



COLORADO OFFICE OF
**THE CHILD'S
REPRESENTATIVE**

OCR Annual Case Law & Legislative Update

2023





Thank you!

- Tiffany Pelham Webb
- Claire Morrow
- Kathy Dory
- Erin Rossiter
- Claudia Lair
- Rebekah Brown
- Josie Burt
- Julie Shultz
- Sylvia Geiger



Juvenile Justice Slides

Watch Katie Hecker's Presentation from August 23rd for information about:

- HB23-1012 – Juvenile Competency to Proceed
- HB23-1042 – Admissibility Standards for Juvenile Statements
- HB23-1145 – Timelines for Juveniles in Adult Facilities
- HB23-1155 – Advisement During Custodial Interrogation
- HB23-1187 – Criminal Justice Alternatives for Pregnant Persons
- HB23-1249 – Reduce Justice Involvement for Young Children
- HB23-1291 – Procedures for Expulsion Hearing Officers
- HB23-1307 – Juvenile Detention Services and Funding

AND MORE...



A woman with long dark hair, wearing a black wide-brimmed hat and a bright yellow long-sleeved shirt, is smiling and holding a yellow confetti popper. She is surrounded by a shower of colorful confetti (blue, red, yellow, and white) that is falling all around her. The background is a soft-focus outdoor setting with greenery and a path.

Take a Moment to Celebrate

SB23-214 Long Bill

- OCR received its funding requests, including an 18% increase for contractors across the board.

SB23-227 State Agency Attorney Hourly Rate

- Sets attorney rate at \$100/hour for FY24.
- Requires annual increases of up to \$5 until the rate reaches at least 75% of the CJA rate.

HB23-1172

Child Welfare and Juvenile Court Jurisdiction

effective August 7, 2023

Jurisdiction to enter APR in a D&N expanded in §19-1-104 to include:

- When all parents have an adjudication OR a continued Adjudication
- OR when at least one parent has an adjudication or continued adjudication AND the other parents who do not have an adjudication or continued adjudication consent to jurisdiction.

Name Change

- If petitioner is under 19 and subject to a D&N action then the petition for a name change **MUST** be filed in the D&N court.
- If petitioner is under 21 and participating in the FYTP then the petition for a name change **MAY** be filed in the FYTP court.
- Public notice of such name change through publication is not required if a child or youth has been adjudicated dependent or neglected or subject to a continued adjudication.

APR and Reasonable Efforts

People in Interest of A.S.L., 527 P.3d 404 (Colo. App. 2022)
issued Dec. 22, 2022

Colorado Court of Appeals

- Addressed allocation of parental rights (“APR”) order and reasonable efforts involving 17-year-old who wanted to continue to live with foster family and did not want to have visits with mother




HELD

- Standard of review for determining whether department made reasonable efforts to reunify is mixed question of law and fact, with factual findings reviewed for clear error and legal conclusions *de novo*.
- Department had statutory obligation to make reasonable efforts even though trial court resolved case through APR to non-parent rather than terminating parental rights
- Without specifically addressing issue of preservation, court reviewed evidence in record and determined that the department had made reasonable efforts to reunify the young person with mother.



SB23-082

Colorado Fostering Success Voucher Program

- 
- 
- 
- Effective June 5th, 2023
 - Established in **§19-7-314.5**
 - Purpose is to support eligible youth in making a successful transition to adulthood and provide developmentally appropriate case management services.
 - **Eligible youth** must be:
 - Over 18 and under 26 years of age.
 - Have prior foster or kinship care involvement in at least one of the following ways:
 - Have been in foster care on or after the youth's 14th birthday.
 - Have been in noncertified kinship care on or after the youth's 14th birthday AND adjudicated dependent and neglected or
 - Have turned 18 when named as a youth in a D&N.
 - Be currently experiencing homelessness and have voluntarily agreed to participate in services offered by a case management agency.
 - Reside in Colorado.
 - Have income that does not exceed a level determined by the State Department of Local Affairs.

Education

HB23-1089 Special Education Services for Students in Foster Care

Effective April 25, 2023

- Allows a child to be deemed a resident of the district if they are in out-of-home placement, enrolled in a school of origin (other than a facility school or day treatment facility) and was considered a resident at the time of enrollment in the school of origin or at the time the child was placed out of the home (whichever is most recent).
- Establishes a working group to identify issues related to foster youth education, transportation, and stability and provide written recommendations to the general assembly.



