

# Updates to GRID 2nd Edition (2018)

## September 2018–2020 Updates

### CHECKLISTS

#### PERMANENCY HEARING (GAL CHECKLIST)

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H99

**Before the bullet beginning with “obtain information on privilege holder” insert the following bullet:**

- ❑ If the child/youth is in a QRTP, ensure the court engages in the review required by FFPSA and Colorado’s implementing legislation.

H103

**Before the bullet beginning with “present evidence” insert the following bullet:**

- ❑ If the child/youth is in a QRTP, ensure the court engages in the review required by FFPSA and Colorado’s implementing legislation.

H129

**Change “three working days” to “five working days” in first bullet in Before section.**

H130

**add the following new bullets after the first bullet:**

- Determine whether the placement provider is following the reasonable and prudent parenting standard.
- ❑ If the proposed permanency goal is OPPLA, confirm the youth is at least 16 years of age or an unaccompanied refugee minor and

arrange for the youth to attend the hearing. Prepare the youth to speak to the judge about his/her desired permanency outcome.

**Add the following bullet to the end of the Before section:**

- If permanent home findings must be made, prepare a written or verbal report specifying efforts/services provided to identify/facilitate a permanent home. Ensure report does not waive privilege or convert GAL into witness.

**H131**

**Add under “proffer evidence” bullet:**

- Whether placement is following the reasonable and prudent parenting standard.

**Add under “ensure the court finds” bullet:**

- whether ongoing efforts have been made to identify kin and relatives available as a permanent placement.

**Delete last two circle bullets under “ensure the court finds” and replace with the following:**

- whether the current placement of the child/youth could be a permanent placement if necessary.
- Whether the child can be returned to the physical custody of the child’s parent or guardian. If not, ensure the court enters a permanency goal for each child and determines whether there is a substantial probability that the child will return to a parent or legal guardian within six months. Possible permanency goals: return home; adoption with a relative; permanent placement with a relative through legal guardianship or APR; adoption with a non-relative; permanent placement with a non-relative through legal guardianship or APR; Other Permanent Planned Living Arrangement, either through emancipation or long-term foster care (only allowed in exceptional circumstances and for youth aged 16 or older).

**Delete last bullet set (beginning with “Ensure the Court enters”)**

**Delete first bullet set (beginning with “one of the following permanency goals”).****To concurrent goal tip, add a new sentence:**

Ensure OPPLA is not entered as a concurrent goal.

**Add a new set of bullets:**

- If OPPLA is entered as a goal, ensure that the:
  - Youth is at least 16
  - Court asks youth about his/her desired outcome
  - Court reviews whether placement is following reasonable and prudent parenting standard.

**Add a new set of bullets on H132:**

- For cases designated as EPP, at the permanency planning hearing immediately prior to 12 months after the original placement out of the home, ensure the court makes a finding regarding whether the child is in a placement that can provide legal permanency.
  - If the court determines by a preponderance of the evidence that the child is not in a permanent home, ensure the court makes findings regarding whether reasonable efforts were made to find the child a permanent home and that such a home is not available or whether a child's needs or situation prohibit the child from successful placement in a permanent home.
  - If a written report was not submitted verbally report on what specific efforts have been made to identify a permanent home and/or what services have provided to the child or youth to facilitate identification of a permanent home.
  - Ensure the court considers placement of the children together as a sibling group.

**Add a new set of bullets in H132:**

- if a placement change (other than return to a parent or legal guardian) is contested by a party, ensure the court has been provided and has considered the following
  - Child's wishes;
  - Individualized Assessment of the child's needs;

- Whether the current home is safe and potentially permanent;
- The child's actual age and developmental stage as well as the child's attachment needs;
- Whether the child has significant psychological ties to the person who could provide the permanent home;
- Whether the person who could provide the permanent home is willing to maintain appropriate contact after an adoption with the child's relatives, particularly sibling relatives, when safe, reasonable and appropriate;
- Whether the person aware of the child's culture and willing to provide the child positive ties to his/her culture;
- Whether the person can meet the child's medical, physical, emotional, or other specific needs;
- The child's attachment to the caregiver and possible effects on the child's emotional well-being if removed.

**Before the bullet beginning with “obtain information on privilege holder” insert the following bullet:**

- If the child/youth is in a QRTP, ensure the court engages in the review required by FFPSA and Colorado's implementing legislation.

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## PERMANENCY HEARING (RPC CHECKLIST)

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**H133**

**In first bullet point, change** three working days **to** five working days.

**Add a new sub-bullet to “meet with client” bullet:**

- Availability of kin/relative placements.

**H134**

**Add a new sub-bullet to “proffer evidence” bullet in “During Hearing” section:**

- Availability of kin/relative placements.

**Delete last two circle bullets under “ensure the court finds” and replace with the following:**

- whether the current placement of the child/youth could be a permanent placement if necessary.
- Whether the child can be returned to the physical custody of the child’s parent or guardian. If not, ensure the court enters a permanency goal for each child and determines whether there is a substantial probability that the child will return to a parent or legal guardian within six months. Possible permanency goals: return home; adoption with a relative; permanent placement with a relative through legal guardianship or APR; adoption with a non-relative; permanent placement with a non-relative through legal guardianship or APR; Other Permanent Planned Living Arrangement, either through emancipation or long-term foster care (only allowed in exceptional circumstances and for youth aged 16 or older).

**Delete bullet set beginning with “Ensure the Court enters” and add a new set:**

- For cases designated as EPP, at the permanency planning hearing immediately prior to 12 months after the original placement out of the home, ensure the court makes a finding regarding whether the child is in a placement that can provide legal permanency.
  - If the court determines by a preponderance of the evidence that the child is not in a permanent home, ensure the court makes findings regarding whether reasonable efforts were made to find the child a permanent home and that such a home is not available or whether a child’s needs or situation prohibit the child from successful placement in a permanent home.
  - If a written report was not submitted verbally report on what specific efforts have been made to identify a permanent home and/or what services have provided to the child or youth to facilitate identification of a permanent home.
  - Ensure the court considers placement of the children together as a sibling group.

### **Add a new set of bullets:**

- if a placement change (other than return to a parent or legal guardian) is contested by a party, ensure the court has been provided and has considered the following
  - Child's wishes;
  - Individualized Assessment of the child's needs;
  - Whether the current home is safe and potentially permanent;
  - The child's actual age and developmental stage as well as the child's attachment needs;
  - Whether the child has significant psychological ties to the person who could provide the permanent home;
  - Whether the person who could provide the permanent home is willing to maintain appropriate contact after an adoption with the child's relatives, particularly sibling relatives, when safe, reasonable and appropriate;
  - Whether the person aware of the child's culture and willing to provide the child positive ties to his/her culture;
  - Whether the person can meet the child's medical, physical, emotional, or other specific needs;
  - The child's attachment to the caregiver and possible effects on the child's emotional well-being if removed.

### **Before the bullet beginning with “if the child is an Indian child” insert the following bullet:**

- If the child/youth is in a QRTP, ensure the court engages in the review required by FFPSA and Colorado's implementing legislation.

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## **PLACEMENT REVIEW HEARING CHECKLIST (GAL)**

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**H153**

### **Change fifth bullet (beginning with “There is a likely”) to**

- There is a likely timeframe in which the child or youth will be returned to a parent or legal guardian or be in a safe and permanent home, and if the child or youth is not likely to be returned to a parent or legal guardian within six months, a finding about whether the child is in a potential permanent placement.

**Delete last two sub-bullets (referencing EPP/permanent home and child support).**

**Delete fourth to last bullet set (regarding EPP/permanent home).**

**Prior to the last bullet on page, insert new set of bullets:**

- if a placement change (other than return to a parent or legal guardian) is contested by a party, ensure the court has been provided and has considered the following
  - Child's wishes;
  - Individualized Assessment of the child's needs;
  - Whether the current home is safe and potentially permanent;
  - The child's actual age and developmental stage as well as the child's attachment needs;
  - Whether the child has significant psychological ties to the person who could provide the permanent home;
  - Whether the person who could provide the permanent home is willing to maintain appropriate contact after an adoption with the child's relatives, particularly sibling relatives, when safe, reasonable and appropriate;
  - Whether the person aware of the child's culture and willing to provide the child positive ties to his/her culture;
  - Whether the person can meet the child's medical, physical, emotional, or other specific needs;
  - The child's attachment to the caregiver and possible effects on the child's emotional well-being if removed.

**Before the bullet beginning with "request contested hearing" insert the following bullet:**

- If the child/youth is in a QRTP, ensure the court engages in the review required by FFPSA and Colorado's implementing legislation.

## PLACEMENT REVIEW HEARING CHECKLIST (RPC)

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H156

**Before the bullet beginning with “In an ICWA case” insert the following bullet:**

- ❑ If the child/youth is in a QRTP, ensure the court engages in the review required by FFPSA and Colorado’s implementing legislation.

**Prior to last bullet in During Hearing Section, insert new set of bullets:**

- ❑ if a placement change (other than return to a parent or legal guardian) is contested by a party, ensure the court has been provided and has considered the following
  - Child’s wishes;
  - Individualized Assessment of the child’s needs;
  - Whether the current home is safe and potentially permanent;
  - The child’s actual age and developmental stage as well as the child’s attachment needs;
  - Whether the child has significant psychological ties to the person who could provide the permanent home;
  - Whether the person who could provide the permanent home is willing to maintain appropriate contact after an adoption with the child’s relatives, particularly sibling relatives, when safe, reasonable and appropriate;
  - Whether the person aware of the child’s culture and willing to provide the child positive ties to his/her culture;
  - Whether the person can meet the child’s medical, physical, emotional, or other specific needs;
  - The child’s attachment to the caregiver and possible effects on the child’s emotional well-being if removed.

