







SB18-254

Child Welfare Reforms

- A bill that came out of the JBC and reforms the funding structure for State child welfare services
- Creates the "Delivery of Child Welfare Services Task Force".
- Does mention the Family First Prevention Services Act.
- Requires CDHS to develop a program to serve children and youth with intellectual and developmental disabilities who are placed by county departments in licensed out-of-home placement.
- Increased the reimbursement to counties for Adoption and Relative Guardianship Assistance to 90%.
- No longer allows counties to negotiate rates lower than the base anchor rate established by the state department.
- Authorizes incentive based payments to providers.
- Requires each county or region of counties to perform an analysis of available in-home, family-like and out-of-home placement settings.

HB18-1348

Child Welfare Information and Services

- Allows foster parents access to certain information regarding a foster child or prospective foster child, including some judicial information and education records.
- Information must be directly relevant to meeting the child's physical, mental, emotional, behavioral and other identified trauma needs. Includes:
 - Educational Records
 - Relevant information in the PSP
 - Circumstances related to removal
 - Placement history, safety concerns and reasons for unplanned placement moves
 - Mental health and medical records subject to privacy laws
- Requires foster parents to maintain confidentiality
- Prioritizes child care assistance for certified foster parents, certified kinship foster parents and noncertified kinship care providers who provide care for children involved in an open child welfare case.

HB18-1328

Redesign Residential Child Health Care Waiver (CHRP)

- Another JBC bill
- Directs the department of Health Care Policy and Finance (aka HCPF) to initiate a stakeholder process to redesign CHRP. Redesign waiver is due to the general assembly 3/31/2019
- What do they really want? To change the agency who administers from CDHS to HCPF (requires federal approval) and they want the program to apply to children remaining in the home – currently have to be in out of home care.
- Applies to Medicaid eligible children.

HB18-1319

Services Successful Adulthood Former Foster Youth

- Allows counties to provide services to youth who are 18-21 who are no longer under the jurisdiction of the court.
- Allows counties to use core services funding.
- Forms the "Former Foster Care Youth Steering Committee" who will convene by 10/30/18 to develop an implementation plan that allows former foster youth to receive services for successful adulthood. The committee must look at alternatives to returning to placement among other things. A report with recommendations is required on or before January 1, 2020.

HB18-1306

Improving Educational Stability for Foster Youth

- A very long and detailed bill that aligns state law with the federal Every Student Succeeds Act (ESSA).
- Requires CDE to hire a full-time foster care education coordinator (with 2 pages of duties).
- Provides better guidance when student in OOH placement transfers to another school. Should prevent some of the current delays in getting enrolled and getting records (including special education records).
- Allows more flexibility in high school regarding prerequisites and graduation requirements when a student in OOH care has to transfer during high school. This should remove some of the barriers to graduation for these students.
- Establishes data sharing between CDE and CDHS.
- Establishes the educational stability grant program.
- Requires rules be established around the best interest determination meetings which determine if it is in the best interests for the child to remain in their current school. This requires DHS to coordinate with (among others) GALS.
- Requires transportation be provided and allocated funding for it.
- Has additional sections regarding homeless youth.

HB18-1257

Correction to House Bill 16-1316 reinsert "not"

- In 2016 the venue statute was amended and they made a mistake that changed the meaning of the statute.
- Reinserted the word "not" to ensure that change of venue could happen AFTER adjudication has occurred.



HB18-1104

Family Preservation for Parents with Disability

- Addresses historical bias regarding parents with disabilities and aligns state law with federal requirements.
- Parent's disability alone must not serve as the basis for denial or restriction of parenting time or parenting responsibilities in dependency and neglect proceedings except when it impacts the health or welfare of a child.
- Prospective adoptive parent's disability alone must not serve as the basis for the denial of adoption unless it impacts the health or welfare of the child.
- Individual's disability alone must not serve as the basis for the denial of temporary custody or foster care except when it impacts the health or welfare of the child.
- In a D&N, when the parent's disability is alleged to impact the health or welfare of the child, the court shall find whether reasonable accommodations and modifications (as required by the ADA) were provided to avoid nonemergency removal on the basis of disability.
- Requires reasonable accommodations and modification (set forth in the ADA) be included in the treatment plan.
- If the court is making a no appropriate treatment plan finding then it is required to make findings that reasonable accommodations and modifications will not remediate the impact of the parent's disability on the health or welfare of the child.

ICWA

Just kidding – ICWA will be covered extensively tomorrow!

