ADVOCATING FOR THE CHILD'S RELEASE FROM DETENTION: AFFORDABLE BOND, PRETRIAL ALTERNATIVES TO DETENTION, APPROPRIATE PLACEMENT AND SERVICES AS WELL AS THE CONTINUING DUTY TO ADVOCATE FOR THE CHILD IN PLACEMENT/FACILITIES—by Diana Richett

A. NJDC National Juvenile Defense Standards:

Role of Counsel at Detention Hearings: § 3.8

Counsel should make every effort to have meaningful contact with the client prior to the detention hearing (or any bond reduction hearings). Counsel must seek immediate release of a detained client if doing so is consistent with the client's expressed interests. Counsel must advocate for the removal of all physical restraints. Counsel should present the court with alternatives to detention and a pre-trial release plan.

1. Counsel must be versed in state statutes, case law, detention risk assessment tools, and court practice regarding the use of detention and bail for young people. Counsel should be aware of and able to invoke research on the adverse impacts of detention on youth. Counsel should independently investigate the alternatives to secure detention and review these with the client. Counsel should be familiar with and have visited the jurisdiction's detention facilities;

2. Preparation for a detention (or bond reduction) hearing requires consultation with the client, and where appropriate, the client's parent. Counsel should conduct as much investigation as possible before the hearing to obtain materials that can be used to support a request for release;

3. Counsel should review detention risk assessment findings, checking for inaccuracies or mitigating factors that may affect the accuracy of risk scores assigned to the client;

4. Counsel should zealously argue for pre-trial release of the client and challenge the state's information regarding the alleged crime or the

client's background. Counsel has an obligation to raise any factors, such as medical, psychological or educational needs that may be adversely affected by detention, as long as the client permits their disclosure; and

5. Counsel must request detention proceedings be recorded.

B. Constitutional grounds for bond:

1. The United States Constitution, specifically the Eighth Amendment, provides that "excessive bail shall not be required." In all cases except for capital cases, any person accused of a crime has an absolute right to be admitted to bail. U.S. Const. Amend. VIII.

   Stack v. Boyle, 342 U.S. 1, 4 (1951): " [T]raditional right to freedom before conviction permits the unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction. . . . Unless this right to bail is preserved, the presumption of innocence . . . would lose its meaning."

2. Under the Colorado Constitution, Colo. Const. art. II, §19, "[A]ll persons shall be bailable by sufficient sureties except for capital offenses when the proof is evident or the presumption great."

   L.O.W. v. District Court in and for Arapahoe County, 623 P.2d 1253 (Colo. 1981): A child does not have an absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court.

   a. "If the policy expressed in section 19-2-103(3)(a)(I) of the Children's Code disapproving the use of detention except in cases satisfying the demanding statutory standards is implemented, the need for bail will be minimized in juvenile proceedings. We therefore hold that there is no unqualified constitutional right to bail for a juvenile under the United States and Colorado Constitution." *Id.* at 1258.

C. Statutory and Procedural Grounds Related to Bail:

1. §19-2-508(2)(b): A juvenile who is ten years of age and older but less than thirteen years of age may not be ordered to detention unless the juvenile has been arrested for a felony or weapons charge. A preadjudication service program created pursuant to §19-2-302 shall evaluate the juvenile.

2. §19-2-508(3)(a)(III): Standard for further detention of juvenile at the detention hearing; rebuttable presumption that juvenile is a danger to himself or the community.

3. §19-2-508(3)(a)(IV): Outcomes of detention hearing and alternatives to detention.

4. §19-2-508(5): Juvenile has the right to bail as limited by this section.

5. §19-2-508(6): Court may issue temporary orders for legal custody of the child.

6. §19-2-509: Bail.

7. §19-2-514(6): Summons and taking juvenile into custody.

8. §16-4-103: Criteria for the selection of type of bond and conditions of release.

9. §16-4-109: Standards for application for revocation/modification of the amount, type or conditions of bail.

