

## **STATUTES ADDRESSING PLACEMENT**

**§ 19-1-115, C.R.S. Legal custody--guardianship--placement out of the home--petition for review for need of placement.**

- (1)(a): In awarding legal custody, court may, "if in the best interests of child," give preference to child's grandparent who is "appropriate, capable, willing, and available" to care for child. Any "individual, agency, or institution" vested by the court with legal custody shall have the rights and duties defined in section 19-1-103(73), C.R.S.
- (1)(b): Any individual, agency, or institution vested with guardianship shall the rights and duties as defined in section 19-1-103(60), C.R.S.; except, right to consent to adoption must be expressly given by the court.

### **§ 19-1-103(73), C.R.S. -- Legal Custody**

"Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. "Legal custody" may be taken from a parent only by court action."

### **§ 19-1-103(60), C.R.S. -- Guardianship of the Person**

"Guardianship of the person" means the duty and authority vested by court action to make major decisions affecting a child, including, but not limited to:

- (a) The authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;
  - (b) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;
  - (c) The authority to consent to the adoption of a child when the parent-child legal relationship has been terminated by judicial decree; and
  - (d) The rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.
- (2)(b): An individual, agency, or institution vested by the court with legal custody or guardianship shall give the court "any information concerning the child which the court at any time may require." Except when child is committed to department of human services.
  - (3)(a): Authority of agency vested with legal custody of child to determine where a child lives is "subject to approval of the court."
  - (3)(b): Child cannot leave the state for more than 30 days without court approval.
  - (4)(a): Decree vesting legal custody shall be reviewed no later than "three months" after it is entered.

- (4)(c): After initial review, decree shall be reviewed each "six months." This can be an administrative review, if there is no objection by any party. The periodic reviews shall include the determinations and projection required in section 19-3-702(6), C.R.S.
- (5): No legal custodian or guardian may be removed without his consent or opportunity to be heard by the court.
- (6): Any order awarding legal custody to "department of humans services" or to a "county department," shall contain specific findings, if warranted by the evidence, as follows:
- (a): Continuation of child in home is "contrary to the child's best interests"
  - (b): There has been compliance with "reasonable efforts", as follows:
    - (I) Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the home, or
    - (II) Emergency situation exists which requires "immediate removal of the child from the home and it is reasonable that preventative efforts not be made due to the emergency," or
    - (III) Reasonable efforts not required pursuant to section 19-1-115(7), C.R.S.
  - (c): That reasonable efforts have been made or will be made to reunite the child and family or that efforts have failed or that efforts are not required pursuant to section 19-1-115(7), C.R.S.
  - (d): Procedural safeguards with respect to parental rights have been applied in connection with removal of child from home, change of placement, any determination affecting parental visitation.
- (6.5): Any order continuing a child in placement out of the home shall contain the specific findings, if warranted by the evidence, as follows:
- (a): Continuation of the child in out of home placement is in the "best interests of the child",
  - (b): Reasonable efforts have been made to reunite child and the family or are not required pursuant to section 19-1-115(7), C.R.S.; and
  - (c) Procedural safeguards with respect to parental rights have been applied in connection with the continuation of the child in placement, a change in the child's placement, and any determination affecting parental visitation.
- (7): Reasonable efforts are not required to "prevent the child's removal from the home" or to "reunify the child and the family" when:
- (a): When court finds that child has been subjected to aggravated circumstances as described in sections 19-3-604(1) and (2), C.R.S.; or
  - (b): When the parental rights of the parent with respect to a sibling have been involuntarily terminated, or
  - (c): Parent has been convicted of any of the following crimes:

Murder or voluntary manslaughter (including aiding, abetting, attempting, or conspiracy) of another child of the parent or felony assault that resulted in serious bodily injury to the child or to another child of the parent.

**(8): Petition for Review of Need of Placement (PRNP)**

- (a):** Voluntary placements out of the home that will be for longer than 90 days and involve the direct expenditure of funds from the department of human services.

The court shall not transfer or require relinquishment of legal custody of a child who has an "emotional, a physical, or an intellectual disability" and who is placed out of the home for the purposed of obtaining "special treatment or care" solely because the parent or guardian is "unable to provide the treatment or care."

- (d):** Guardian ad litem appointed unless court make specific findings that no useful purpose would be served by such appointment.

- (e):** [Describes the requirements of the PRNP or social study]

- (f):** Preponderance of the evidence whether:

- Placement or continued placement is necessary and in the best interest of child, family, and community
- Reasonable efforts have been made to return the child to a safe home or whether child should be permanently removed

**§ 19-3-100.5, C.R.S. Legislative declaration**

**(1):** Clarifies that "stability and preservation of the families of this state and the safety and protection of children" are matters of statewide concern. "Reasonable efforts" to prevent placement out of the home and to reunify the family whenever appropriate.