D&N Court's Continuing, Exclusive Jurisdiction

In the Interest of D.C.C., 2018 COA 98

- Relying on an order from pending child support case declaring stepmother to be the legal parent of the child, the D&N court dismissed Father from the case. Father appealed.
- D&N court erred in dismissing father from the petition based on parentage findings made by the child support court
- Under the Children's Code, the D&N court "maintains **continuing, exclusive jurisdiction** over decisions related to the status of a child who has been adjudicated dependent or neglected."
 - Statutory interpretation.
 - Fundamental fairness and due process concerns.

Jurisdiction to Terminate Parental Rights/Subject Matter Jurisdiction v. Personal Jurisdiction

People in Interest of J.W., 406 P.3d 853, 2017 CO 105 (Colo. 2017)

- Court accepts mother's admission that children were dependent and neglected; proposed written adjudication and disposition orders were distributed and approved by parties but court does not sign the orders.
- COA held that court's failure to enter written adjudication order deprived court of jurisdiction to terminate the parent-child legal relationship. Supreme Court reverses this decision.
- Supreme Court disagrees with COA's characterization of the jurisdictional issue as one of subject matter jurisdiction, reasoning that the case "unquestionably falls within the class of cases that a juvenile court may hear pursuant to § 19-1-104 . . ."
- Question is whether court had jurisdiction over the children. In this case, mother's admission established children's status and court's failure to enter a written adjudication order did not deprive court of jurisdiction or deprive mother of fundamental fairness or due process.

Jurisdictional Issues under the UCCJEA

People in Interest of C.L.T., 405 P.3d 510, 2017 COA 119 (Colo. App. 2017)

- Termination of mother's parental rights; mother argues trial court failed to comply with UCCJEA.
- Possibility of child welfare involvement in 7 states. Minute orders indicated that Texas DHS had closed its case, but record did not include a transcript of the hearing or any other information about the Texas case or other six referenced states.
- Court concludes that based on information in the record, trial court could not have determined whether it had jurisdiction to enter any orders other than temporary emergency orders concerning the child.
- Because trial court did not develop record by inquiring of the parties, further proceedings are necessary to resolve the jurisdictional issues.
- Even though mother did not raise jurisdictional issue below, subject matter jurisdiction under the UCCJEA is reviewed *de novo* and lack of jurisdiction can be raised for the first time on appeal.
- Court notes that even though trial court had very limited information to make a determination, UCCJEA provided two options: staying proceeding until the necessary information is furnished, requiring a party who has provided information to provide additional information under oath.

Adjudication

People in Interest of M.M., 2017 COA 144 (Colo. App. 2017)

- Trial court adjudicates children dependent and neglected via summary judgment on four grounds: injurious environment; lacking proper parental care (no fault); mistreatment and abuse by mother; lacking proper parental care through mother's actions and omissions. Father appeals.
- COA agrees with father that mother's admissions cannot support summary judgment against him. However, father's admissions supported court's adjudication of children under the two grounds that do not require findings of parental fault.
- Division affirms the adjudication on the two "no fault" grounds and reverses adjudication as to the grounds referencing parental conduct.

Dispositional Hearing

People in Interest of B.C., 418 P.3d 538, 2018 COA 45 (Colo. App. 2017)

- Treatment plan was prepared, distributed, and filed with the court, but court never held a dispositional hearing or entered findings that the treatment plan was appropriate.
- Court's failure to hold a dispositional hearing and approve an appropriate treatment plan requires reversal of termination of mother's parental rights.

Discovery

In Interest of S.L., 421 P.3d 1207, 2017 COA 160 (Colo. App. 2017)

- Trial court ordered CRCP 26 to apply to proceeding and Department.
 - failed to disclose with specificity prior cases in which experts had testified and a particular area of expertise for two experts and
 - mistakenly disclosed the third expert was licensed
- Trial court did not abuse its discretion in allowing department's witnesses to testify as experts despite department's failure to comply with C.R.C.P. 26(a).

C.K. v. People, 407 P.3d 566, 2017 CO 111 (Colo. 2017)

- Trial court had imposed discovery sanctions on department; COA reversed based on sovereign immunity.
- Sovereign immunity does not bar the imposition of attorney's fees against a department for discovery violation.
- However, Court does not decide whether C.R.C.P. 37 applies to proceedings governed by the Children's Code and whether it contains the express language required to authorize attorney's fees against a public entity.

In Camera Interviews

H.K.W., 417 P.3d 875, 2017 COA 70 (Colo. App. 2017)

- Trial court may conduct an in camera interview to determine child's best interests in allocating parental responsibilities in a D&N proceeding.
- A record of interview must be made a part of the case.
- Record of interview must be made available, upon request, when a parent needs to determine whether trial court's findings are supported by the record and contest information supplied by the child during the interview.