D. Revocation of summons, conversion to bond and remand: §§19-2-509(8) and 19-2-514

   1. Statutory argument:

      a. There is no authority under §§19-2-509(8) and 19-2-514 or anywhere in the Children's Code to revoke or convert a juvenile's promise to appear/summons when the juvenile has complied with the only

conditions of the promise to appear/summons, and that is, appear in court at the specified time/date.

1) Principles of statutory construction demand that the court look to the plain and ordinary meaning of the statutory language.

2) Section 19-2-508 provides that: "A juvenile may be released on bond or as otherwise provided in this section regardless of whether the juvenile appears in court pursuant to a summons or a warrant."

    a) The plain language of the statute stating that "a juvenile may be released" requires that a juvenile must be in custody in the first place before a court can apply this provision.

3) The only way referenced in the Children's Code by which a juvenile on summons would appear in court in custody is pursuant to §19-2-514(6) which states that: "If it appears that the welfare of the juvenile or the public requires that the juvenile be taken into custody, the court may, by endorsement upon the summons **direct that the person serving the summons take the juvenile into custody at once.**"

    a) The plain language of that section limits the court's authority to order that a juvenile on a summons be taken into custody to **prior** to service of the summons. The statute clearly states that it is the person serving the summons who has the authorization to take the juvenile into custody if the court endorses this on the summons.

    b) There is no language in this section or anywhere in the Children's Code authorizing the court to revoke or convert a summons and remand or set bond once the juvenile appears in court. If the legislature had intended this, they would have clearly and plainly in unambiguous language state that a juvenile summons can be revoked or converted into a bond and the juvenile remanded for whatever reasons.

c) Further the court has to strictly construe criminal statutes in a manner that favors the liberty of the juvenile and against the government.

4) In addition, §19-2-514(2) states that: "No summons shall issue to any juvenile . . . who appears voluntarily or who waives service or **who has promised in writing to appear at the hearing** but any such person shall be provided with a copy of the petition and summons upon appearance or request." So under this provision for any juvenile who appeared in court pursuant to a promise to appear cannot be issued a summons in the first place making §§19-2-514(6) and 19-2-509(8) inapplicable to the juvenile.

2. Constitutional argument

a. It is fundamentally unfair and violation of due process and the right to counsel when there is no notice to the juvenile that at any court appearance the juvenile could have his summons "revoked", placed on a bond and remanded.

1) There is no authority to convert voluntary participation in a pretrial program into a court order that the juvenile comply or face punitive sanctions.

a) Check the Juvenile Assessment Center Disclosure/Authorization and Advisement of Rights and Procedures that is typically signed by the juvenile and parent without counsel.

b) Did the court advise the juvenile of conditions with which the juvenile had to comply or be subject to punitive sanctions? The court cannot delegate the setting of these conditions to pretrial. *See: People v. Rickman,* 178 P.3d 1202 (Colo. 2008).

b. The court cannot detain the juvenile without a determination of probable cause. *See: Riverside v. McLaughlin,* 500 U.S. 44 (1991) and *Gerstein v. Pugh,* 420 U.S. 103 (1975): Under the Fourth

Amendment, the court is required to make a prompt determination of probable cause as a prerequisite to a restraint on a person's liberty following arrest.

1) To makes this determination, the court typically relies upon an affidavit in support of an arrest or a warrantless arrest which will never be contained in the file in a case where the juvenile appears on a summons or a promise to appear.

E. Senate Bill 19-108: A bill concerning changes to improve outcomes for youth in the juvenile justice system

1. The bill establishes a committee on juvenile justice reform in the governor's office with the following duties:

   a. Adopting a validated risk and needs assessment tool to be used by juvenile courts, the Division of Youth Services (DYS), juvenile probation and the parole departments.

   b. Selecting a mental health screening tool for juvenile offenders;

   c. Selecting a validated risk screening tool to used by the district attorneys in determining the juvenile's eligibility for diversion;

   d. Selecting a vendor to assist in the implementation of and provide training on the tools; and,

   e. Developing plans for measuring the effectiveness of the tools.