**(2):** One of the goals of all placement decisions is "safety for the child."

**(3):** All stakeholders independently responsible for ensuring that reasonable efforts are made, children achieve permanency, and safe placements occur.

**(4):** H.B. 15-1337

**§ 19-3-203, C.R.S. Guardian ad litem**

- (3): The guardian ad litem, if in "the best interest of the child," shall seek to assure that reasonable efforts are being made to prevent unnecessary placement of the child out of the home and to facilitate reunification of the child with the child's family or, if reunification is not possible, to find another safe and permanent living arrangement for the child. In determining whether said reasonable efforts are made with respect to a child, and in making such reasonable efforts, "the child's health and safety" shall be the paramount concern.

**§ 19-3-213, C.R.S. Placement Criteria**

- (1): Any decision to place a child out of the home or in which a child is in out-of-home placement, the court and all parties must consider the child's best interests and "shall comply" with the following criteria:
- (a): Prior to change of placement, court shall notify all parties. If any party disagrees, he may seek any emergency hearing concerning the appropriate placement. In an emergency, the department may proceed to move child prior to any hearing.
  - (b): Except in "exceptional circumstances," no child shall remain in (or be moved between) an emergency, short-term, or shelter facility for more than sixty days, unless all reasonable efforts to return home or place in a more permanent setting have been exhausted.
  - (c)(I): If child part of a sibling group, department shall make "thorough efforts" to locate a joint placement. If a joint placement is located, it shall be presumed that placement of the entire sibling group in joint placement is in children's best interests. Presumption may be rebutted by "a preponderance of the evidence" that placement of entire group not in child's or children's best interests.
  - (c)(II): Consideration of placing sibling group together shall not be construed as requiring the removal of a child from her home "if not in her best interests."
  - (c)(III): In any proceeding under this article involving a sibling group, the judge shall review the family services plan document regarding placement of siblings.
  - (d): Prior to change of placement, all parties shall "attempt to promote educational stability" by taking into account the child's "existing educational situation and, to the extent possible and in accordance with the child's best interests," selecting a change of placement that enables child "to remain in existing educational situation" or to transfer to a new educational situation that is "comparable to the existing situation."
- (2): If child run away from an out-of-home placement, the department shall be notified as soon as possible. The department shall notify the court and other parties within "ten days" and take appropriate steps to locate child.

**§ 19-3-403, C.R.S. Temporary custody--hearing--time limits--restriction—rules**

(3.5): When temporary custody is placed with the county department of social services pursuant to this section or section 19-3-405 or when an emergency protection order is entered pursuant to section 19-3-405, the court shall hold a hearing within seventy-two hours after placement, excluding Saturdays, Sundays, and court holidays, to determine further custody of the child or whether the emergency protection order should continue. Such a hearing need not be held if a hearing has previously been held pursuant to subsection (2) of this section.

(3.6)(a)(V): The court may consider and give preference to giving temporary custody to a child's relative who is appropriate, capable, willing, and available for care if it is in the best interests of the child and if the court finds that there is no suitable birth or adoptive parent available, with due diligence having been exercised in attempting to locate any such birth or adoptive parent. The court may place or continue custody with the county department of social services if the court is satisfied from the information presented at the hearing that such custody is appropriate and in the child's best interests, or the court may enter such other orders as are appropriate.

**§ 19-3-405, C.R.S. Temporary protective custody.**

(2)(a): Temporary protective custody orders may be requested when a person reasonably believes that a child has been abused or neglected, if such person believes that the circumstances or conditions of the child are such that continuing the child's place of residence or in the care and custody of the person responsible for the child's care and custody "would present a danger to that child's life or health in the reasonably foreseeable future."

**§ 19-3-507, C.R.S. Dispositional Hearing**

(1)(a): After adjudication, court shall hear evidence on the question of the proper disposition "best serving the interests of the child and the public."

(1)(b): If child is part of a "sibling group" and the child was not placed with siblings, caseworker shall submit a statement about whether it remains in the siblings best interests to be placed separately. If an appropriate, capable, willing, and available joint placement for sibling group is located, it shall be "presumed that placement of the entire sibling group in the joint placement is in the best interests of the children." Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interest of a child or of the children.

- (4): In any case in which the disposition is placement out of the home (except children committed to department of human services), the court shall set a review within ninety days to determine whether continued placement is “necessary and in the best interests of the child and the community,” whether reasonable efforts have been made to return the child home or place sibling group together. The review shall be conducted in accordance with section 19-1-115(8)(f), C.R.S.

**§ 19-3-508, C.R.S. Neglected or dependent child – disposition – concurrent planning**

- (2): If legal custody of child is placed with a person or agency other than a parent or guardian, it shall be established by a preponderance of the evidence that a separation of the child from the parents or guardian is in the best interest of the child.