Education

HB23-1291

Procedures for Expulsion Hearing Officers

Effective April 25, 2023

§22-33-105

- Clarifies that the school district has the burden of proving by a preponderance of the evidence that the student violated §22-33-106 and the school districts policy.
- Requires the school district seeking to expel or deny admission to a student to provide all records the district intends to use as supporting evidence at least 2 business days prior to the hearing.
- The hearing officer must create a report with findings of fact and recommendations.
- A student who is denied admission or expelled as a result of the hearing has 10 business days to appeal the decision to the Board of Education. The Board shall issue a written order providing notice of the decision.
- Clarifies that the hearing officer must not have a conflict of interest with regard to the student under consideration and must receive training on how to serve impartially. An executive officer involved in investigating or reporting an incident that leads to a hearing shall not act as the hearing officer and must delegate such powers to a designee who is not involved in investigating or reporting the incident.

HB23-1168

Legal Representation and Students with Disabilities

Effective May 25th, 2023

§22-1-141

- A nonprofit organization selected by the Department of Ed will create and maintain a list of attorneys qualified to represent a parent in a due process complaint filed by a school district concerning issues disputed in a state complaint in which the parent prevailed.
- The bill is repealed in 5 years with some reporting requirements.

Americans with Disabilities Act (ADA)

People in Interest S.Z.S., 524 P.3d 1209 (Colo. App. 2022)

Issued Nov. 17, 2022

Colorado Court of Appeals

- Addressed parent's challenge to decision terminating parental rights based upon ADA raised for the first time on appeal

HELD

- Parent challenging TPR cannot raise argument that they have qualifying disability under the ADA for first time on appeal
- Appellate court does not need to consider whether parent had reasonable time to comply with treatment plan or whether reasonable efforts were made when TPR based on abandonment

Education Taskforces

SB23-029 - Disproportionate Discipline in Public Schools

- Creates the “School Discipline Task Force” to study and make recommendations regarding school district discipline policies and practices, reporting requirements and local engagement.
- They will begin by October and are required to look at certain areas laid out in §22-33-112 (6).

SB23-094 School Transportation Taskforce

- Creates the “Colorado School Transportation Modernization Task Force” to collect data, as well as study and make recommendations on a variety of things listed in §22-107-104.
- The Task Force must issue a report by December 1, 2024

HB23-1003

School Mental Health Assessment

- Effective June 5th, 2023
- 6th – 12th grade for schools that opt in.
- Provides a screening for all students (with notice to parents and the ability to opt out).

HB23-1191

Prohibit Corporal Punishment of Children

- Effective April 20, 2023
- Aimed at schools, childcare centers, foster homes and specialized group facilities.

HB23-1263

Translating IEPs

- Effective August 7th, 2023
- Translation into the dominant language spoken in the home of the child's parent upon request. IEP team shall verbally inform the family of the right to make this request.





HB23-205

Universal High School Scholarship Program

effective August 7th, 2023

§24-48.5-502

- Provides scholarships up to \$1500/student to offset the costs associated with postsecondary education, a registered apprenticeship, or training or education related to an in-demand or high-priority postsecondary pathway.
- Eligibility requirements:
 - Graduated from a Colorado high school or was awarded a GED by the Colorado Dept. of Ed.
 - Completes the FASFA or Colorado Application for Financial Aid.
 - Did not receive a grant or scholarship from the Colorado Opportunity Scholarship Initiative.
 - Submits an application for the program.
- Can be a full time or part time student and financial needs does not need to be demonstrated.
- Money can be used for tuition, fees, books, and equipment at a service provider.
- Includes a career advising component.

HB23-1024

Relative and Kin Placement of a Child

effective August 7th, 2023

- Expands notification and relative affidavit requirements.
- Strengthens placement presumptions for relatives/kin.
... placement with a capable, willing, and available relative or kin is in the best interests of the child.
- Requires the Court give primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement.
- Provides 63 days for a placement hearing if a party objects to a proposed placement.
- Lists factors that may NOT be considered unless they threaten the mental, physical, and emotional health or safety of the child or youth.
- Made changes to the intervention statute.

Relatives and Kin

HB23-1026

Family Time for Grandparents

- Relocated from §19-1-117 to Title 14.
- New legislative declaration in §14-10-124.4.
- Incorporated Troxel requirements into the statute.
- Court must consider the best interests of the child factors in § 14-10-124 (1.5)(a).
- Gives specific authority for the court to appoint a CLR in a Grandparent Family Time matter.

HB23-1043

Emergency and Continued Placement with Relative or Kin

- Combined § 19-3-406 and 407 into a new § 19-3-406.
- Clarifies procedures around fingerprint background checks.
- Updates the “shall not” criminal history in section (5).