### PRELIMINARY PROTECTIVE HEARING

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**H15**

**In second full paragraph, insert after § 19-3-503(8)(b):**

; *see also In Interest of A.B.-A.*, 2019 COA 125 (holding that juvenile court erred in allowing department to serve a parent by publication when the record did not establish that the department had exercised due diligence to obtain personal service).

**At the end of that paragraph insert:**

**TIP**

If the parent's identity and some information about the parents' whereabouts are known "service by publication alone is unlikely to pass constitutional muster." A.B.-A. citing *Synan v. Haya*, 15 P.3d 1117, 1117 (Colo. App. 2000)). Counsel should consider advocating for service that would "have a reasonable chance of giving that party actual notice of the proceeding" when it is known that a parent is in another country or out of state. *Id.* Parties should carefully review Motions for Publication to ensure that they provide support for a finding of due diligence in finding parents, and where they do not, should advocate for additional methods that would be likely to assist in finding parents. If RPC have been appointed to the case, they should consider requesting an investigator through ORPC to assist in this process.

**H19**

**Delete last word also from line 7.**

**At the end of the first (incomplete) paragraph, add the following sentences:**

If "a parent, although mentally disabled to some degree, understands the nature and significance of the proceeding, is able to make decisions in her own behalf, and has the ability to communicate with and act on the advice of counsel" then a court would not abuse its discretion in not appointing a GAL to such a parent. See *M.M.*, 726 P.2d 1108, 1120 (Colo. 1986). The court must make findings to support the appointment of a GAL for a parent. See *In the Interest of T.M.S.*, 2019 COA 136.

## Following that paragraph, insert a new TIP:

### TIP

In *In Interest of T.M.S.*, 2019 COA 136, a division of the Court of Appeals clarified expectations regarding the role of a parent's GAL. Specifically, the division explained that the GAL for a parent serves an assistive role of facilitating communication between the parent and counsel and helping the parent participate in the proceeding. The parent's GAL, however, does not have a statutory right to participate as a party. The division held that the GAL improperly participated in the proceeding when she attempted to represent the parent's best interests and to file pleadings independent of the parent and the parent's counsel. The GAL also undermined the parent's fundamental liberty interest in the care, custody, and control of her child by advocating for a reduction in parenting time and supporting a concurrent permanency goal of adoption. Finally, the court erred in allowing the GAL to give closing argument, as she was not a party to the proceeding, and in allowing the GAL to give improper testimony during closing argument rather than requiring the GAL to limit her argument to facts that had been introduced into evidence.

## Prior to last sentence in last practice tip, insert the following additional citation:

*In re Jessica G.*, 93 Cal. App. 4th 1180 (2001) (holding that prior to appointment of a GAL for a parent, the parent must be provided with a hearing and opportunity to be heard and that appointment of a GAL without the required hearings and findings violated Mother's due process rights)

### H23

In second practice tip, change “will provide” to “provides”.

### H25

Add the following to the first practice tip:

If the department has tried to serve a family through a differential response/“family assessment response” track, the department will have documented the treatment and prevention plan. *See* 12 CCR 2509-2:7.104.131.

H28

**In Visits subsection, change reference to Sections 19-1-128 to Sections 19-7-204(3) and (4).**

**Replace**

if the siblings mutually request an opportunity to visit one another

**with**

if a sibling requests an opportunity to visit a sibling or ongoing visits with a sibling.

**Change reference to §19-1-128(3) §19-7-204(5).**

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## PRETRIAL HEARING

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H32

**At the end of the second sentence under “Rehearing,” insert**

“pursuant to C.R.C.P. 59.”

**Following the citation for *In re Marriage of Phelps*, insert:**

“; *but see People in Interest of J.D.*, 464 P.3d 785 (Colo. 2020) (holding that magistrates may modify or reconsider their own orders if such orders are not final and appealable orders subject to review by a judge).”

H45

**In practice tip after reference to Family Finding/Diligent Search fact sheet, insert a new sentence:**

The juvenile court has exclusive, continuing jurisdiction to determine paternity during an ongoing D&N proceeding and may not rely on paternity findings issued by other courts during the pendency of the proceeding. *See People in the Interest of D.C.C.*, 2018 COA 98.

**H53****After first sentence under section 7, add:**

Counsel must also investigate whether another state has home state jurisdiction over the child even though no prior custody proceeding commenced in the home state. See § 14-13-201; *People in Interest of S.A.G.*, 2020 COA 45 (*pending petition for certiorari*).

**H69****In Siblings section, change reference to §19-1-128 to § 19-7-204.**

**In Siblings section, replace “if the siblings make a mutual request” with “if a sibling makes a request”.**

## ADJUDICATORY HEARING

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**H70****Add second tip under Appeals:****TIP**

RPCs who are appointed for clients after a client has been adjudicated by default or adjudicated at a hearing at which they were not present or represented by counsel should investigate the circumstances of the adjudication and advise the client regarding any right to appeal or to request the court reconsider the adjudication. Respondent Parents will likely not be able to raise appellate issues regarding adjudication on appeal of a termination order. See *A.R. v. D.R.*, 456 P.3d 1266, 1277 (Colo. 2020). As a result, it is crucial that RPCs appointed post-adjudication act swiftly to investigate and advise the client so that any claims the client may have are not waived and the case is not delayed. If appointed in such circumstances, RPCs should consider requesting the assistance of an investigator and/or requesting discovery.

**H73****Add new paragraph before “Procedural Means of Resolving Adjudicatory Issues”:**

Findings regarding fitness are not static and may change over the course of the case. In *People in Interest of N.G.G.*, 459 P.3d 664 (Colo.

App. 2019), the Colorado Court of Appeals determined that a parent was entitled to a *Troxel* presumption as a fit parent after she successfully completed her treatment plan and was awarded primary allocation of parental responsibilities.

**TIP**

RPC should consider whether a parent has become fit after entry of adjudication and consider filing a motion to determine fitness of the parent if parental fitness is an outcome determinative factor in an upcoming proceeding. GALs should also consider whether a parent is entitled to a *Troxel* presumption when making recommendations regarding APR and grandparent visitation.

**H76**

**At the end of the first paragraph, insert the following sentence:**

*In People in Interest of R.J.*, 2019 COA 109, the Court of Appeals held that a juvenile court's exercise of peremptory challenges that the GAL had not used did not require reversal when the court's explanations for its challenges did not suggest bias, parents' counsel did not object, and the parents on appeal did not articulate how the court's actions undermined the fundamental fairness of the proceedings or otherwise prejudiced parents.

**H77**

**Insert a new paragraph at the end of the first practice tip:**

Counsel should ensure that any instructions the court gives the jury are in compliance with the Civil Rules and constitutional due process and fundamental fairness considerations. In *People in Interest of M.H.K.*, 2018 COA 178, a division of the Court of Appeals held that a juvenile court erred in reading detailed allegations from the petition in its introductory remarks to the jury trial, reversing the judgment and remanding the case for a new adjudicatory trial.

**H83**

**In last practice tip, delete reference to §19-3-703 and accompanying parenthetical.**

**H85**

**In first practice tip, delete reference to §19-3-703.**

**H86**

**In first sentence under “Required Findings/Bases for Adjudication,” cross out “testing positive at birth for a controlled substance” and replace with:**

born affected by alcohol or substance exposure where the infant’s health or welfare is threatened by substance abuse,

**H89**

**Under Section 5, “Neglect,” add sentence to end of second paragraph:**

Similarly, a parental decision not to immunize a child on the basis of medical, religious, or personal belief considerations shall not be, on its own, the basis for a finding of abuse or neglect. § 19-3-103(3).

**H90**

**Cross out “8. Testing Positive at Birth for a Controlled Substance” and replace with “Infant Threatened by Substance Use.” Cross out first sentence and replace with:**

In 2020, the Colorado legislature changed the provision that allowed a child to be adjudicated dependent or neglected solely on the basis of testing positive for a Schedule I or II controlled substance. Now, if a child is born affected by alcohol or substances and the newborn’s health or welfare is threatened by substance use, the infant can be determined dependent or neglected. If a mother is taking a drug as prescribed or recommended and monitored by a licensed healthcare provider, the child shall not be dependent or neglected based on this provision alone. § 19-3-102(1)(g).

**H91**

**Delete TIP**

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## DISPOSITIONAL HEARING

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**H105**

**Insert a new first practice tip immediately prior to other two tips:**

**TIP**

The dispositional hearing is an important hearing in the D&N proceeding, and if the case ultimately proceeds to termination of

the parent-child legal relationship, failure to hold a dispositional hearing will result in reversal of the termination order. *See People in Interest of B.C.*, 2018 COA 45.

**H108**    **After first (incomplete sentence) insert a new sentence:**

If a parent has a disability, any identified accommodations and modifications must be listed in the report prepared for the dispositional hearing. *See* § 19-3-507(1)(c); **Disabilities and Accommodations fact sheet.**

**H111**    **At the end of the first practice tip add the following sentence:**

Child support orders may also allow a parent to obtain housing and financial stability supportive of an in-home placement. *See People in Interest of E.Q.*, 2020 COA 118 (holding that a juvenile court has subject matter jurisdiction to order child support over dependent and neglected children, and that the court must comply with the provisions for determining child support set forth in § 19-6-106 and the child support guidelines set forth in § 14-10-115).