In Interest of S.L., 421 P.3d 1207, 2017 COA 160 (Colo. App. 2017)

- Trial court has discretion to make determination about parents/counsel presence. Court should consider:
 - Child's age/maturity
 - Nature of information
 - Child's relationship with parents/parents' relationship
 - Potential harm to the child
- Court should allow parents/counsel to submit questions; court may ask its own questions.
- Interview must be on the record and, if timely requested by any party and the trial court anticipates relying on information from the interview, the transcript of the interview must be made available to the parties in advance of the hearing.
- Court should be satisfied that information "did not pass through the crucible of cross-examination."
- Judge must maintain impartiality to avoid the appearance of favoring a particular outcome.

Reasonable Efforts

People in Interest of S.L., 421 P.3d 1207, 2017 COA 160 (Colo. App. 2017)

- Court rejects father's argument that department failed to provide parents with sufficient time to complete the services required by treatment plans.
- Motion to terminate was filed only 77 days after treatment plans were adopted, but department began voluntary services with parents four months before filing of D&N and, including that time period, parents received services for approximately 9 months prior to filing of termination motion—and termination hearing was not held until more than a year after filing of motion to terminate.
- Drug testing needs were reasonably accommodated.
- Although juvenile court agreed that parents might benefit from inpatient treatment, father did not make arguments that treatment plan was inappropriate because it did not provide for it and his counsel agreed with court that treatment plan was achievable and appropriate.

Termination of Parent-Child Relationship

People in Interest of L.M., 416 P.3d 875, 2018 CO 34 (Colo. 2018)

- Department cannot terminate parental rights using Article 5 procedures in an Article 3 proceeding.
- Differences:
 - Purposes: family preservation and reasonable efforts vs. promoting integrity, finality, and expediency of adoption
 - Presumptions: Article 5 presumes fit parent; Article 3 presumes D&N adjudication
 - Substantive and procedural mechanisms: treatment plan, counsel, clear and convincing evidence, expert, diminution of less drastic alternatives
- "[O]nce the State commences a proceeding under Article 3, the parents are entitled to all of the substantive and procedural protections provided therein, and their parental rights can only be terminated in accordance with those procedures."
- What about relinquishment in Article 1? "Although we can appreciate why mother would wish to relinquish her parental rights rather than having those rights terminated, we perceive no basis for allowing the Department, at that point, to choose to proceed under Article 3's more expeditious and streamlined termination and adoption procedures with respect to Father."

Termination of Parent-Child Relationship

People in Interest of L.M. and M.M., 2018 COA 57M, 2016 WL 199546 (Colo. App. 2016)

- Adjudication based on finding that father had sexually abused L.M. Treatment plan premised on father's guilt. Criminal case acquittal. Trial court's termination order makes clear that it could not find that sexual assault allegations had been established by clear and convincing evidence.
- Father completes psychological evaluation; after father produced non-distress results in polygraph, his participation in denier's intervention program concluded.
- COA holds that record does not support decision to terminate parental rights.
 - Use of SCMH protocols after acquittal put father "in a no-win situation and was not reasonably calculated to render him a fit parent who could meet the children's needs."
 - While trial court's decision was centered on father's failure to acknowledge children's trauma and how he may contribute to it, the record does not establish that father was asked to address any other potential causes of the children's trauma.
 - For sexual abuse to serve as basis for determining that father was unfit and that there was no less drastic alternative to termination, it needed to be established by clear and convincing evidence.
 - When parent is acquitted of criminal charges relating to sexual abuse and court cannot find abuse occurred by clear and convincing evidence, parent's failure to admit to the sexual abuse as part of the treatment protocol is insufficient to support termination of parental rights.

Ineffective Assistance of Counsel

In Interest of S.L., 421 P.3d 1207, 2017 COA 160 (Colo. App. 2017)

- Claim of IAC based on failure to meet discovery and disclosure deadlines for an expert witness fails to demonstrate the necessary prejudice when:
 - Father's witness was allowed to testify as lay witness
 - It is not apparent from the record that allowing witness to testify as an expert would have led to different ruling
- Parent asserting IAC must show that counsel's performance was 1) outside range of professionally competent assistance and 2) so prejudicial that it deprived parent of a fair hearing.