2. The bill adds to the working group under DYS on detention of juvenile offender and alternative services to detention as follows:

   a. Adopt a research-based detention screening instrument, develop a plan for training on the new instrument and submit a report on the use of the instrument;

b. Establish criteria for alternative services and report on the effectiveness of these services; and,

c. Adopt a form affidavit for parents and guardians to complete.

3. The bill restricts removing a juvenile from a parent's custody unless the detention screening is conducted and specified findings are made and directs that unless physical restriction is required, custody of the juvenile is given to kin or another person. It limits which juveniles may be placed in detention.

4. The legislative declaration states that "the placement of children in a detention facility exacts a negative impact on the mental and physical well-being of the child and such detention may make it more likely that the child will reoffend." It recognizes that detained children are more likely to penetrate deeper into the juvenile justice system than similar non-detained children and that community-based alternatives to detention should be based on the principle of using the least-restrictive setting possible and returning a child to his home whenever possible consistent with public safety.

5. The bill states that it is the intent of the general assembly in amending §§19-2-212 and 19-2-508 to limit the use of detention to only those children who pose a substantial risk of serious harm to others or that are a flight risk from prosecution and community-based alternatives to detention are insufficient to reasonably mitigate risk. Flight from prosecution is distinguished from a simple failure to appear.

6. The bill sets forth limitations on detentions for certain populations of juveniles and when a juvenile shall not be placed in detention.

F. Hearings: Advocating for Affordable Bonds, Pretrial Alternatives to Detention and Release

1. Standards and Presumptions:

a. The statute favors release "except in narrowly defined circumstances where the state establishes that detention is necessary to protect the child from imminent harm or to protect others in the community from serious bodily harm." *L.O.W. v. District Court*, 623 P.2d 1253, 1259 (Colo. 1981).

b. The court may further detain the juvenile if the court is satisfied from the information provided at the hearing that the juvenile is a danger to himself or to the community. §19-2-508(3)(a)(III).

    1) A child less than 13 years old may not be ordered to further detention unless the juvenile has been arrested or adjudicated for a felony or weapons charge. §19-2-508(3)(a)(III).

c. The preferred course for juveniles pending trial and disposition should be unconditional release. Restraints on the accused juvenile's freedom are generally contrary to public policy. American Bar Association, Juvenile Justice Standards Relating to Interim Status, cited in *L.O.W. v. District Court, supra,* at p. 1259.

d. The imposition of interim control/detention on an accused juvenile may be considered for the purposes of: a) protecting the jurisdiction and process of the courts; b) reducing the likelihood that the juvenile may inflict serious bodily harm on others during the interim period; or c) protecting the accused juvenile from imminent bodily harm upon his request. American Bar Association, Juvenile Justice Standards Relating to Interim Status, cited in *L.O.W. v. District Court*, at 1259.

e. Interim control/detention should not be imposed on an accused juvenile: a) to punish, treat or rehabilitate juvenile; b) to allow parents to avoid their legal responsibilities; c) to satisfy demands by a victim, the police or the community; d) to permit more convenient administrative access to the juvenile; e) to facilitate further interrogation or investigation; or f) due to a lack of a more appropriate facility or status alternative. American Bar Association, Juvenile Justice Standards Relating to Interim Status, cited in *L.O.W. v. District* Court at 1259.

f. Preventative detention of a juvenile is not a per se violation of due process. Preventative detention serves the legitimate state objective of protecting both the juvenile and society from the hazards of pretrial crime. *Schall v. Martin*, 467 U.S. 253 (1984).

g. Under §19-2-508(3)(a)(III), there is a rebuttable presumption that the juvenile is a danger to himself or the community and may be held without bail if:

1) The juvenile is alleged to have committed a crime of violence as defined in §18-1.3-406;

2) The juvenile is alleged to have used, or possessed and threatened to use, a firearm during the commission of any felony offense against a person;

3) The juvenile is alleged to have committed the possession or prohibited use of weapons under §18-12-101 et seq.

a) There is no presumption of dangerousness if the item in the possession of the juvenile is alleged to be a BB, pellet or gas gun. §19-2-508(3)(a)(III.5)

People v Juvenile Court, 893 P.2d 81 (Colo. 1995): The presumption statute does not impermissibly shift the burden of proof from the state to the juvenile with respect to establishing that secure detention is warranted. Instead, the statute merely requires the juvenile to introduce some evidence to overcome the presumption of dangerousness created by the statute.