**H112**    **In second practice tip, replace “will require” with “requires”. Add “alone” to the end of the last sentence in the tip.**

**H122**    **Add sentence to the second paragraph of the first tip immediately before the citation.**

Counsel should also ensure that the department provides funding and access to services for parents living out of state. The department must make reasonable efforts to reunify children with out-of-state parents, and referring for an ICPC is not enough on its own to constitute reasonable efforts. *See People in Interest of I.J.O.*, 465 P.3d 66 (Colo. App. 2019).

**H123**    **At the end of the bullet beginning with “emotional/mental illness,” add the following sentence:**

The court must also make findings that the provision of reasonable accommodations and modifications to the treatment plan will not remediate the impact of the parent's disability on the health and welfare of the child. § 19-3-604(1)(b); **Disabilities and Accommodations fact sheet.**

**H125**

**Delete reference to § 19-3-702.**

**In appeals section, add the following phrase to the end of the first sentence:**

, and an appeal of an adjudication may include an appeal of the initial dispositional order.

**Add the following cite and sentence to the end of the first paragraph:**

*People in Interest of C.L.S.*, 934 P.2d 851 (1996); *People in Interest of H.T.*, 2019 COA 72. However, the initial dispositional order alone is not final for the purposes of appeal. *See H.T.*, 2019 COA 72.

**H126–H127**

**Delete all practice tips.**

**Delete the first paragraph immediately prior to the practice tip (beginning with “Section 19-1-109”).**

**Delete the paragraph immediately following the practice tips (beginning with “Temporary custody”).**

**H128**

**In the second paragraph of Setting the Next Hearing section, change 12 months of the date the child entered foster care to 90 days after the date of the dispositional decree.**

**Delete the subsequent two sentences (beginning with “If a child is under six years old”).**

## PERMANENCY HEARING

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*\*\*\*Please note that § 19-3-702 was stricken and reordered pursuant to HB 19-129. The edits below align the GRID content with the new enumeration of sections in §19-3-702. To simplify this document, new subsection numbers (i.e., subsection (1)(b) rather than (1)) are not added in this pocket part update unless necessary to correct an inaccurate citation. Please refer to the online version of the GRID or §19-3-702 for specific subsection numbers.*

**H137**

**In Timing of Hearing Section, delete last sentence of first paragraph and replace with**

Colorado's Children's Code sets forth stricter timeframes.

**In first sentence of second paragraph, delete:**

who was six years or older at the time a petition was filed

**replace “12 months” with “90 days”**

**replace “date the child entered foster care” with “decree of disposition (unless the federal 12-month limit occurs sooner).”**

**Delete last sentence of paragraph (“A child is considered . . .”) and entire third paragraph.**

**In last paragraph, delete:**

that includes consideration of in-state and out-of-state placement options for the child.

**H138**

**In first (incomplete) paragraph of Timing of Hearings Section, delete:**

unless a motion for termination of the parent-child relationship has been filed in the interim

**In first sentence of first complete paragraph, change “12” to “six”.**

**At the end of sentence, add “or upon the motion of any party”.**

**Delete the last sentence of first complete paragraph (“If a child is not . . .”).**

**In Notice Requirements section, delete the following:**

as well as to the foster parents, pre-adoptive parents, and relatives of the child with whom the child is placed. See §§ 19-3-702(2), 19-3-502(7).

**and replace with:**

the parents or guardians, placement providers, and named children or youth. § 19-3-702(2)(a).

**Add a new sentence:**

The notice must comply with § 19-3-502(7). *Id.*

**In the second sentence, delete the phrase “substance of the motion” and replace with “purpose of the hearing”**

**H139**

**In Participation of Parties and Others section, delete first sentence and reference to § 19-3-702(1.5); replace with:**

The court must hold the permanency hearing in person and provide all parties the opportunity to be heard. § 19-3-702(1)(a); *see also*.

**Delete second sentence.**

**In Participation of Child section, replace “age-appropriate” with “developmentally appropriate”.**

**Change reference to § 19-3-702(3.7) to §19-3-702(1)(b).**

**Add a new sentence at the end of the paragraph:**

If considering the goal of Other Permanent Planned Living Arrangement, the court must ask the youth about his or her desired permanency outcome. § 19-3-702(4)(a)(VI)(D).

**H140**

**In Advance Submission of Proposed Permanency Plan section, delete:**

Upon setting the permanency hearing, the court must order the department to prepare a permanency plan for the child. § 19-3-702(2). The department must submit the plan to the court and the parties at least three working days in advance of the permanency hearing. *Id.*

**and insert**

The department must prepare a permanency plan for the child. § 19-3-702(2). The department must submit the plan to the court and the parties at least five days in advance of the permanency hearing. *Id.*

**In Contemporaneous Hearings section, change citation at end of the first paragraph from §19-3-702(6.5) to §19-3-702.5.**

**Delete second paragraph from Burden of Proof section.**

**H140–142**

**Amend Required Findings section as follows:**

**H140**

**Insert the following bullet set as first set of required findings:**

- First, the court must determine whether the child or youth should be returned to his or her parent or guardian. § 19-3-702(3).
  - If applicable, the court must also find the date on which the child may be returned. *Id.*
  - If the child/youth cannot be returned home, the court shall determine whether reasonable efforts have been made to find a safe and stable permanent home. *Id.* See also **Reasonable Efforts fact sheet.**

**In first sub-bullet under “Whether,” change “visitation” to “determination impacting visits”.**

**In first sub-bullet under “Whether,” change §19-3-702 to §19-3-702(3)(a).**

**In first sub-bullet on page H141, change plan in effect at the time of the hearing to goal. Change §19-3-702 reference to §19-3-702(3)(b).**

**As second sub-bullet on H141, insert:**

- Ongoing efforts have been made to identify kin and relatives that are available to be in a permanent placement. 19-3-702(3)(c).

**in “out-of-state placement” sub-bullet, change §19-3-702 reference to § 19-3-702(3)(d).**

**Replace sub-bullet beginning with “The permanency plan for a child age 14 or older” with:**

- If the child/youth is 14 years of age or older, whether the child is receiving transition services to successful adulthood. § 19-3-702(3)(e).

**Replace sub-bullet beginning with “reasonable efforts” with:**

- The child’s placement could be a permanent placement if necessary. 19-3-704(3)(f).

**Delete sub-bullet beginning with “The child can be returned to . . .”**

**Replace the last bullet beginning on H141 (beginning with “If the court determines”) with the following:**

- If the court determines the child cannot be returned to the physical custody of a parent or legal guardian on the date of the hearing, the court must enter one or more of the following permanency goals: return home; adoption with a relative; permanent placement with a relative through legal guardianship or APR; adoption with a non-relative; permanent placement with a non-relative through legal guardianship or APR; Other Permanent Planned Living Arrangement, either through emancipation or long-term foster care (only allowed in exceptional circumstances and for youth aged 16 or older). § 19-3-704(a)(I)-(VI); *see Permanency Goals section, infra.*

**Add another set of bullets after newly added bullet on H142:**

- The department shall document in the family services plan and the court shall review:
  - The compelling reasons why it is not in a child's best interests to return home, be placed for adoption, be placed with a legal guardian or fit and willing relative (including an adult sibling), as well as the department's intensive, ongoing, and unsuccessful efforts to achieve these goals, including the use of technology and social media. § 19-3-702(4)(b).
  - Whether the child's placement is following the reasonable and prudent parenting standard and whether the child has regular, ongoing opportunities to engage in age-appropriate activities. § 19-3-702(4)(b)(II).

**Delete last two bullets and two practice tips on H142 and replace with the following:**

- For children in EPP cases, the Court must make permanent home findings. *See Permanent Home subsection, infra.*

**Replace the permanency goals and accompanying citation listed at the end of first sentence of the In Permanency Goals section with:**

return home; adoption with a relative; permanent placement with a relative through legal guardianship or APR; adoption with a non-relative; permanent placement with a non-relative through legal guardianship or APR; Other Permanent Planned Living Arrangement. § 19-3-704(a)(I)-(VI). All goals except for the OPPLA goal may be adopted as concurrent goals.

**New box/bullet:**

- Once Colorado has implemented FFPSA, the Court will need to make specific findings regarding any placement in a Qualified Residential Treatment Program (QRTP). *See Qualified Residential Treatment Program* section in **Placement Review Hearings** chapter.

**Move tip about concurrent goals from H144 to this section.**

**In Return Home section, change cite to §19-3-702(3) to § 19-3-702(4)(a)(1).**

**H144**

**Delete sentence in second paragraph and replace with:**

Efforts to place a child for adoption or with a legal guardian or custodian may be made concurrently with reasonable efforts to preserve and reunify the family.

**H144-145**

**Adoption subsection:**

**Note that adoption goal is set forth in new Section 19-2-704(a)(II), (IV).**

**H145**

**Delete second sentence of first paragraph.**

**At end of first sentence in second paragraph, change §19-3-702(5) to § 19-3-702(4)(e).**

**Delete second sentence in second paragraph.**

**In first and second bullets regarding cause, delete “(children of all ages)”.**

**Delete “physical and” from first incomplete bullet and delete “(children six and over)” from bullet**

**Delete reference to §19-3-702(2.5), (5)(a) and replace with 19-3-702(4)(e)(I)-(IV).**

**Delete first full sentence on H145 and replace with (same cite):**

Efforts to place a child for adoption or with a legal guardian or custodian may be made concurrently with reasonable efforts to preserve and reunify the family.