A photograph of a family walking away from the camera in a park during sunset. A young girl in a blue jacket and pink tutu is holding hands with an adult on the left and another adult on the right. The ground is covered in fallen leaves, and the background is a soft, golden glow from the setting sun.

Relative Request for Placement People in Interest of E.B., 523 P.3d 988 (Colo. App. 2022)

Issued Oct. 13, 2022

- Colorado Court of Appeals
- Addressed whether a relative's request for guardianship/custody under C.R.S. 19-3-605(1) is a final, appealable order

HELD

- Decision on post-TPR request for guardianship/custody under C.R.S. 19-3-605(1) not final, appealable order
- Because it was not a final, appealable order, the COA dismissed the appeal without addressing merits of grandparent's request for placement

HB23-1027

Parent and Child Family Time

- “Visitation” is out, “Family Time” is in.
 - *Defined as any form of contact or engagement between parents, legal custodians, guardians, siblings, and children or youth for the purposes of preserving and strengthening family ties. § 19-1-103 (64.5)*
- Language change is effective June 1, 2023 and the remainder of the bill is effective January 1, 2024.
- Family time plan is required to be put on the record at the first hearing that occurs after the shelter hearing or no later than 30 days after removal.
- Cannot be used as a sanction.
- Presumption that family time be supervised by informal supports and occur in a home like environment or the community.
- Child/youth’s preferences must be considered when determining supervision, location, and timing of family time.
- Restrictions of family time can only occur if necessary to protect the child/youth’s safety or mental, emotional or physical health.

SB23-039

Reduce Child and Incarcerated Parent Separation

effective January 1, 2024

- Parents who are incarcerated will have counsel appointed to them. §19-3-202 (1)
- Respondents have a right to attend and participate in their hearings. §19-3-502 (5.5)(a)
- Pieces about getting respondents to court or allowing virtual attendance.
- Must make reasonable efforts to involved the incarcerated parent in treatment planning, including virtual attendance for meetings.
 - This must include opportunities for meaningful family time. If in person is not practicable, then by virtual means.
 - Court shall consider the wishes of the child and parent, and family time does not need to occur if it would jeopardize the child's mental, emotional, or physical health.
 - Simply being incarcerated isn't a reason to not have family time.
 - The caseworker must also report on services and treatment available to a parent at their facility or jail.
- Removes long term confinement as a basis for no appropriate treatment plan. §19-3-604
- Provides a new good cause factor for not filing for termination under §19-3-702, when a parent is incarcerated and has a meaningful and safe relationship with the child or youth.
 - Safe and meaningful relationship requires primary consideration of the child's mental, emotional, and physical needs and whether the involvement of the parent who is incarcerated in the child's life serves the child's best interests.



Additional Incarcerated Related Bill

HB23-1133

Cost of Phone calls for Persons in Custody

- Will be covered by DOC, phased in over the next 3 years.
- Starting Sept. 1, 2023 25% is covered.
- Then beginning on July 1, 2024 35% is covered.
- July 1, 2025 and thereafter, 100% is covered.

HB23-1187

Alternatives in Criminal Justice System and Pregnant Persons

- Rebuttable presumption against detention for a pregnant or postpartum defendant.
- May request a stay of execution through the end of pregnancy and postpartum period (of 1 year).
- Applies to juveniles with lengthy additions in §19-2.5-1118.5.

Continuation of Termination Hearings/Virtual Appearances *People in Interest of E.B.*, 521 P.3d 637 (Colo. 2022)

issued Dec. 12, 2022

Colorado Supreme Court

- Addressed question whether trial court violated father's due process rights when it denied counsel's motion to continue termination hearing although father may have been attempting to attend Webex hearing but did not stay connected

HELD

- Reversed decision by Colorado Court of Appeals
- Father needed to demonstrate "actual prejudice" stemming from alleged due process violation
- Looked to uncontroverted facts in record which, in sum, demonstrated that father was not participating in treatment plan, was not visiting child and was not otherwise meaningfully engaged in case at time of termination hearing



Serious Bodily Injury

People in Interest of L.S., 524 P.3d 847 (Colo. 2023)

issued January 23, 2023

Colorado Supreme Court in Rule 21 Proceeding

- Interpreted provision of **disposition** statute which provides that court can determine that no appropriate treatment plan can be devised for parent due to “single incident resulting in serious bodily injury [“SBI”] or disfigurement of the child.” C.R.S. 19-3-508(1)(e)(I), 19-3-604(1)(b).