2. Restrictions on the types and amount of bail in juvenile cases: §19-2-509(1)

    a. Unless the prosecutor consents, no juvenile charged or accused of having committed a felony or a class one misdemeanor shall be released without bond or on a personal recognizance bond, if:

        1) The juvenile has been found guilty of a delinquent act constituting a felony or class one misdemeanor within one year prior to detention;

        2) The juvenile is currently at liberty on another bond of any type; or

        3) The juvenile has a delinquency petition alleging a felony pending in any district or juvenile court for which probable cause has been established.

    b. In lieu of bond, a juvenile who the court determines is a danger to himself or to the community may be placed in a preadjudication service program. §19-2-509(2)

3. Application for modification/revocation of the amount, type or conditions of bail shall be made in accordance with section 16-4-109. §19-2-509(3)

    a. Presumption of §19-2-508(3)(a)(III) applies, that is, to further detain the juvenile, the court must find that the juvenile is a danger to himself or to the community.

    b. Procedure: *See:* §16-4-109

        1) Reasonable notice of application for modification of bond must be given by the district attorney to the defendant and vice versa;

            a) This section does not limit the juvenile to "a one-time expedited hearing for bond reconsideration" as does §16-4-107 which does not apply to proceedings under the Children's Code. *See:* §16-1-102.

2) Court must consider the following criteria set forth in §16-4-103 and apply these criteria to the status of a child. *See:* §19-2-509(4)(a).

   a) The employment status and history of the person in custody or for a juvenile, his school status;

   b) The nature and extent of family relationships of the person in custody;

   c) Past and present residences of the person in custody or for a juvenile, his family;

   d) The character and reputation of the person in custody;

   e) Identity of persons who agree to assist the person in custody in attending court at the proper time;

   f) The likely sentence, considering the nature and the offense presently charged;

      (1) Under §19-2-911(1), the court may sentence any juvenile adjudicated for felonies (class 3 to 6) or a misdemeanor weapons charge to detention for a period not to exceed 45 days. The statute does not provide for detention time for juveniles adjudicated for non-weapon misdemeanor offenses, therefore, why should presumptively innocent juveniles appearing before the court on non-weapon misdemeanor offenses be detained when juveniles who are guilty and adjudicated for such offenses cannot be sentenced to detention.

   g) The prior criminal record, if any, of the person in custody and any prior failures to appear for court;

h) Any facts indicating the possibility of violations of the law if the person in custody is released without certain conditions of release;

i) Any facts indicating that the juvenile is likely to intimidate or harass possible witnesses; and

j) Any other facts tending to indicate that the person in custody has strong ties to the community and is not likely to flee.

c. Unlike §16-4-107 which allows a one-time expedited hearing for bond reconsideration, §§19-2-509(3) and 16-4-109(1) do not limit the number of times a juvenile can request a bond reduction.

4. Preparation and Investigation for the Bond/Bail Hearing:

See: National Juvenile Defender Center. *Juvenile Defender Self-Assessment Tool for Best Practices in Detention Advocacy.* http://www.njdc.info.

Hertz, R., Guggenheim, M., & Amsterdam, A. National Juvenile Defender Center. *Trial Manual for Defense Attorneys in Juvenile Delinquency Cases.,* Updated 2018. http://www.njdc.info.