**§ 19-3-702 [§ 19-3-703 repealed effective August 2, 2019] Permanency hearing—periodic review**

1. Revised § 19-3-702 became effective August 2<sup>nd</sup>, 2019.
2. Permanency Planning Hearings need to occur for all children placed out of the home as soon as possible following the dispositional hearing but no later than 90 days after the initial Dispositional Hearing.

For all cases in which the child remains out of the home, a Permanency Planning Hearing shall be held at least every six months while the case remains open or more often in the discretion of the court.

All permanency planning hearings are to be held in person after proper notice to all parties. (Permanency Planning Hearings are held as to the child and not as to the parent. So after the first Permanency Planning Hearing, even if another parent has a dispositional hearing, the next permanency planning hearing will occur within six months after the first permanency planning hearing.)

3. A permanency plan of Other Planned Permanent Living Arrangements (OPPLA) can only be used for children 16 years or older and cannot have a concurrent goal. The statute lays out the criteria for making an OPPLA goal for a youth.
4. PERMANENT HOME DESIGNATION – 19-3-703 was the repealed statute that talked about making a delay finding as to an EPP child who was not in a permanent home within a year. This language has been modified and moved into 19-3-702. A work group through SCAO has been working on a permanent home designation process for about 4 years and with the change in language, it will be rolled out throughout the state over this next fiscal year. DANSR districts will be the next group to roll out the process. Until the process is formally rolled out in your county, this is what you need to know:

- a. A court shall make a designation that an EPP child is in a permanent home within a year of the first removal in the existing case. A permanent home is the place in which the child may reside if the child is unable to return home to a parent or legal guardian.
- b. If the Court determines by a preponderance of the evidence that a permanent home is not currently available or that the child's current needs or situation prohibit placement, the Court must be shown and the Court must find that reasonable efforts were made to find the child an appropriate permanent home and such a home is not currently available or that a child's needs or situation prohibit the child from a successful placement in a permanent home.
- c. The designation should be made at a permanency planning hearing that occurs immediately prior to the twelve months after the original placement of the child out of the home.
- d. If a child is not in a permanent home within twelve months after the original placement of the child out of the home, the Court shall review the permanent home status at every permanency planning hearing thereafter until the child is in a permanent home.
- e. If the permanent home designation is contested, or if there is a motion to move the child from the designated permanent home to another home other than a return home to a parent or legal guardian, 19-3-702 continues to list the factors the court must consider before the child is moved.

### **CASE LAW ADDRESSING PLACEMENT**

People, In the Interest of T.W., 642 P.2d 16 (Colo. App. 1981).

It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent and state department of human services may not encroach upon that authority. 642 P.2d at 17. Once court enters a placement order, DHS cannot invoke its rules and regulations to contravene such an order. Thus, the court has authority, in the absence of consent from the Executive Director, to order DHS to pay for cost of placement.

People, In the Interest of M.A.G., 732 P.2d 649 (Colo. App. 1986).

Delinquency case. Following an order placing custody of child with local department, the court maintained the exclusive authority to determine the specific placement. 732 P.2d at 650-51.

People, in the Interest of J.H., 770 P.2d 1355 (Colo. App. 1989).

Court has authority to place custody of child in legal custody of private individual and direct local departments of social services to provide reimbursement for cost, when necessary to protect the welfare of a child. This authority exists even when legal custody is not granted to the department.

People, In the Interest of L.M., 910 P.2d 100 (Colo. App. 1995).

Follows J.H., and holds no violation of separation of powers doctrine.

People, In the Interest of A.C., 304 P.2d 589 (Colo. App. 2011).

(question validity of the case following the repeal of § 19-3-703?)

19-3-703 and “best interests standard”.

19-3-703 requires a child, who was under six years of age at the time petition filed, to be placed within a “permanent home” no later than twelve months after the “original placement out of the home” unless court determines that placement in a permanent home is not in child’s best interests.

In order to delay a child’s placement in a permanent home, court must find that the delay is in the “child’s best interests.” § 19-3-703. To make this finding, the court must be shown, by “clear and convincing evidence,” that either (1) reasonable efforts were made to find the child an appropriate permanent home and such a home was not currently available; or (2) the child’s mental or physical needs or conditions deem it improbable that such child would have a successful permanent placement. 304 P.3d at 595.

Court concludes A.C. was in a “permanent home” within the meaning of section 19-3-703 because he had been placed out of his home for longer than a year and currently was in the home of potential adoptive parents. 304 P.3d at 595.

Thus, prior to removing a child from a permanent home, the Department was required to show, by clear and convincing evidence, that (1) it was making “reasonable efforts” to find the child an appropriate permanent home, and (2) concerns about the permanent home rendered that foster home “not currently available.” 304 P.3d at 595.

People ex rel. C.J., 410 P.3d 839 (Colo. App. 2017).

Citing T.W.; a court is not bound by the department’s placement recommendations.