Final Appealable Orders

People in Interest of R.S., 416 P.3d 905, 2018 CO 31 (2018)

- § 19-1-109(1) authorizes appeals in D&N proceedings from any order that qualifies as "final" for purposes of § 13-4-102(1). Appealable orders are not limited to the orders specifically enumerated in (2)(b) (termination) and (2)(c)(adoption).
- Order dismissing father from the petition was not a final appealable order b/c it did not end the action in which it was entered and was not a final determination of the rights of all of the parties to the action.
- Court does not address whether CRCP 54(b) allows court to direct the entry of a final judgment as to one or more but fewer than all of the claims or parties. No party sought 54(b) certification and the court did not enter it.

People in Interest of M.M.A., 2018WL2297071 (Colo. 2018)

- Supreme court grants petition for certiorari and vacates the judgment of the Colorado Court of Appeals for reconsideration in light of *People in Interest of R.S.*
- Certiorari question: Whether juvenile court's order terminating its jurisdiction is a final and appealable order from which an appeal may be taken or whether an order allocating parental responsibilities automatically terminates the juvenile court's jurisdiction such that the APR order is the only order from which an appeal may be taken after entry of the allocation order.
- COA had ruled that APR order was final and appealable so mother's appeal was not timely.

Foster Parent Standing

C.W.B., Jr., v. A.S., 410 P.3d 438, 2018 CO 8 (Colo. 2018)

- Foster parents do not have standing to appeal a juvenile court's order denying termination.
- Foster parents do not have a legally protected interest in the outcome of termination proceedings.
- 19-3-507(5)(a) does not automatically confer standing on foster parents to appeal.
 - Procedural rather than substantive right—right to intervene does not give them a stake in the outcome of the proceeding
 - Unlike GALs and department, neither statutes nor caselaw suggest that foster parents are authorized to initiate termination proceeding
- Because GAL is statutorily obligated to advocate for best interests of child, including on appeal, there is no need to confer standing on foster parents to represent child's best interests on appeal.
 - GAL's decision not to pursue an appeal does not equate to a failure to represent the child's best interests.

Miscellaneous Cases

People in Interest of C.V., 417 P.3d 975, 2018 COA 50 (Colo. App. 2018)

- On second day of termination hearing, judge realizes she had served as G.U. for mother's other child in a previous case.
- Although automatic recusal not required:
 - prior D&N case was highly relevant to the termination at issue/ finding that conduct/ condition was unlikely to change in a reasonable time and
 - prior case was referenced extensively throughout the termination hearing.
- Presiding over the termination proceeding did create an appearance of impropriety and judge did abuse her discretion in denying mother's request to recuse.

People in Interest of C.J., 410 P.3d 839, 2017 COA 157 (Colo. App. 2017)

- Mother challenges department's lack of notice/ invitation to an "administrative review" that ruled out as a placement option.
- Mother was not entitled to notice and prior hearing under §19-3-21(3)(a) because department did not propose to change the placement.
- "Proceedings" as referenced in 19-3-202(1) does not apply to this review so no deprivation of right to counsel.
- Mother's due process rights were protected by her opportunity to challenge the department's recommendations at the motions and termination hearings. Juvenile court is not bound by department's placement recommendations, as "it is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent."

Juvenile Delinquency

SB18-213 Transfer Academic Credits for DYS Youths

- Requires schools to follow the same practice when a student in OOH placement at a public school transfers to students who are transferring to/ from DYS placement/schools.



SB18-154

Juvenile Planning Committee Crossover Youth Plans

- Requires local Juvenile Services Planning Committees to devise a plan to manage dually identified crossover youth.
- GALs are not required members of the JSPCs but may be members (members are appointed by the Chief Judge in each district).
- Plan must include a process to identify crossover youth, method for collaborating and exchanging information, promptly communicating information between child welfare and juvenile justice systems, process for identifying appropriate services or placement based assessment, process for a single case management plan and identification of lead agency for case management, sharing assessments and case planning information, etc.

HB18-1344

Relief from Criminal Collateral Consequences

- Allows a juvenile court to enter an order for collateral relief using the same process as criminal courts.
- Combines collateral relief sections into one section and authorizes a court to enter an order for collateral relief at the time of conviction or any time thereafter.
- Created: §19-2-927 which spells out the application contents and hearing requirements.