Information obtained by counsel from the client and other sources in preparation for the detention hearing also is relevant and necessary information in arguing for an affordable bond and pretrial alternatives to detention.

a. Review paperwork, evaluations and assessments that may have been done while the client has been detained which include the following:

1) Detention Assessment Report (includes delinquency history, risks/strengths, recommendations) prepared by SB-94 pretrial specialist;

2) Juvenile Detention Screening and Assessment Guide (25 assessment factors);

3) Affidavit in support of warrantless arrest or warrant;

4) Mental health assessments which may indicate areas of concern that if addressed through outpatient services could stabilize the client's behavior;

5) Medication evaluation: Is the client now on medication and doing better?

6) Drug and alcohol evaluation: Does client have a substance abuse problem that can be addressed through the recommended treatment in the community?

7) Senate Bill 94 Juvenile Assessment Report: What is the client's risk for re-offending and recommendations regarding release and under what conditions?

8) Trauma screens: *See:* Adams, E.J. (2010). *Healing invisible wounds: Why investing in trauma-informed care for children make sense*, at http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf.

b. Information to obtain from the client, family and other individuals who are involved with the client:

1) School: Does the child regularly attend; how is his behavior including any incidents of suspensions and expulsions; how does he perform academically; Does the client have an Individual Education Program (I.E.P.) or is he involved in any special education or services at school;

2) Employment: Where does the child work, hours, dates of employment, any verification from employer that child is a reliable and trustworthy employee;

3) Currently on probation and parole: What services have and will they provide to the client and his family if the client returns home; what has been the client's compliance while on probation or parole; officer's recommendation regarding release;

4) Nature of prior arrests or adjudications: Crimes of property or against person; any record/history of violence or assaultive behavior that would increase his risk in the community;

5) Appearance at court hearings: Does the client have a track record of showing up for his court hearings;

6) Family support: Does the child behave and follow the rules at home, including curfews; Does the child have any history of runaways; Is the parent willing to take the child home and insure that he is supervised; What is the parent's ability to post bond; What services or controls (e.g. EHM) will the parent need in place to assist with the child in the home; If the parent is not willing to take the child home are there other adult relatives who would be willing to have the child in their care/custody pending trial;

7) Community supports: Is the client involved in any extracurricular activities that provide structure in the community; Is there a coach or mentor or program staff that can speak positively about the child's involvement in these activities;

8) Mental health information, including diagnoses and medications, therapies, counseling, treatment: Is or has the client been participating in any of these; Level of participation and progress; Is a therapist or counselor able to speak to the child's needs and low risk to himself or the community;

9) Any prior social services involvement and/or placement history; What services can social services provide the family; If placement is a possibility, what placements are available and best fit the

child's needs; If a guardian ad litem is involved or has been involved what is the recommendation of the GAL.

c. In arguing against continued detention and advocating for pretrial alternatives, release and an affordable bond:

1) Accentuate the client's strengths in the community like employment, school performance, behavior in the home, community activities;

2) Address the risk factors: If the juvenile has a history of running away or not following curfew, address ways to shore up supervision like EHM, increased supervision; If drug use is a concern, the client can do urinalyses and participate in treatment;

3) Identify services that the client needs and cannot receive in the detention: Special education services, therapies or mental health services; physical therapies; family therapies;

4) Present any testimony from witnesses who can attest to the client's strengths or who can offer assistance and services in maintaining the client in the community as well as records, assessments or evaluations that will help the client;

5) Be aware of and able to invoke the research on the adverse impact of detention on youth:

See: Holman, B. & Ziedenberg, J. (2006). *The dangers of detention: The impact of incarcerating youth in detention and other secure facilities*, at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

Adams, E.J. (2010). *Healing invisible wounds, supra.*

6) Consider asking for a placement evaluation conducted by the county department of social services when:

a) Services in the home may help the child return and maintain in the home;

b) If it is unlikely that the child will be bonded, or the family does not want the child home, then ask for placement in lieu of bond.