**In practice tip, delete reference to 42 USC and 12 CCR and replace with “Adoption Fact Sheet.”**

**Delete:**

, which is set forth in Volume 7, *see id.*

**H145–146**

**Legal Guardianship/Allocation of Parental Responsibilities subsection:**

**Note that this permanency goal is listed in new § 19-3-702(4)(a)(III), (V).**

**Add the following to the end of the first paragraph:**

*See also* HB 19-1219 (clarifying in Section 19-3-702(4) that APR/guardianship to relative or non-relative are both available permanency goals).

**Delete last sentence of the section, leaving the citation, and replace with:**

Efforts to place a child for adoption or with a legal guardian or custodian may be made concurrently with reasonable efforts to preserve and reunify the family.

**H146–148**

**4. Another Permanent Planned Living Arrangement:**

**Note that this goal is described in § 19-3-702(VI)(A).**

**Delete third sentence in first paragraph (beginning with “The court must”) and replace with:**

This goal is limited to youth age 16 or older who have co-occurring complex conditions that preclude the other permanency goals. Section 19-3-704(4)(a)(VI)(B) (exempting unaccompanied refugee minors from these requirements). OPPLA cannot be entered as a concurrent goal. Section 19-3-704(4)(a)(VI)(C).

**Add the following note prior to the additional findings and documentation:**

(note that the Children's Code requires many of these findings for all children during permanency hearings).

**Add the following cite to the first bullet:**

; Section 19-3-702(c).

**Add the following cite to the second bullet (first bullet on H147):**

; Section 19-3-702(c).

**Add the following cite to the first sentence in last bullet:**

*See also* § 19-3-702(4)(b)(II).

**H147**

**Delete last two sentences from the first practice tip.**

**H148**

**Add the following sentence to the end of the first (incomplete) practice tip on H148:**

Colorado also refers to this plan as a “Roadmap for Success.” *See* 12 CCR 2509-4: 7.305.2(C).

**Add the following new section on Permanent Home immediately prior to Special Considerations Section:**

For children and youth placed out of home in an EPP case, the court must make additional permanent home findings. § 19-3-702(5). A permanent home is defined as the place in which the child or youth may reside if the child or youth is unable to return home to a parent or guardian. § 19-3-702(5)(a). The purpose of permanent home findings is to ensure that a child or youth who has been removed from his or her home has been placed in a permanent home as expeditiously as possible. § 19-3-702(5)(c).

**TIP**

HB 19-129 repealed former § 19-3-703 and clarified the legislature's intent regarding permanent home findings.

The requirement for permanent home findings begins at the permanency planning hearing that occurs immediately prior to twelve months after the original placement of the child or youth out of

home. § 19-3-702(5)(a). At this hearing, the court must find whether the child or youth is in a placement that can provide legal permanency. § 19-3-702(5)(c). If the court determines by a preponderance of the evidence that permanent home is not currently available or that the child's or youth's current needs or situation prohibit placement, the court must be shown that reasonable efforts were made to find the child or youth an appropriate permanent home and that such a home is not currently available or that a child or youth's needs or situation prohibit the child or youth from a successful placement in a permanent home. § 19-3-702(5)(a). The court must make findings regarding these efforts and needs. *Id.* When a child has siblings, the court's finding must include consideration of the children together as a sibling group. § 19-3-702(5)(f).

Until the court finds that a child or youth is in a permanent home, the court must review this finding at a permanency hearing at least every six months. § 19-3-702(5)(d). the court must be provided evidence of one the following:

- ❑ that the child or youth is in a permanent home or
- ❑ that reasonable efforts continue to be made to find the child or youth an appropriate permanent home and that such a home is not available or that the child's or youth's needs or situation prohibit the child or youth from successful placement in a permanent home.

§ 19-3-702(5)(d). At each permanency planning hearing, the caseworker and the child or youth's GAL must provide a verbal or written report specifying what efforts have been made to identify a permanent home for the child or youth and what services have been provided to the child or youth to facilitate identification of a permanent home. § 19-3-702(5)(e).

**TIP**

In reporting on the progress of finding a child a permanent home, the GAL should be careful not to convert himself or herself into a witness or to share any privileged information. *See* **Children's Psychotherapist-Patient Privilege fact sheet.**

The court's findings regarding permanent home do not alter the department's obligation to make reasonable efforts to return the child or youth home, and any findings regarding permanent home shall not delay or interfere with reunification of a child or youth with a parent or legal guardian. § 19-3-702(5)(b); *see also* **Reasonable Efforts fact sheet.**

**In Concurrent Planning section, delete last sentence and replace with**

Permanency goals other than OPPLA may be entered as concurrent goals. 19-3-702(4)(a).

**In Placement Determinations at the Permanency Hearing, replace beginning clause in first sentence with:**

If a placement change is contested by a party or a child or youth and the child is not reunifying with a parent or guardian.

**Add the following to the end of the sentence:**

, including the child's or youth's wishes.

**Replace the reference to § 19-3-702(9) with § 19-3-702(6).**

**Delete paragraph immediately following bullets on H149.**

**H149**

**In Sibling Placement section, delete reference to § 19-3-213.**

**Change last sentence to**

The court shall not delay permanency planning by considering joint placement by a sibling group. § 19-3-702(3).

**H150**

**Delete Ongoing Placement with Foster Parents section.**

**Delete last sentence (prior to practice tip) in Setting the Next Hearing section.**

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## **PLACEMENT REVIEW HEARING**

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**H152**

**Change reference to §19-3-702(6), (8)(a) in Purpose/Overview of Hearing section (second to last sentence) to §19-3-702.5.**

**Delete reference to state statutes in first sentence of practice tip.**

**H159**

**Delete first complete sentence on the page and replace with:**

Section 19-3-702.5 requires reviews to be conducted every six months.

**Delete references to §19-3-702(6), (8)(a) but leave in reference to § 19-1-115.**

**Delete second sentence in Contemporaneous Hearings section.**

**In Administrative Reviews section, delete first clause in second sentence and replace with:**

Colorado law allows courts, if a party does not object, to order review hearings to be conducted.

**Delete reference to §19-3-702 at the end of that sentence.**

**Change reference to §19-3-702 at the end of the third sentence to *Id.***

**H163**

**Delete first paragraph.**

**H163-165**

**In Required Findings Section, change 19-3-702(6) and (6.5) to 19-3-702.5.**

**H166**

**Change bullet above first practice tip to read:**

**TIP**

A likely date by which the child may be returned to a parent or legal guardian or be in a safe and permanent home. Section 19-3-702.5(e).

### **Insert new sentence after the last bullet:**

If a child/youth is placed in a QRTP, the court will need to make special findings regarding the child's needs and that level of care. See **Qualified Residential Treatment Program** section in **Special Issues/Considerations**, *infra*.

### **Delete last bullet and accompanying practice tip and replace with:**

- If the child or youth is not likely to be returned to a parent or legal guardian within six months, whether the child is in a potential permanent placement and, if not, a likely timeframe when he or she will be in a safe and permanent home. Section 19-3-702.5(f).

**H167**

**In first complete sentence, replace “regulations contemplate” with “law contemplates”.**

**H168**

**Add the following sentence to the end of the first paragraph in Independent Living Services section:**

Note that the Preventing Sex Trafficking and Strengthening Families Act replaced the term “independent living” with “transition planning for successful adulthood.” See 42 U.S.C. Section 675(1)(D), (5)(C) (i)-(ii). Colorado also refers to this plan as a “Roadmap for Success.” See 12 CCR 2509-4: 7.305.2(C).

**H169: To the end of the first sentence, add:**

unless the child is reunifying with a parent or legal guardian

**and change the reference §19-3-702(9) to §19-3-702(g).**

**Change “placement” to “home” in the second, fifth, and sixth bullets.**

**Add a Section 9 titled Qualified Residential Treatment Program (QRTP) and insert the following paragraphs:**

Once Colorado has implemented FFPSA, special procedures and findings will apply to any placement in a Qualified Residential Treatment Program (QRTP). First, whether this level of treatment is

necessary must be assessed by a Qualified Individual as defined by the FFPSA, who must not be an interested party or participant in the proceeding and who must be free of any personal or business relationship that would cause a conflict of interest. § 19-1-103(87.7). This assessment must identify whether the QRTP level of treatment is the most effective, appropriate, and least restrictive placement for the child/youth and identify child-specific short- and long- term goals for the child/youth and family. § 19-1-115(4)(h).

Second, the court must hold a hearing to determine whether the needs of the child/youth can be met with a parent, legal guardian, kinship provider, or foster care home or whether placement of the child in a QRTP is the most effective and appropriate level of care for the child/youth in the least restrictive environment and whether placement is consistent with the short and long term goals for that child/youth as outlined in the permanency or family services plan for the child. § 19-1-115 (4)(e). The court must hold this hearing within sixty days after a placement or within thirty days after a placement if the evaluation by the Qualified Individual does not support the QRTP level of care or the child/youth, GAL, or any party objects to the placement. *Id.*

As long as the child/youth remains in a QRTP, the court must review the placement at every permanency and placement review hearing and no less frequently than every 90 days. § 19-1-115(4)(g). At these hearings, the department must submit evidence that ongoing assessment continues to support the initial findings required for the placement and documenting the specific treatment or service needs that will be met for the child in the placement, the length of time the child is expected to need the treatment or services, and the efforts made to return the child home or to a less restrictive placement. § 19-1-115(4)(f). Parties may consent to the Administrative Review Division (ARD) of the Colorado Department of Human Services conducting this periodic review instead of the court; attorneys of record must be notified of these periodic reviews. § 19-1-115(4)(g). In reviewing the placement, the court or ARD must give great weight to the assessment of the Qualified Individual; any decision that deviates from the assessment must be based on specific findings of fact regarding the most effective, appropriate, and least restrictive placement for the child or youth and whether the placement is consistent with the child-specific short and long term goals for the child/youth and family. § 19-1-115(4)(h). The court shall consider all relevant information, including but not limited to: whether the Qualified Individual followed the assessment protocol; the strengths and spe-

cific treatment or service needs of the child/youth and family; the expected length of stay; and the placement preference of the child/youth and family. *Id.*

**H169**

**After second sentence in Child Support subsection add:**

A juvenile court allocating child support should follow the child support guidelines set forth in § 14-10-115. *See People in Interest of E.Q.*, 2020 COA 118.