HELD:

- A single incidence of SBI sufficient for court to find that no appropriate treatment plan can be devised to address unfitness & this does not violate due process
- At dispositional hearing where proposed disposition is no appropriate treatment plan proper burden of proof is preponderance of evidence and not clear and convincing evidence (standard applied at termination).



Judicial Branch Bills

HB23-1019

Judicial Discipline Procedures and Reporting

- Creates the Judicial Discipline Adjudicative Board.

HB23-1205

Office of Judicial Ombudsman

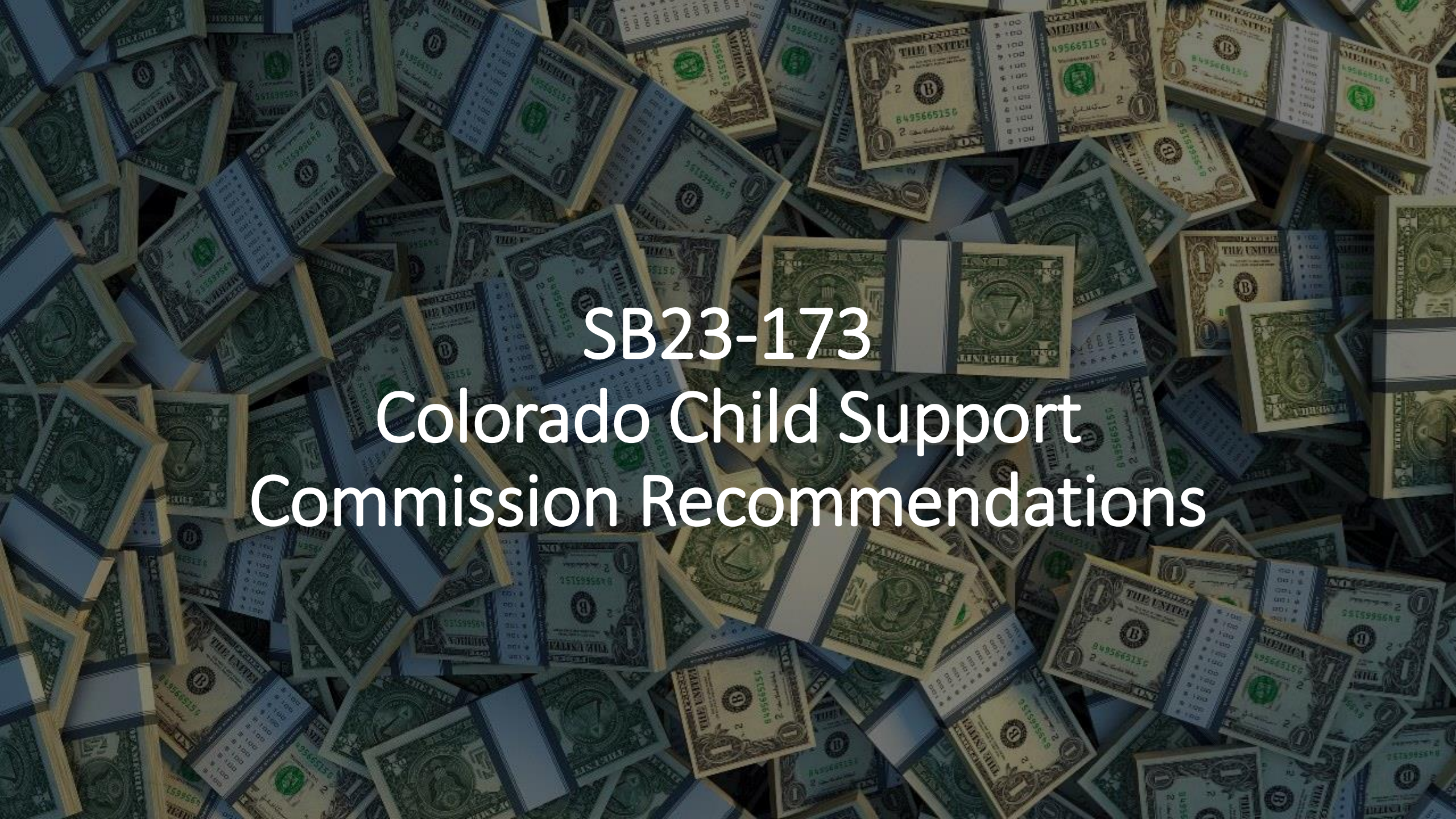
- Creates the Office of the Judicial Discipline Ombudsman.