7) Pretrial detention is contrary to the presumption of innocence and prevents the client from assisting defense counsel in his own defense in finding witnesses and preparing the case for trial. If the client is found or pleads guilty, pretrial detention prevents the client from providing evidence and a track record of his ability to adjust and have success in the community.

5. Assessing the impact of system-induced trauma on children and youth and grounds for advocacy and interventions:

a. Research shows that court-involved children and youth suffer from trauma at higher rates:

See: Lisa Pilnik & Jessica Kendall (2012). *Victimization and Trauma Experienced by Children and Youth: Implications for Legal Advocates* at http://www.safestartcenter.org/pdf/issue-brief_7_courts.pdf

1) 12% of child abuse and neglect victims had increased PTSD symptoms, including depression and anxiety related to trauma compared with 2% of the general population;

2) Youth in the juvenile justice system are at least twice as likely as other youth to have had past traumatic experiences and meet PTSD diagnostic criteria.

b. Trauma to children results from the child personally experiencing or witnessing an intense event that involves harm or is perceived as a threat to the child's physical or emotional well-being.

c. Identification of past traumatic experiences is critical in helping us understand how exposure to trauma may influence the child's current behavior:

1) Types of victimization include the following:

See: Lisa Pilnik and Jessica Kendall (2012). *Identifying Polyvictimization and Trauma Among Court-Involved Children and Youth: A Checklist and Resource Guide for Attorneys and Other Court-Appointed Advocates* at http://www.safestartcenter.org/pdf/Resource-Guide_Polyvictim.pdf.

a) Physical abuse in the home, placement, or detention facility either by an adult or another youth;
b) Assault by a non-caretaker;
c) Severe physical injury;
d) Sexual abuse or assault;
e) Victim of human sex trafficking;
f) Severe neglect;
g) Emotional or verbal abuse;
h) Witnessing violence in the home, school or community;
i) Witnessing animal cruelty;
j) Victim of repeated bullying;
k) Crime victim;
l) Disrupted caregiving which includes multiple changes in foster homes/placements;
m) Permanent/long-term loss of a caregiver;
n) Victims of war, terrorism or natural disaster;
o) System-induced trauma;
p) Other significant events (e.g. poverty, homelessness, parents who have substance abuse problems or mental illnesses)

2) Polyvictimization: Children who have experienced seven or more different types of victimization or exposure to violence, crime or abuse.

See: Finkelhor, D., Turner, H., Hamby, S., & Ormrod, R. (2011). *Polyictimization: Children's Exposure to multiple types of violence, crime and abuse* at http://www.unh.edu/ccrc/pdf/jvq/Polyvictimization%20OJJDP%20bulletin.pdf.

d. Assessing information:

1) Interviews with client:

a) Development of trust;

b) Re-victimization: Sharing information causes distress for client or fear as to what will happen to perpetrators or to them.

2) Interviews with parents, past and current caregivers;

3) Information from service providers, mental health professionals;

4) Court records;

5) Mental health assessments, Child Find, Sewall Evaluations, Psychological and Neuropsychological evaluations, etc.

6) Obtain current screenings and evaluations that assess for trauma and direct and indirect exposure to violence.

e. How are these experiences currently impacting the child?

See: Pilnik and Kendall, *Identifying Polyvictimization, supra*, Polyvictimization/Trauma Symptom Checklist

Symptoms may include:

1) Attachment issues;

2) Sleep disturbances (nightmares, insomnia and excessive sleep);

3) Arousal (startles easily, easily distracted, impulsive, inattentive, trouble concentrating);

4) Regression (stops engaging in age-appropriate behaviors already mastered);

5) Affect Dysregulation (trouble feeling or expressing emotions)

6) Hypervigilance;

7) Dissociation;

8) Depression;

9) Anxiety;

10) Aggression

11) Oppositional behaviors;

12) Conduct problems;

13) Emotional or behavioral problems;

14) Substance abuse;

15) Eating disorders;

16) Self-harm (cutting);

17) Suicide attempts or thoughts;

18) Poor academic performance;

19) Low self-esteem;

20) Poor social functioning.

f. Responses to and treatment to help traumatized children: A trauma-informed system of care

1) Screening and assessments for trauma which should include how the exposure to trauma is impacting the child's current functioning.