**H170**

**Delete the last sentence of the Setting the next hearing section and change citation “§19-3-702(8)(a)” to “§19-3-702.5(1).”**

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## TERMINATION HEARING

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**H181**

**At the end of the first complete sentence, change “§ 19-3-702(1)” to “§ 19-3-702(1)(a).”**

**H184**

**In the first sentence, delete “The Colorado Court of Appeals has held.” At the end of the sentence, add:**

such that “there is a reasonable probability that but for counsel’s unprofessional errors, the result of the proceeding would have been different.”

**After “See” add:**

*A.R. v. D.R.*, 456 P.3d 1266, 1280 (Colo. 2020); *see also*

**At the end of the paragraph, add:**

In *A.R. v. D.R.*, the Supreme Court found that Mother’s counsel rendered deficient performance under the *Strickland* standard where counsel failed to present a less drastic alternative argument to the court where the record indicated that a relative of the child was available and willing to take placement of the child, and counsel failed to make any effort to secure placement of the child with the relative

beyond filing a letter written by the mother with the court. 456 P.3d at 1283. Because the trial court indicated in orders subsequent to the termination order that it may not have terminated mother's rights had it been aware of the availability of the relative for placement, the court concluded that the record established prejudice and that no further record was necessary. *Id.*

**H185**

**In the fourth sentence, replace:**

expert may testify on the county's behalf

**with**

other parties may obtain discovery of the expert's report and introduce the expert's testimony as evidence. Where statements are made in circumstances that do not give rise to a reasonable expectation that the statements will be treated as confidential, privilege may not apply.

**Add the following to the citations following that sentence:**

*People in Interest of A.N-B.*, 440 P.3d 1272, 1277 (Colo. App. 2019) (quoting *Lanari v. People*, 827 P.2d 495, 499 (Colo. 1992)).

**Insert a new practice tip in subsection 5:**

**TIP**

RPCs and GALs should carefully consider the engagement of an expert, particularly an expert evaluating the relationship between parents and children. RPCs and GALs should consider use of social workers, family advocates, or social service professionals on their team to help assess whether obtaining a PCI may be helpful. Practitioners should consider using expert engagement agreements to set forth the expectations for confidentiality and preparation of reports.

**H188**

**Delete all language in Relinquishment subsection practice tip and replace with:**

In *People in Interest of L.M.*, 416 P.3d 875 (Colo. 2018), the Colorado Supreme Court held that when a dependency and neglect proceeding is pending, the Department can only terminate the parent-child legal relationship through the provisions of Article 3. While

the Supreme Court did not question the juvenile court's acceptance of the mother's relinquishment of parental rights (an Article 5 procedure), the Court held that it was error for the juvenile court to then terminate father's parental rights under the provisions of Section 19-5-105(1).

**H193**

**In description of HB 18-1104 in practice tip, change will require to requires.**

**H199**

**At end of first full paragraph, insert:**

In *People in Interest of S.R.N.J-S.*, 2020 COA 12, the Court reversed an order terminating the parent-child legal relationship; in this case, the juvenile court's oral findings that the parents were "semi-fit" contradicted its written finding of unfitness, the juvenile court's written order incorporated its oral findings by reference, and the Court of Appeals held that the court's findings regarding parents' visits, participation, and success in their treatment plans lacked record support and were clearly erroneous.

**H201**

**Insert second paragraph to practice tip (continued from previous page):**

In *People in Interest of A.M.*, 20SC 187, the Colorado Supreme Court granted *certiorari* on the following issue related to less drastic alternatives: Whether a trial court is required to make a specific finding considering and eliminating less drastic alternatives before ordering termination of the parent-child legal relationship, and if so, whether the trial court must do so using the best interests of the child standard or the adequacy standard. The Supreme Court's holding in this case will likely clarify required findings regarding less drastic alternatives, and counsel should continue to monitor this case.

**H204**

**Under Section 2, at the end of the paragraph but before the citation to the Jurisdictional Issues fact sheet, add:**

Colorado may also lack jurisdiction to hear a termination hearing if Colorado was the home state of the child at the time of the com-

ment of the dependency and neglect case. See *People in Interest of S.A.G.*, 2020 COA 45 (*Petition for Certiorari pending*).

**Delete second sentence in Americans with Disabilities Act subsection and replace with:**

A treatment plan for a parent with a known disability, however, is evaluated for appropriateness in light of both reasonable efforts made to rehabilitate the parent and the reasonable accommodations made for the parent's disability.

**Add the following cite to the end of the sentence:**

*People in Interest of S.K.*, 2019 COA 36.

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## POST-TERMINATION REVIEW HEARING

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**H212**

**Delete the last sentence in Contemporaneous Hearings subsection practice tip.**

**H214–215**

**In Timely Placement in Permanent Home subsection, replace the second clause of the first sentence (beginning with “the child shall be”) with the following:**

the court must consider whether the child is in a permanent home at the permanency hearing immediately occurring 12 months after the original placement out of the home.

**At the end of the sentence, change the cite from “§ 19-3-703” to “702.5. See Permanency Hearings chapter.”**

**Delete all subsequent sentences in the paragraph (beginning with “In determining whether” and ending with the citation “to *People ex rel. T.M.*”)**

**H215**

**In the Next Steps/Setting the Next Hearing section, replace the statutory cites at the end of the first sentence with §§ 19-3-702(1)(a), 19-3-702.5(1).**

**In second sentence, replace “Such reviews may be in the form of placement reviews, which” with “These hearings”.**

Replace the statutory cites following the second sentence with §§ 19-3-702(1)(a), 19-3-702.5(1).

## FACT SHEETS

### ADOPTION

F7

**Delete all text in the Post-Adoption Agreements and Financial Support section and replace with the following paragraphs and tip:**

Children and youth who have special needs that create a barrier to their adoption are eligible for adoption benefits in Colorado. Sections 26-7-102(8) and 26-7-105 outline criteria that qualify a child or youth for a subsidy. Children who meet the criteria for federal Supplemental Security Income or for whom it would be reasonable to conclude that they cannot be adopted without benefits are eligible. Factors supporting a child's eligibility include but are not limited to: a physical, mental, intellectual, or developmental disability; an education disability that qualifies the child for a Section 504 plan, being over seven years of age or part of a sibling group that should remain intact, and ethnic background or membership in a minority group. Section 26-7-102(8). A subsidy must be supported by a determination that reasonable efforts have been made to place the child for adoption without benefits or a determination that such efforts would be against the best interest of the child. *See* Section 26-7-105(2)(c) (including a significant bond with the prospective adoptive parents or the delay caused by a search for a nonsubsidized adoptive placement as factors supporting a best interest determination). Available benefits include monthly subsidized payments, medical assistance, reimbursement of nonrecurring expenses such as adoption and attorney fees. Section 26-7-106(2).

Colorado's adoption assistance program is supervised by CDHS and administered by county departments. Section 26-7-103. At the time that a family is matched for adoption of a child or youth potentially eligible for benefits, the department or child placement agency must provide written notice to the prospective adoptive family of the availability of monetary, mental health, and tax benefits and the family's rights in the adoption assistance process, including the right to involve the GAL and other individuals who have information

about the child's history and needs, the right to request a negotiation meeting, and the right to appeal. *See* section 26-7-104(1). The subsidy determination must be reached through a discussion and good-faith negotiation process that takes into account the circumstances of the adoptive family and the needs of the child or youth; however, use of a means test is prohibited. Section 26-7-107(1)-(3). Volume 7 outlines several important protections applicable to adoption subsidy negotiations, including but not limited to: the presentation interview must take place within 90 days of termination of the parent-child legal relationship; the GAL must be invited to the interview; the department must provide an audio recording of the presentation interview and give the adoptive parents time to review the recording and written information. *See* 12CCR 2509-4: 7.306.16. An agreement must be signed prior to the adoption. Section 26-7-107(1). An appeals process is provided by section 26-7-110.

**TIP**

SB19-178 responded to two significant reports identifying issues with the administration of Colorado's adoption subsidy programs. *See* Office of Colorado's Child Protection Ombudsman, Investigation Report Case 2016-2074 (December 13, 2017), available at <http://www.coloradocpo.org/>; Adoption Steering Committee Recommendation Report: Submitted to the Child Welfare Executive Leadership Council (December 15, 2017), available at <https://www.colorado.gov/pacific/cdhs-boards-committees-collaboration/child-welfare-executive-leadership-council>. The black letter law section above outlines these legislative changes, and expected CDHS rules will support consistent interpretation and enforcement of this new legislation. This legislation clarifies that GALs may participate in subsidy negotiations, and GALs should advocate for subsidies that advance children's best interests through this permanency support.