HB18-1156

Limit Penalties for Juvenile Truancy

- Ongoing effort to reform truancy law in Colorado.
- Removes truancy from the definition of a "Delinquent Act".
- Emphasizes appropriate sanctions other than placement in a juvenile detention facility.
- Provides expanded procedural protections for youth in contempt of court proceedings pursuant to §22-33-108.
 - Warrant must provide for release of the child/youth from temporary custody on an unsecured PR bond (assigned by parent/legal guardian, DHS) or direct that the child/youth may only be arrested while court is in session and that he/she is taken directly to court for an appearance rather than booked into secure confinement.
- Limits detention as a sanction to no more than 48 hours.
- Requires that Courts not sentence a child/youth to detention as sanction for contempt unless the court finds that detention is in the best interest of the child/youth as well as the public. Provides some factors to consider.

HB18-1050

Competency to Proceed Juvenile Justice System

- Bill came from the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal Justice System.
- LONG history lead to the passage of this bill - it is definitely a compromise bill.
- Establishes a juvenile-specific definition of competent to proceed and incompetent to proceed in the juvenile justice system.
- Defines competent to proceed as the sufficient present ability to consult with his/her attorney with a reasonable degree of rational understanding in order to assist in the defense and that he/she has a rational as well as factual understanding of the proceedings.
- Includes "lack of mental capacity" as a basis for "Incompetent to Proceed".
- Mental Capacity is then further defined and requires, among other things, that the juvenile "appreciates" the charges or allegations against him/her, the nature of the adversarial process, the range and nature of allowable disposition.

Sentencing

People in Interest of J.C., 2018 COA 22 (Colo. App. 2018)

- Global plea agreement adjudicating J.C. delinquent in all three cases. Ct imposes a sentence of DYC commitment of 1-2 years, mandatory minimum sentence.
- Court may not sentence a juvenile to DYS for an indeterminate period; the 1-2 year sentence was an indeterminate one and therefore illegal.
- Mandatory sentence offender provisions do not apply because J.C. was not *subsequently* adjudicated when she entered her third guilty plea in the same hearing as the first two adjudications.
- Repeat juvenile offender designation is not met when all adjudications occur at same hearing.
- 19-2-921(3)(c) does not authorize a mandatory minimum.

Fees and Surcharges

People in Interest of T.C.C., 410 P.3d 805, 2017 COA 138 (Colo. App. 2017)

- T.C.C. at sentencing asked for a waiver of mandatory fees based on indigence. Court stated that probation could ask for waiver of fees if the juvenile did well on probation.
- Plain language of relevant statutes:
 - allows only the court to make the waiver decision.
 - permits the court to waive fees based solely on finding of indigence and not based on good behavior.

GAL Appointment

Ybanez v. People, 413 P.3d 700, 2018 CO 16 (Colo. 2018)

- § 19-1-111 provisions defining court's discretion to appoint GAL in delinquency/transfer cases apply to court's appointment of GAL in direct file cases under § 19-2-517
- Court did not err in not appointing GAL because "[n]one of the three possible triggering events prompted, or even permitted the court to exercise its discretion in the case."
 - Father was active and present throughout the proceeding; court was not made aware of any conflict of interest; no "motion or other occurrence" prompted the court to make specific findings that appointment of GAL would serve the best interests of the child.

Random Things

SB18-119

False Imprisonment of a Minor

- Adds additional sections to the false imprisonment statute to prohibit false imprisonment of a minor (C.R.S. 18-3-303).

SB18-050

Free-Standing Emergency Facility as Safe Haven

- Expands Colorado safe haven law to include staff at community clinic emergency centers.

<p>HB18-1136 Substance Use Disorder Treatment</p> <ul style="list-style-type: none"> • This bill came out of the Opioid and Other Substance Use Disorders Interim Study Committee. • Adds residential and inpatient substance use disorder services to the Colorado Medical Assistance Program. • Is conditioned on Federal approval. 	<p>HB18-1094 Children and Youth Mental Health Treatment Act</p> <ul style="list-style-type: none"> • Extends the Child Mental Health Treatment Act indefinitely and changes the name to the Children and Youth Mental Health Treatment Act. • Expands some definitions in the Act. • No longer requires the child to be in the child welfare system.
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<p>HB18-1346 Abuse of Youth under 21 in Care of Institution</p> <ul style="list-style-type: none"> • Adds language to the definition of child abuse to include youth aged 18-21 who are being cared for by a facility. • Also adds language to the definition of institutional abuse to allow the state department to investigate allegations of abuse or neglect regarding a youth between 18-21 who is under the continuing jurisdiction of the court. 	<p>HB18-1233 Consumer Reporting Agency Security Freeze Minors</p> <ul style="list-style-type: none"> • Authorizes a representative (parent or legal guardian) to request a consumer reporting agency place a security freeze on the consumer report of a protected ward which includes a minor under 16.
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The End!