HB23-1178

Court Personnel & Domestic Violence Awareness

effective May 25th, 2023 (ish)

- Impacts DR cases where there is a claim of domestic abuse or child abuse (or the court has reason to believe that a party has committed DV or child abuse). Bulk of the language is found in §14-10-127.5.
- Imposes requirements about experts and neutral professionals.
- Specifies rules about reunification treatment.
- Creates a taskforce to study training requirements under the Keeping Children Safe from Family Violence Act.
- Requires substantial training for CFIs, PREs and CLRAs that do not contract with OCR.
- OCR must report to SCAO regarding the training we offer each year.



SB23-173
Colorado Child Support
Commission Recommendations

HB23-211

Federal Indian Child Welfare Act of 1978

- Legal Requirements and Regulations of ICWA as they existed on Feb. 9, 2023 are incorporated into Colorado statute as of May 4th, 2023.



ICWA - Notice

People in Interest of E.A.M., 516 P.3d 24 (Colo. 2022)

Issued Sept. 12, 2022

Colorado Supreme Court

- Addressed "reason to know" provision in ICWA which triggers notice and other ICWA requirements

HELD

- While court may have information child has Indian heritage, this by itself is not "reason to know" that the child is an Indian child
- Despite assertions of tribal heritage with either Apache or Sioux tribes, nothing in record demonstrated child was "a member of an Indian tribe, eligible for membership in an Indian tribe or the biological child of a tribal member." (definition of Indian child in ICWA)
- Rather, these assertions gave department and court sufficient information to trigger the requirement in Colorado's ICWA statute that the department conduct "due diligence" to ascertain whether child was an Indian child. C.R.S. 19-1-125(3).
- Because question of whether department exercised due diligence as required by CRS 19-1-126(3) was not properly before court, it declined to rule on this issue.
 - *Stand-by: We are awaiting a decision by the Colorado Supreme Court on this issue in People in Interest of H.B.*



Additional Diversity, Equity and Inclusion Bills



23-1057

Amenities for all Genders in Public Buildings



23-1067

Family Intervener Program Deafblind Children



23-1280

Colorado Access to Justice Commission



23-189

Increasing Access to Reproductive Health Care



23-296

Prevent Harassment and Discrimination in Schools



SB23-290

Natural Medicine Regulation and Legalization

- Result of a ballot measure that was approved by voters.
- Legalizes the use of psilocybin
- Adds language to §19-3-103
 - It is not abuse or neglect when a person uses natural medicine in accordance with the law unless it threatens the health or welfare of a child.
 - Court shall not restrict or prohibit family time, or determine that family time is not in the child's best interests based solely on the fact that a person has used these substances lawfully unless the court finds that the child's safety or mental, emotional, or physical health is at risk as a result of the family time.



HB23-174

Access to Certain Behavioral Health Services

- Provides Medicaid recipients under 21 with access to limited services without requiring a diagnosis.
- Limited services include:
 - Family therapy
 - Group therapy
 - Individual therapy
 - Services related to prevention, promotion, education or outreach
 - Evaluation, intake, case management, and treatment planning
- Available on or after July 1, 2024



Additional Mental & Behavioral Health Bills

HB23-1200
Improved Outcomes Persons Behavioral Health

HB23-1236
Implementation Updates to BHA

HB23-1269
Extended Stay and Boarding Patients

HB23-014
Disordered Eating Prevention

Miscellaneous

- 23-1135

Penalty for Indecent Exposure in View of Minors

Makes indecent exposure a F6 if the person knew there was a child under 15 in view of the exposure.

- 23-1157 Uniform Unregulated Child Custody Transfer Act

Applies to children being placed for adoption or changing custody outside of child welfare, between family members or other traditional methods.

- 23-1197 Stakeholder Process for Host Home Providers

Requires HCPF to engage in a stakeholder process to address oversight of host home providers. Will start no later than Sept. 1, 2023.

UCCJEA

R.W. v. People Interest E.W., 523 P.3d 422 (Colo. 2022)

Issued Nov. 7, 2022

Colorado Supreme Court

- Addressed application of UCCJEA when all parents and child relocate out-of-state during course of D&N

HELD

- Upheld Court of Appeals decision
- Colorado does not lose jurisdiction of a case under the UCCJEA simply because a child is placed out-of-state, and the parents then move to that same state.
- Termination proceedings is not a separate child-custody proceeding under UCCJEA but a request for a remedy in one

LOOKING AHEAD

Child Welfare Interim Study Committee

Attorney Satisfaction Survey

GRID