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## APR/GUARDIANSHIP

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**F16**

**Change statutory reference in second bullet from § 19-3-702(5)(a)(III) to §19-3-702(4)(E)(III).**

**F19**

**At the end of the second sentence in Required Findings subsection, delete reference to § 19-3-702(4).**

**At the bottom, under “Legal Effect of Order” add a second TIP:**

**TIP**

If a parent or relative being allocated parental responsibilities desires to relocate, counsel should consider addressing relocation at the APR hearing and may look to the provisions of § 14-10-129 as a guide. Counsel should not request a provision allowing a parent to relocate at some point in the future as doing so may result in a reversal of the APR order. *See, e.g., People in Interest of N.G.G.*, 459 P.3d 664, 669 (Colo. App. 2019).

**F20**

**Under “Certification of APR” add a last sentence to the paragraph:**

At least one division of the Court of Appeals has applied the provisions of the Uniform Dissolution of Marriage Act (UDMA), or Title 14, in reviewing an APR order where the APR order was certified into a new domestic relations case. *See People in Interest of N.G.G.*, 459 P.3d 664, 669 (Colo. App. 2019).

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## APPEALS FACT SHEET

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**F24**

**Insert the following TIP as the third practice tip on the page:**

**TIP**

In *People in Interest of M.B.*, 2020 COA 13, a parent urged the Court of Appeals to apply a plain error standard of review to a his due process and equal protection claims, which had not been brought to the attention of the trial level court during the proceedings. The Court of Appeals declined to apply a plain error standard of review, noting that that standard arrives from Colorado Rule of Criminal Procedure 52(b) and that D&N proceedings are civil proceedings. Instead, the Court of Appeals determined that the proper standard of review for unpreserved constitutional claims in dependency and neglect cases is a miscarriage of justice standard, which the Court found the father had not met in this case.

### To the end of the first TIP, add:

If counsel intends to file a Notice of Appeal but lacks a written final order, counsel should make a written or verbal request at every opportunity that the court enter the written final order, or counsel will risk waiving the right to raise the issue at a later date. See *A.R. v. D.R.*, 456 P.3d 1266, 1277 (Colo. 2020). All parties should be mindful that the written order includes the same findings and orders made in the oral order. Where the written order references findings made on the record without specific written findings, the oral orders may end up controlling. See *People in Interest of S.R.N.J-S.*, 2020 COA 12. To avoid ambiguity, parties should consider submitting detailed written proposed orders or requesting clarification of the court's written orders to accurately reflect the oral orders.

**F25**

### Before the last sentence of the first tip, insert:

*A.R. v. D.R.*, 456 P.3d 1266, 1277 (Colo. 2020) (barring parent from making claim of ineffective assistance of counsel at an adjudicatory hearing as part of an appeal of a termination order even where the adjudicatory order had not been reduced to writing).

**F26**

### Add new bullet to non-final orders list:

- ❑ The initial dispositional order, unless part of the appeal of the adjudication order. See *People in Interest of H.T.*, 2019 COA 72.

**F28**

### Delete first practice tip and replace with:

**TIP**

The Court of Appeals has held that when a district court has entered an adjudication order but the accompanying dispositional order has been entered by a magistrate, Section 19-1-108(5.5) does not require the district court to review the magistrate's dispositional order before a parent may appeal the adjudicatory order. *People in Interest of R.J.* 2019 COA 109.

**F32****Add a second practice tip below the first tip:****TIP**

*In People in Interest of Z.M.*, 2020 COA 3M, the Court of Appeals denied a parent's request for a new hearing based on two missing transcripts. The court held that the parent failed to establish materiality under C.A.R. 10(f)(2) and held that it did not violate father's due process rights when it required him to establish materiality.

**F33****Add a third practice tip:****TIP**

Ineffective assistance of counsel claims may be raised on direct appeal in the Opening Brief. *A.R. v. D.R.*, 456 P.3d 1266, 1271 (Colo. 2020). Appellate RPCs must allege facts with sufficient specificity to establish a *prima facie* showing that, if true, the facts would meet both prongs of *Strickland*, as laid out in *A.R. See, e.g., People ex rel. C.H.*, 166 P.3d 288, 291 (Colo. App. 2007). “[W]hen either the record is sufficiently developed to allow the appellate court to decide the question of counsel’s ineffectiveness or the record establishes presumptive prejudice”, the appellate court may reverse the trial court’s order without remanding for an evidentiary hearing. *Id.* at 1284. In most cases, the appellate court will need to issue a limited remand to the trial court to permit the trial court to hold an evidentiary hearing on the claim of ineffective assistance. *Id.* If the appellate court determines the claim of ineffective assistance of counsel must be remanded for further proceedings, appellate RPC should contact the ORPC to request new trial counsel be appointed for the parent.

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## CHILDREN IN COURT

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**F43**

**At the end of the second sentence, change reference to § 19-3-702(2) to § 19-3-702(1)(a).**

**In last paragraph of Colorado Law Regarding Children in Court section, change**

age-appropriate **to** developmentally appropriate.

**Change reference to § 19-3-702(3.7) to § 19-3-702(1)(a).**

**F47**

**In the *In Camera* Interviews of Children subsection, change reference to § 19-3-702(3.7) to § 19-3-702(1)(a).**

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## CHILDREN'S RIGHTS

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**F60**

**In Notice subsection, change reference to § 19-3-702(3.7) to § 19-3-702(2)(a).**

**In Court Participation subsection, change:**

§ 19-3-702(1.5) **to** § 19-3-702(1)(a)

§ 19-3-702(3.7) **to** § 19-3-702(1)(a)

**After reference to 42 U.S.C. § 675a(a)(2)(A), add**

§ 19-3-702(4)(a)(VI)(D).

**F61**

**At the end of the first complete paragraph, change**

§ 19-3-702(5)(a)(1) **to** § 19-3-702(4)(E)(II)).

**At the end of the last sentence on the page, add the following sentences:**

Note that the Preventing Sex Trafficking and Strengthening Families Act replaced the term “independent living” with “transition planning for successful adulthood.” *See* 42 U.S.C. Section 675(1)(D), (5(C)(i)-(ii)). Colorado also refers to this plan as a “Roadmap for Success.” *See* 12 CCR 2509-4: 7.305.2(C).

F62

**Change title of “Visits with Siblings” subsection to “Placement and Visits with Siblings”.**

**Delete all text of the subsection and replace with:**

Siblings in foster care have a right to placements with their siblings when possible and in the best interests of each sibling and, when they cannot be placed together, to be placed in close geographical distance to each other. Section 19-7-203(1)(a)-(c). They also have a right to maintain frequent and meaningful contact with their siblings and to be actively involved in each other's lives, unless such contact/involvement is not in the best interests of one of the siblings. Section 19-7-203(1) (g)-(h). *See Siblings fact sheet.*

F64

**At the end of the first (incomplete) sentence, change reference to § 19-3-702(10) to § 19-3-702(4)(c).**

F66

**In bullet “p” change:**

§ 19-3-702(3.7) to § 19-3-702(1).

## CROSSOVER YOUTH

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F86

**Delete last sentence of first paragraph and replace with:**

HB 19-1315 sets forth a process by which a juvenile can seek suppression of any statements made during custodial interrogation if the juvenile alleges that the responsible adult had an interest adverse to the juvenile. *See § 19-2-511(7)(a).*

F87

**In first complete paragraph, delete two instances of:**

is a danger to him- or herself or the community

**and replace with**

poses a substantial risk of serious harm to others

### **Add new sentence following first deletion:**

or a substantial risk of flight from prosecution and community-based alternatives to detention are insufficient to reasonably mitigate the risk. The statute distinguishes flight from prosecution from simple failure to appear. *See id.*

**In the last sentence of the paragraph, add § 18-12-106 to the list of statutory provisions.**

### **Add a new last sentence to the end of the paragraph:**

Section 19-2-507.5(3) lists a number of bases that alone cannot justify the detention of a juvenile, including but not limited to: lack of supervision alternatives, service options, or more appropriate facilities; the community's inability to provide treatment or services; lack of supervision in the home or community; and risk of self-harm.

**F87–88**

**Delete the last sentence beginning on F87 and the remainder of the paragraph concluding on F88.**

**F88**

**Add the following sentence to the end of the second complete paragraph:**

A division of the Court of Appeals has held that because juveniles “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,” a juvenile court has an expanded duty of careful inquiry into a juvenile’s understanding of his or her right to counsel before the court can find that a waiver of that right is voluntary, knowing, and intelligent. *See People in Interest of J.V.D.*, 2019 COA 70 (quoting *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011)).

**F89**

**At the end of the first (incomplete) practice tip, add:**

*; see also People in Interest of G.S.* 2019 COA 4.

F92

**At the end of the second paragraph, insert the following sentence:**

If the court sentences a juvenile to DYS, the court must make a finding as to whether the lack of available and appropriate congregate care placements is a contributing factor to the commitment to DYS. *See* § 19-2-921(1.5)(a)(III).

F95

**Add the following sentence as third to last sentence in the second to last paragraph on the page:**

The juvenile court does not have jurisdiction to order a second competency evaluation in lieu of holding a restoration hearing or a competency review. *People in Interest of B.B.A.M.*, 2019 CO 103.

