

TOOLS FOR DR CASES WHERE IT LOOKS LIKE SOCIAL SERVICES ASSISTANCE IS NEEDED

- DR Court is NOT a Treatment Court
 - Substance abuse, emotional abuse, physical abuse, truancy issues
 - 1. Court can order parties to participate in treatment if in the best interests of the child
 - In re Marriage of Yates, 148 P.3d 304 (Colo. App. 2006) (anger management counseling)
 - 14-10-124(7) parenting plan must address current and future needs of the child and may include
 - “Any other orders in the best interest of the child.” C.R.S. 14-10-124(7)(f)
 - Practical challenges: cost, availability of services
- C.R.S. § 14-10-130(2) - Judicial Supervision
 - “If both parties or all contestants agree to the order or if the court finds that in the absence of the order the child’s physical health would be endangered or the child’s emotional development significantly impaired, the court may order the county or district welfare department to exercise continuing supervision over the case to assure that the terms relating to the allocation of parental responsibilities with respect to the child or parenting time terms of the initial decree are carried out.”
 - In re the Marriage of Hatton, 160 p.3d 326 (Colo. App. 2007). Court had ruled that Mother wasn’t to have parenting time without Father’s written consent. Court of appeals found that this was not the least restrictive alternative available for the children, and listed other options such as:
 - 1. “Accordingly, on remand, the trial court should consider, as appropriate, options such as supervision of parenting time by the county or district welfare department or the court’s probation department, under § 14-10-130(2), C.R.S.2006”
 - 2. C.R.S. § 14-10-130(2) was modified in 2015 by SB15-099 to remove probation department from the statute
 - Practical challenges of using this statutory provision
 - 1. County of the DR case may not be the county where the child lives
 - 2. Confusion upon receipt by department, seem to treat as C.R.S. § 19-3-501(1) referrals?
- Title 19 Preliminary Investigation and Authorization of Petition C.R.S. § 19-3-501(1)&(2)
 - See Other Outline
 - Need to convince the Court that the parents inability to meet the child’s needs merits a preliminary investigation
 - 1. Possible approach: Subpoena the confidential records of prior Department Involvement for in camera review
 - C.R.S. § 19-1-307(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 pending before it.”

- People v. Jowell, 199 P.3d 38 (Colo. App. 2008) (party seeking review must show that the records exist and that they contain relevant information)
 - Practical point – as CLR, releases can be obtained to review the records prior
 - Whether a party has been founded for abuse/neglect is relevant under C.R.S. § 14-10-124(4)
- Safety assessment is done by Department.
 1. Court will usually order a return date for review after hearing from the Department
 - Practical challenge – the worker will advise that the Department has 60 days, and the Court seems to set the hearings more quickly
 - Tip: ask the court to order the worker to appear at the review hearing
 - Practical challenge – the DR case is one county, child lives primarily in a different county, or child lives primarily with a safe parent, but has regular parenting time with the concerning parent
- C.R.S. § 19-3-501(2) – Court shall authorize, and may order, the filing of a petition if it receives a report filed by a mandatory reporter
 1. If the CFI, a mandatory reporter pursuant to C.R.S. § 19-3-304(2)(ee), provides sufficient information such that the children fall within the statutory criteria of C.R.S. § 19-1-103(1)(a), can you skip the preliminary investigation and just ask the Court to order the filing of a petition
 - Practical challenges – court reluctance, Department unwilling to prosecute
- Requesting that the Court Order the Filing of a Petition
 1. Language of C.R.S. § 19-3-501(1) and (2) regarding is permissive “may authorize” and “shall authorize and may order”, how should court exercise discretion? No caselaw on point
 - Analogize to the court’s authority to order D.A. to prosecute, C.R.S. § 16-5-209
 - To order prosecution, court needs to find that the decision not to prosecute was arbitrary and capricious. Sandoval v. Farish, 675 P.2d 300 (Colo. 1984)
 - If the evidence before the court shows that the decision not to file was unreasonable, that there is substantial evidence that the children meet the criteria for dependent or neglected children one could argue the court should order the filing of a D&N. See Moya v. Colorado Ltd. Gaming Control Com’n, 870 P2d 620, 624 (Colo. App. 1984) (finding that a reviewing court must find no substantial evidence exists in the record to support agency’s decision in order to find agency decision was arbitrary and capricious)
 2. Practical Challenge/Point- communication with assigned GAL (if not you) likely needed to ensure not simply filed and dismissed