See: L. Pilnik and J. Kendall, *Victimization and Trauma, supra,* p. 6 for selected screening and assessment instruments.

2) Programs/services should address the underlying effects of trauma that fuel behavior

a) Ensure that the child is physically and psychologically safe;

b) Are the child's basic needs being met;

c) Programs/services use evidence-based practices.

6. Other alternatives and strategies in advocating for release/placement:

a. Motion pursuant to §19-3-501 requesting the filing of a D&N:

1) When appropriate, the juvenile defender or guardian ad litem may file a motion pursuant to §19-3-501(2) requesting that the court order the county Division of Social Services to file a dependency and neglect action;

2) The motion should emphasize that the issues in the family cannot be adequately addressed through a delinquency action alone;

3) If the issues have their origin in a neglectful or abusive family situation, the child should be in a treatment and with an appropriate family (either kin or foster care) who can provide the guidance, support and structure necessary for the child rather than detention and should not be punished because of his family's situation.

b. Referrals to specialized courts like mental health courts: If the child meets the criteria and is accepted, this is another service that serves as alternative to detention for a child whose trauma is aggravated by detention and not being treated.

G. Advocating for Placement, Services at the Expense of the Department of Social Services Agency

1. Standing of social services agency to appeal a trial court order placing the juvenile in lieu of bond prior to adjudication

a. Only question relevant to the Department's standing to appeal the trial court's placement order is whether the Department, a non-party to the action, was "substantially aggrieved" by the temporary custody order, that is, did the court order require the non-party agency to act in a manner that the agency believed was prohibited by law. *Arapahoe County Department of Human Services v. People in Interest of D.Z.B.,* 433 P.3d 578 (Colo. 2019).

2. The court has the authority to order the Division to pay for placement and services:

a. The juvenile court has exclusive jurisdiction over the juvenile and therefore, has the authority to determine the appropriate custody, placement and care for the child. *See:* §19-1-104(1)(a); *People in Interest of J.H.,* 770 P.2d 1355 (Colo. App. 1989); *City and County of Denver v. Juvenile Court,* 511 P.2d 898 (Colo. 1973).

b. In exercising this authority on behalf of a child within its exclusive jurisdiction, the court must first and foremost consider the best

interests and welfare of the child. *See: City and County of Denver v. Juvenile Court, supra.*

c. In general, it is the responsibility of the state and county departments of human services to provide child welfare services to dependent and neglected children and children, who if such services are not provided are likely to become neglected or dependent. *See:* §§26-5-101(3) and 26-5-102(1)(b) (Upon appropriate request and within available appropriations, child welfare services shall be provided for any child residing in the state of Colorado who is in need of such services.). Moreover, such services are to be "rendered in complement of, and not in duplication of or contrary to, legal processes provided by the Children's Code." *See:* §§26-5-101(3), 26-5-102, 26-5-103.

d. In making determinations regarding the care and placement of the child, the court is vested with the authority to direct the county social services department to provide child welfare services as well as the accompanying authority to order the department to pay for these services.

   People in Interest of L.M., 910 P.2d 100 (Colo. App. 1995): District court has the authority to order the department of social services to pay foster care funds to maternal grandfather of three adjudicated dependent and neglected children retroactive to include the period before he was certified as a foster parent.

   People in Interest of J.H., 770 P.2d 1355 (Colo. App. 1989): Court has authority to direct local social services department to pay for the costs of a private placement even when the local department does not have custody of the child.

   People in Interest of T.W., 642 P.2d 16 (Colo. App. 1981): Court has the authority to place the child in an out-of-state placement and require the State Department of Social Services to pay 80% of the funding.

City and County of Denver v. Brockhurst Boys Ranch, 575 P.2d 843 (Colo. 1978): Juvenile court had the authority to enforce its order of support by entry of money judgment in favor of Boys Ranch for reimbursement for costs of maintaining the child.

