropriateness of parent and child visitation, including assessment of risk
  - ✓ Child’s contact with parents, siblings, and other family members
  - ✓ Visitation between the child and his/her family shall increase in frequency & duration as the goal of reuniting the family is approached.
- Visits and Supervision. §7.304.64.
  - ✓ At a minimum, visiting plan should provide methods to meet following needs of child:
    - Child’s growth and development
    - Child’s adjustment to placement
    - Ability of provider to meet child’s needs
    - Appropriateness of parent and child visitation, including assessment of risk
    - Child’s contact with parents, siblings, and other family members
    - Child’s permanency plan
  - ✓ Visits between the child and his/her family shall increase in frequency and duration as the goal of reuniting the family is approached.
  - ✓ Department must notify parents of any determination affecting visitation rights.
  - ✓ If goal is not to reunite the family, caseworker shall discuss issue of separation and help define child’s future relationship with family.

### State Cases

- ***People ex rel. D.G., 140 P.3d 299 (Colo. App. 2006)***
  - ✓ Children's Code requires trial court itself to make decisions regarding visitation and may not delegate this function to third parties. *Id.* at 302 (citing *People in Interest of B.C.*, 122 P.3d 1067 (Colo. App. 2005)).
  - ✓ Written communication rather than visitation may be necessary in certain cases. “However, simply stated, written communication is not visitation.” *Id.* at 305.

### State Statutes

- Grandparents and great-grandparents may seek visiting orders. C.R.S. §19-1-117. *Limited on constitutional grounds by CA (see below)*
  - ✓ Best interests determination governs whether court should grant request.
  - ✓ Procedure for resolution of disputes regarding grandparent visits and possible consequences for failure to comply with order requiring grandparent visits set forth in C.R.S. §19-1-117.5.
- C.R.S. §19-1-128 – County department must arrange visits between siblings when
  - ✓ Mutual request from siblings;
  - ✓ If visitation is required on regular basis, county must “arrange the visits and ensure that the visits occur with sufficient frequency and duration to promote continuity in the siblings’ relationship.”
  - ✓ Exceptions for best interests; criminal prosecution; restraining orders.
  - ✓ Note broader definition of “sibling” in this statute than in §19-1-103(98.5). Siblings need not have been raised together or have lived together.

### State Regulations

- Children in foster care must be informed of the right to sibling visits. §7.304.64(C).
- Sibling visits when requested must be scheduled within reasonable amount of time and with sufficient frequency to promote continuity of relationships. §7.304.64(C).

### State Cases

- ***In re Adoption of C.A., 137 P.3d 318 (Colo. 2006)***
  - ✓ Appropriate standard for issuance of an order for grandparent visitation under C.R.S. §19-1-117 requires:
    - (1) a presumption in favor of the parental visitation determination;
    - (2) to rebut this parental presumption, a showing by the grandparents through clear and convincing evidence that the parental visitation determination is not in the child's best interests; and
    - (3) placement of the ultimate burden on the grandparents to establish by clear and convincing evidence that the visitation schedule they seek is in the best interests of the child. *Id.* At 319.
  - ✓ Court must apply this standard in grandparent visitation cases, and, if it orders grandparent visitation, must make findings of fact and conclusions of law identifying those “special factors” on which it relies.

**State Regulations****➤ Family Foster Homes**

- ✓ Foster parents shall “***work actively with families of origin as specified in each child’s Family Services Plan.***” §7.304.74(B).
- ✓ Foster children have the right to:
  - Communicate with “significant others,” such as parents. §7.708.33(A).
  - Access letter writing materials, including postage, and for the foster parent to assist the child if unable to write, prepare and mail letters. §7.708.33(B).
  - Access telephones to make and receive calls in private. §7.708.33(B).
  - Have convenient opportunities to meet with visitors. §7.708.33(B).
  - Send and receive sealed correspondence. §7.708.33(B).
- ✓ Foster homes must develop a plan with certifying agency (and appropriately communicate to child) regarding:
  - How and when phone, including cell phone use, and written communications, including, but not limited to, social networking and other electronic communication, will take place. §7.708.33(C).
  - Extenuating circumstances & emergency situations affecting the foster child & his/her family.
- ✓ Foster child grievance procedure: §7.708.62.

**➤ 24- Hour Child Care**

- ✓ Facilities must have written policies and procedures that protect the following rights:
  - To communicate with significant others such as parents. §7.714.31(A).
  - Access letter writing materials, including postage, and for the foster parent to assist the child if unable to write, prepare and mail letters. §7.714.31(B).
  - Access telephones to make and receive calls in private. §7.714.31(B).
  - Have convenient opportunities to meet with visitors. §7.714.31(B).
  - Send and receive sealed correspondence. §7.714.31(B).
- ✓ Written policies restricting child’s rights must include plans for:
  - How and when phone and written communication will take place. §7.714.31(C).
  - Regular visits with relatives, friends, or others interested in child’s welfare. §7.714.31(C).
- ✓ Grievance plan/procedure required: §7.714.32.

**➤ Residential Care**

- ✓ Centers must have written policies and procedures that protect the following rights:
  - To communicate or correspond with persons or organizations subject only to the limitations necessary to maintain facility order and security. §7.713.22(A).
- ✓ Written policies and procedures pertaining to visiting, mail, and other forms of communication must address:
  - Visits with relatives, friends or others interested in the child’s welfare. §7.713.22(D).
  - Access to telephone to make and receive personal calls. §7.713.22(D).
  - Inspection, sending, receiving, and forwarding of mail. §7.713.22(D).