F98

**Add a second practice tip:**

**TIP**

In *People v. Brown*, 2019 CO 50, the Colorado Supreme Court held that a juvenile charged in an adult proceeding could limit his waiver of testimonial privileges to the transfer hearing alone. GALs with relevant treatment and mental health information should work with defense counsel prior to engaging in any actions that would constitute a waiver of the psychotherapist-patient privilege at this stage, as waiving that privilege might allow the prosecution to use the information against the juvenile at a later stage in the proceeding.

F100

**Insert new Section 9 titled “Qualified Residential Treatment Program (QRTP)”. In that section, insert the following sentence:**

Once Colorado has implemented FFPSA, special procedures and findings will apply to any placement in a Qualified Residential Treatment Program (QRTP). *See* **Qualified Residential Treatment Program** section in **Placement Review Hearings** chapter.

## DISABILITIES AND ACCOMMODATIONS

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**F103**

**Insert the following practice tip after the last complete paragraph:**

**TIP**

The determination of whether a parent is a qualified individual with a disability under the ADA requires a case-by-case determination. See *People in Interest of S.K.*, 2019 COA 36. While the department must provide appropriate screenings and assessments, the parent is responsible for disclosing information regarding his or her disability and should also identify modifications believed necessary to accommodate the disability.

**F107**

**Add the following sentence to the end of the first paragraph in the first practice tip:**

*People in Interest of S.K.*, 2019 COA 36, a division of the Court of Appeals considered parents' arguments regarding reasonable accommodations; its analysis may serve as a helpful examples for GALs and RPC.

**Delete this phrase from the beginning of the last (incomplete) paragraph:**

The Colorado Court of Appeals has held that,

**F108**

**Delete the following phrase from the first complete sentence:**

However, a failure to comply with the ADA is not a defense to termination of parental rights—that is

**and replace with**

While

**At the end of the sentence, add the following text:**

, a court should consider whether reasonable accommodations were made for the parent's disability in determining whether a parent's treatment plan was appropriate and reasonable efforts were made to rehabilitate the parent. *S.K.*, 2019 COA 36.

## EDUCATION LAW: RIGHTS AND ISSUES

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**F109**

**In Parents or Legal Guardians section change 19-1-107(73) to 19-1-103(73).**

**F113**

**Insert a new paragraph at the end of the first (incomplete) practice tip:**

Each school district and the state charter school institute must designate a staff as its child welfare education liaison. *See* § 22-32-138(2). These liaisons are responsible for working with the department and child placement agencies to successfully maintain students in out of home placement in their schools of origin and, when it is not in the students' best interests to remain in their school of origin, to facilitate prompt and appropriate placement, transfer, and enrollment in schools within their district.

**F122**

**Before Maintaining and Accessing Educational Records section, insert a new subsection 3: “Credits Transfer, Coursework Recognition, and Graduation Requirements.”**

**Add the following text:**

For students in out of home placement, the new school must accept the student's coursework certification as if had been completed at the school. § 22-32-138(5)(a). For students who have experienced an out of home placement at any point during high school, education providers may waive course or program prerequisites for enrolling in courses or programs. § 22-32-138(5)(b). Schools may also waive specific courses required for graduation if the student has completed similar coursework demonstrated competency; for students who cannot meet this requirement, schools are encouraged to provide alternative means of completing coursework or demonstrating competency. § 22-32-138(5)(c). For students in out of home placement transferring schools at the beginning of or during twelfth grade and who do not meet the new school's diploma requirements, the new school may request a diploma from the student's previous school. § 22-32-138(d).

**F132**

**Delete the third and fourth bullets from the Timing of Hearings section.**

**F133-134**

**Delete all text (including tips) in Timely Placement in a Permanent Home section and replace with:**

For children and youth placed out of home and in EPP proceedings, the court must make additional permanent home findings. § 19-3-702(5). A permanent home is defined as the place in which the child or youth may reside if the child or youth is unable to return home to a parent or guardian. §19-3-702(5)(a). The purpose of permanent home findings is to ensure that a child or youth who has been removed from his or her home has been placed in a permanent home as expeditiously as possible. § 19-3-702(5)(c). *See* **Permanency Hearings chapter**.

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## HEARSAY IN D&N PROCEEDINGS

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**F162**

**In Admissible Statements subsection, replace “D&N” in first sentence with “civil”.**

**Insert a new first bullet:**

- Statements made by a person under thirteen years of age if the child is alleged to have been a victim.

**In first (existing) bullet, after “Statement,” insert:**

by a child as defined by relevant statute or by a person under fifteen years of age

**Replace:**

any act or attempted act of sexual contact, intrusion, or penetration as defined in § 18-3-401 or §18-3-411

**with**

all or part of an offense of unlawful sexual behavior, as defined in § 16-22-102(9).

**Delete second (existing) bullet.**

### **F188 After the first sentence, add:**

In 2019 Colorado amended that statute to align the statute with the updated ICWA regulations. *Id.*

### **F188 Change citation at the end of the second existing sentence to § 19-1-126(1)(a)(I)(B).**

#### **Add a new sentence after that citation:**

It also places an obligation on all parties to disclose any information indicating the child is an Indian child in a timely manner. § 19-1-126(1)(a)(I)(B).

#### **In the last sentence of the first paragraph, delete:**

when the petition or pleading does not identify whether a child is an Indian child and provides specific guidelines for the court to consider in determinations regarding transfer to the court. § 19-1-126(2), (4).

#### **and replace that deleted language with:**

and determine the identity of an Indian child's tribe. § 19-1-126(1)(a)(I)(A-B).

#### **Insert second TIP in Indian Child subsection:**

**TIP** In cases involving children who are not members of a federally recognized tribe but eligible for membership, RPC and GALs should ensure that there is a clear record as to whether either parent is a tribal member. *See, e.g., People in Interest of K.R.*, 2020 COA 35 (remanding for further findings regarding parents' tribal membership).

### **F189 At the end of the first full paragraph, insert the following TIP:**

**TIP** In *People in Interest of K.C.*, 2020 COA 86, the Court of Appeals held that in a D&N proceeding, when a tribe notifies the department of its desire to obtain tribal citizenship for a child, the department

must timely deposit the tribe's response with the juvenile court and the juvenile court must hold an "enrollment hearing" to determine whether tribal enrollment is in the child's best interests. At this enrollment hearing, the court must give primary consideration to the child's best interests and must consider the positions of the parents, the department, and the GAL; given the benefits of tribal enrollment, the court should not treat an objection to enrollment, even by a parent, as a veto. Such a hearing is unprecedented in Colorado law and not mentioned in ICWA. As of August 2020, a petition for *certiorari* seeking review of this hearing is currently pending before the Colorado Supreme Court.

**F191** In the first sentence, delete:

the petitioning or filing party in a proceeding to make continuing inquires to determine whether the child is an Indian child and whether there has been compliance with ICW's procedural requirements. § 19-1-126(1)(a).

**and replace that deleted language with:**

the court to ask each participant in child-custody proceedings whether the participant knows or has reason to know the child is an Indian child. (Section symbol) 19-1-126(1)(a)(I).

**Delete the last sentence of the first paragraph, including the citation.**

**F192** After the first phrase on the top of the page, add:

Sample logs can be found on the OCR's Litigation Toolkit.

**F193** In the first sentence of section i, delete:

ICWA and the 2016 ICWA Regulations require notice for.

**Replace that deleted language with:**

Notice is required in.

**Delete the second paragraph in section i.**

**Delete the tip following the second paragraph.**

**F194**

**In the second paragraph of section iii, delete:**

The Colorado Children's Code provides that notice must be sent . . . § 19-1-126(1)(b).

**Delete the first tip.**

**At the end of the third tip, add:**

At least one division of the court of appeals has held that although the failure to comply with ICWA's notice provisions does not divest a trial court of its subject matter jurisdiction to enter adjudicatory and dispositional orders, such failure does invalidate dispositional orders because dispositional orders constitute a child custody proceeding pursuant to ICWA. *People in the Interest of M.V.*, 432 P.3d 628, 632-36 (Colo. App. 2018).

**F195**

**At the end of the second paragraph in section iv, add:**

In a case where a father claimed tribal heritage from a state lacking federally recognized tribes with designated tribal agents within its borders, a division of the court of appeals held that the BIA bears the burden of determining tribal connections from such vague information, but remanded the case to the trial court because the notice sent to the BIA failed to mention that the father reported a tribal connection to a specific state. *People in the Interest of I.B.-R.*, 439 P.3d 38, 41-2. (Colo. App. 2018).

**Delete the last sentence of the second paragraph:**

Section 19-1-126(b) requires notice . . . receipt requested.

**Delete the tip.**

**F196**

**In section iv, after 25 C.F.R. § 23.111(a)(12)., add a new sentence stating:**

A division of the court of appeals remanded due to insufficient notice where the department only filed an unsigned and undated return receipt. *People in the Interest of Z.C.*, 2019 COA 71M, ¶¶ 18-21.

**Delete the last sentence and citation in that paragraph:**

Section 191-1-126(1)(c) requires that . . . See also ¶ 19-3-602(1.5)(b).

**F198**

**In the 3rd paragraph in section 3, delete:**

See 19-1-126(4)(b);

**F199**

**Delete the first full paragraph and its bullet points:**

“similarly, the Colorado Children’s Code encourages courts addressing transfer requests to consider . . . after receiving sufficient notice. § 19-1-126(4)(a).

**In the next paragraph delete the introductory phrase:**

As to the final criterion listed above—whether the . . . if the petitioner did not respond promptly after receiving sufficient notice.