Heim v. District Court, 575 P.2d 850 (Colo. 1978): Court had jurisdiction to enter custody order placing a juvenile in a private facility and directing the county department of social services to pay the costs of the private treatment.

3. Family First Prevention Services Act (Family First): Omnibus child welfare bill that amended multiple programs included in Title IV-B and Title IV-E of the Social Security Act. *See:* http://www.crs.gov/Reports/IN10858 for an overview of Family First.

   a. Beginning October 1, 2019, states will be able to use Title IV-E funds for prevention services for eligible children at risk of foster care placement and their families.

   b. Eligibility for prevention and family services/programs:

      1) Children who are "candidates" for foster care, that is, they have been identified as being at imminent risk of entering care but can safely remain at home or in a kinship placement if provided services that prevent entry into foster care;

      2) Children in foster care who are pregnant or parenting;

      3) Parents/kin caregivers of candidates for foster care where services are needed to prevent the child's entry into care or directly relate to the child's safety, permanence or well-being.

   c. Assurances that changes in federal reimbursement do not impact the juvenile justice system:

      1) States will need to include in their plan a certification assuring that the state will not enact or advance polices/practices that will result

in a significant increase in number of youth in the juvenile justice system because of the new restrictions on federal reimbursement for children not placed in a foster family home.

H. Continuing Duty to Advocate for Appropriate Placement

1. Continuity of Care/Services: *See:* §19-7-101, Protection for Youth in Foster Care

   a. Sibling visitation, *see:* §19-1-128: Upon the mutual request of the child in foster care and his sibling, the county department shall arrange visitation if requested and ensure that such visits occur with sufficient frequency and duration to promote continuity in the sibling relationship unless such visits are not in the best interests of one or both of the siblings.

   b. Pet visitation: A number of children have a bond with a beloved pet and worry about the pet while in the care of the parent. Is the parent/guardian able to bring the pet along on scheduled visitations.

   c. Child's possessions: Often children request their clothes and other belongings be given to them when they move. Will the parent/guardian provide these voluntarily or is a court order necessary.

   d. School stability:

      §19-1-102: Purpose of the Children's Code is to secure for the child such care and guidance as will best serve his welfare and the interests of society and to fulfill this purpose, such provisions will be liberally construed.

      §19-3-213(1)(d): Prior to any change in placement, educational stability for the child should be promoted by taking into account the child's existing educational situation and, to the extent possible and in accordance with the child's best interests, a change of placement should be selected that enables the child to remain in his existing educational situation or to transfer to a comparable educational situation.

§19-7-101(1)(v): Youth in foster care shall enjoy having school stability that presumes that youth will remain in the school in which he is enrolled at the time of placement unless remaining in that school is not in his best interests.

e. Treatment providers: Consider the quality of the therapist-client relationship, the child's desire to maintain or transfer therapists, and the possible re-traumatization to the child of repeating the same history/information to a new person.

f. Extra-curricular activities, *see:* §19-7-103.

2. Conditions of Placement/Confinement:

a. Protections for Youth in Foster Care, *see*: §19-7-101which lists the basic entitlements that youth in foster care should enjoy.

b. Protections for youth in detention and DYS facilities:

1) From 2013-2016, a collaborative investigation of the punitive and abusive practices of then Division of Youth Corrections (DYC) against children was undertaken and culminated in the report *Bound and Broken*, *see:* http://cjdc.org/wp/juvenile-justice-policy/bound-and-broken-report/, for key facts and findings and policy recommendations.

2) Investigating and challenging conditions of confinement:

See: Colorado Juvenile Defense Manual, 3rd edition, April 2018, pp. 48-56, for Federal and state authority to challenge these practices.

See also: NJDC, *National Juvenile Defense Standards*, Report and Address Harmful Conditions of Confinement, §10.8, and *Conditions of Confinement* at https://njdc.info/conditions-of-confinement/