

## ADVOCATING FOR THE FILING OF A DEPENDENCY AND NEGLECT CASE

### I. Petition initiation and preliminary investigation

#### A. Statutory basis: §19-3-501(1)

1. Who may initiate the preliminary investigation: “Whenever it appears to a law enforcement officer or **other person** that a child is or appears to be within the court’s jurisdiction, as provided in this article 3, the law enforcement officer or **other person** may refer the matter to the court, which shall make a preliminary investigation to determine whether the interests of the child or of the community require that further action be taken.”
  - a. Guardian ad litem is an “other person” who may request the preliminary investigation based on the Guardian’s investigation in other cases, delinquency, truancy, paternity, for which they have been appointed.
  - b. Who makes the investigation:
    - 1) Probation department;
    - 2) County department of human/social services;
    - 3) Any other agency designated by the court.
  - c. Ways to trigger the preliminary investigation
    - 1) A report of child abuse and neglect that results in a D&N investigation
    - 2) Court-ordered assessments in other cases
      - a) Placement evaluations;
      - b) SB 94 reports;

c) Reports by other agencies

2. Course of action once the preliminary investigation is complete:  
§19-3-501(1) & (2)

a. The court may:

- 1) Decide that no further action is required, either in the interests of the public or of the child;
- 2) Authorize a petition to be filed;
- 3) Make whatever informal adjustment is practicable without a petition
- 4) Order the filing of a dependency and neglect action upon a receipt of a report filed by law enforcement or any other person required to report pursuant to §19-3-304(2) indicating that the child has suffered abuse as defined in §19-1-103(1), and that the best interests of the child require that he be protected from risk of further abuse or a report by any other person.

B. The Guardian's role:

1. Guardian may file a report/motion in the case in which the GAL has been appointed requesting that the court order the Division to file a dependency and neglect action
2. Motion/report should be as fact specific as possible including:
  - a. Basis for court's involvement with the child in the current court action;
  - b. Social services contacts with the family including all reports of abuse & neglect, prior court filings involving other children;

*People in Interest of D.L.R.*, 638 P.2d 39 (Colo. 1981): Court may properly consider treatment accorded other children in determining whether the child before the court is dependent or neglected.

- c. Respondent parents' compliance/noncompliance with court orders in other cases including parents follow through or lack thereof with family therapy, services and visits
- d. Reports of concern by the school, therapists, kin/family
- e. Reports by the child of abuse/neglect, drug use, domestic violence in the home;
- f. Pending criminal cases on parents citing information set forth in affidavits for arrest warrant for the parent;
- g. Emphasize that the issues in the family cannot be adequately addressed through other court filings, like a delinquency action:
  - 1) Focus of a delinquency action is on public safety and assisting the juvenile in becoming a productive member of society while the focus of a dependency and neglect is on the family with safety and protection of the children being of paramount concerns;
  - 2) Significant and longstanding child protection issues in the family have heretofore not been adequately addressed by voluntary services or other court actions;
  - 3) Dependency and neglect action is preventative as well as remedial. Although the child currently is placed out of the home through a delinquency action, the juvenile as well as other family members would be at risk if the juvenile would be allowed to return home at this time;

*People in Interest of D.L.R.*, 638 P.2d 38 (Colo. 1981):  
Child may be adjudicated neglected and dependent based on a showing of prospective harm to the child if placed with the parents.

4) Child needs a realistic permanency goal and support, services and assistance on a long-term basis and the juvenile, who has successfully completed probation, should not have to remain on probation because of his family situation; is child in danger of being committed; is child approaching his 18<sup>th</sup> birthday and is unable to support self or return to his family; is the child developmentally disabled and will need to transition into adult services;

h. List how the facts of the case support the statutory grounds for a dependency adjudication that is, the child has been abandoned by the parents; lacks proper parental care; is in an injurious environment; is beyond control of the parent; or is not domiciled with the parent through no fault of the parent.

II. Guardian's role when court orders a petition to be filed but Division is refusing to prosecute.

A. Guardian has the authority to object to a dismissal of the petition by the Division and to prosecute the petition:

*People in Interest of R.E.*, 729 P.2d 1032 (Colo. App. 1986): The child through the Guardian ad Litem is entitled to a determination of the merits and a petition may not be dismissed over the objection of the Guardian. The trial court must conduct a hearing and specifically determine whether the petition is supported by a preponderance of competent evidence and the child is in fact dependent and neglected.

*People in Interest of M.N.*, 950 P.2d 674 (Colo. App. 1997): The Guardian ad litem "is charged in general with the representation of the child's interests. Among other things, the guardian may  
". . . participate further in the proceedings to the degree necessary to adequately represent the child." "It would be anomalous for a guardian ad litem to have authority to object to the dismissal of a dependency and neglect proceeding and to appeal an order refusing to

terminate the parent-child relationship, yet no have authority to initiate termination proceedings. More importantly, it would undercut the unique and vital role assigned by the Children's Code to the guardian ad litem in dependency and neglect proceedings."

- B. Guardian may have to file a motion to amend the petition pursuant to C.R.C.P. 15 and §19-3-505(4)(b) when the petition ordered to be filed by the court is deficient and the best interest of the child and justice require amendment of the petition to adequately and substantially reflect the protective concerns regarding the child, the merits of which should be determined through an adjudicatory trial.
- C. In prosecuting the petition, the Guardian must:
  - 1. Subpoena witnesses and do further investigation as is necessary:
    - a. Obtain police reports from District Attorney and subpoena police officers
      - 1) Affidavits in support of arrest warrant may be admitted as business records under C.R.E. 803(6). *Lannon v. Taco Bell*, 708 P.2d 1370 (Colo. App. 1985).
    - b. Subpoena and prep lay witnesses
    - c. Subpoena and prep expert witnesses such as therapists, school social workers
  - 2. Remember to obtain funding approval from OCR for investigators and any experts
  - 3. File witness and exhibit list
  - 4. Prepare jury instructions, voir dire, opening statements, direct and cross examination, and closing argument