**Replace that deleted phrase with:**

As to the first criterion stated above,

**Delete the second tip (which begins on F199 and ends on F200).**

**F201**

**In the first full paragraph, replace “home” with “harm”.**

**F204**

**At the end of the first tip, delete:**

2017 COA 139 at ¶¶ 6-7, 12-2. At the time of this writing, a petition for . . . Supreme Court.

**Replace that deleted language with**

414 P.3d 46, 48, 49 (Colo. App. 2017), *cert. den. People in the Interest of D.B.*, 2017 SC 819.

**F206**

**In the first tip, delete**

2017 COA 139, ¶¶ 6-7, 12-21. At the time of this writing, a petition . . . Colorado Supreme Court.

**Replace that deleted language with:**

414 P.3d 46, 48, 49 (Colo. App. 2017), *cert. den. People in the Interest of D.B.*, 2017 SC 819.

**Insert a second paragraph to the TIP:**

In *People in Interest of K.N.B.E.*, 2019 COA 157, the Court of Appeals held that a parent's due process rights were not violated when a QEW interviewed her outside the presence of her counsel or her GAL; her counsel's representation during the termination hearing, ability to cross-examine the QEW, and introduction of her own expert's report and testimony sufficiently protected mother's due process rights.

## **INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)**

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**F210**

**Under the fourth bullet point under applicability, cross out the word "parent".**

**F211****At the end of the paragraph, add:**

Colorado courts have not yet resolved whether the ICPC applies to placement of a child with an out-of-state parent. *See People in the Interest of I.J.O.*, 465 P.3d 66, 69 (Colo. App. 2019).

**Under the first tip, delete the start of the fourth sentence**  
 “While Colorado’s appellate courts have not addressed this issue,”

**At the end of the first paragraph of the tip, add:**

; see also NACC Summary of State Cases Addressing ICPC, available at: [https://cdn.ymaws.com/www.naccchildlaw.org/resource/re-smgr/icpc\\_appendix\\_2.pdf](https://cdn.ymaws.com/www.naccchildlaw.org/resource/re-smgr/icpc_appendix_2.pdf).

**F212****In the second paragraph, replace the citation that begins “Connie E. Eiseman” and ends “1999” with:**

*See In re R.S.*, No. 58 September Term, 2019, Maryland Court of Appeals (published August 17, 2020).

**In the last paragraph, delete the citations for *State Div. of Youth & Family Servs. v. K.F.*, 803 A.2d 721, 727-29 (N.J. App. Div. 2002) and from “In re Johnny S.” to the end of the paragraph. Replace with:**

*In re M.W.*, 130 N.E. 3d 114 (Ind. App. 2019) (holding the ICPC does not apply to placement with an out of state parent based on the plain language of the compact); *In re Alexis O.*, 157 N.H. 781 (N.H. 2008) (holding the plain language of the compact bars its application to placement of children with out-of-state parents)

**F213****Before last TIP, add second tip:****TIP**

If the court does order the department to refer a parent for an ICPC and the ICPC is subsequently denied, RPCs should consider arguing that approval of an ICPC is not a precondition to placing

the child with a parent. *See, e.g., San Diego Cnty. Health & Human Servs. Agency v. Christine L.*, 193 Cal. Rptr. 3d 378, 393 n.8 (Cal. Ct. App. 2015). In addition, the RPC should advocate that services and visitation be provided for out-of-state parents as part of reasonable efforts, particularly when an ICPC has been denied. *See I.J.O.*, 2019 COA 151 (Colo. App. 2019).

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## JURISDICTIONAL ISSUES

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**F223**

**Prior to the last sentence, add: “; see also *People in Interest of A.B.A.*, 2019 COA 125.”**

**F224**

**At the end of the second to last sentence on the page that ends with “subject to the UCCJEA”, add citation:**

*In re M.M.V.*, 2020 COA 94 (holding that the UCCJEA applies to a termination proceeding which is initiated in a stepparent adoption case) (*Petition for Certiorari pending*).

**F225**

**At the end of the first sentence, add:**

as well as information about where the child has lived for the last five years.

**F227**

**In the third paragraph, third sentence, between “under the UCCJEA” and “the court exercising TEJ”, add:**

or that Colorado is not the home state of the child,

**At the end of the paragraph and before the TIP, add another citation:**

; *People in Interest of S.A.G.*, 2020 COA 45 (*Petition for Certiorari pending*) (reversing a termination order where the trial court did not confer with the state that had home state jurisdiction but where no custody orders existed).

### Add a clause to the end of the TIP:

, the temporary orders state they will become final, and Colorado becomes the home state of the child.

**F228**

#### **Move TIP under 7 to underneath 4 and add:**

The communication must be made by the court and could be via telephone, or electronic communication. See *In re M.M.V.*, 2020 COA 94. Parties may participate in the communication with the other court, and if they are not included in the communication, the court must give parties the opportunity to present evidence and argument before making its decision. § 14-13-110(2).

**F232**

#### **In the last sentence on the page, delete “or alter their own findings or rulings” and replace with “their own final orders”**

**F233**

#### **To the end of the partial paragraph at the top of the page, add:**

However, magistrates can review or modify orders entered which do not constitute a final and appealable order. See *People in Interest of J.D.*, 464 P.3d 785, 789 (Colo. 2020).

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## MAGISTRATES

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**F234**

#### **Keep first sentence in practice tip. Delete remaining sentences and replace with:**

A division of the Court of Appeals has held that when a district court has entered an adjudication order but the accompanying dispositional order has been entered by a magistrate, Section 19-1-108(5.5) does not require the district court to review the magistrate's dispositional order before a parent may appeal the adjudicatory order. *People in Interest of R.J.* 2019 COA 109.

## MEDICAL AND DENTAL NEEDS

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F243

**At the end of the first (continued) practice tip on this page, add the following sentence:**

HB20-1237 promotes consistency in services for children in out-of-home placement by providing that even when a child's placement changes to a different RAE, the child remains assigned to the RAE region covering the county with jurisdiction over the matter unless that county or the child's legal guardian requests a change in the RAE assignment. *See* § 25.5-5-402(6)(a).

## PARENTS' RIGHTS

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F256

**In last paragraph prior to Appointment of a GAL section, delete the second sentence and replace with:**

In determining whether a parent has been denied effective assistance of counsel, reviewing courts apply the *Strickland* standard. A parent must first "show that counsel's performance was outside the wide range of professionally competent assistance." *A.R. v. D.R.*, 456 P.3d 1266, 1280 (Colo. 2020).

**Delete the third sentence entirely. Replace the final sentence and citations with:**

To prove prejudice as a result of counsel's deficient performance, parents must show "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." *A.R.*, 456 P.3d at 1280.

Prejudice may be presumed if counsel "*entirely* fails to subject the [department or GAL's] case to *meaningful* adversarial testing." *A.R.*, 456 P.3d at 1281 (quoting *U.S. v. Cronin*, 466 U.S. 648, 659 (1984)). this presumption applies only in relatively narrow circumstances. *Id.* *See, e.g., In re M.A.W.*, 456 P.3d 1284 (2020) (declining to presume prejudice where trial counsel failed to request a continuance of a termination hearing or to cross examine the caseworker and finding that these instances of deficient performance did not prejudice the parent under the *Strickland* standard).

**Add the following cite to the end of the paragraph:**

*But see People in Interest of A.R.*, 2018 COA 176 (articulating and applying a “fundamental fairness” test that does not require *Strickland’s* “but for” showing to establish prejudice), *cert. grant’d in People in Interest of A.R.*, 18SC919.

**In Appointment of a GAL section, delete the first sentence and replace with:**

A GAL must be appointed for a respondent parent who “lacks the intellectual capacity to communicate with counsel or is mentally or emotionally incapable of weighing the advice of counsel on the particular course to pursue in her own interest.” *M.M.*, 726 P.2d at 1120. If conservator has already been appointed, that person should serve as the GAL for the parent.

**Keep citation to § 19-1-111(c) and Preliminary Protective Hearing chapter.**

**Add a new paragraph to this section:**

The court must make specific findings justifying the appointment of the GAL. *See People in Interest of T.M.S.*, 2019 COA 136. The parent’s GAL has an assistive role of facilitating communication between the parent and RPC and helping the parent participate in the proceeding. The GAL for parent does not have the right to participate in the proceedings as a party and may not advocate against a parent’s goal of protecting her fundamental liberty interest in the care, custody, and management of her child. *See id.*

**F257**

**In Administrative Reviews section, change § 19-3-702(8)(a) to § 19-1-115(4)(c).**

**F261**

**At the end of the first paragraph, prior to the TIP, add:**

In addition, the Court of Appeals has held that parents do not have a due process right to have counsel present when interviewed by a qualified expert witness, and that a parent’s due process rights are not violated where a parent appears through counsel, is able to pres-

ent evidence, and cross-examine witnesses. See *People in Interest of K.N.B.E.*, 457 P.3d 140, 142 (Colo. App. 2019).

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## PREGNANT AND PARENTING TEENS

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**F262**

**At the end of the first practice tip, insert a new sentence:**

HB 19-1193 is intended to improve access to behavioral health supports for pregnant and parenting women, and attorneys should consider the services and supports established pursuant to this legislation in advocating for alternatives to filing a D&N proceeding.

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## REASONABLE EFFORTS

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**F270**

**In sixth bullet, change reference to §19-3-702(3.5)(b) to § 19-3-702(3)(b).**

**In seventh bullet, change reference to §19-3-702(6)(a)(II) to ) to § 19-3-702.5(1)(b).**

**F271**

**Remove the following language from the first (incomplete) sentence:**

placement in a permanent home is not in the child's best interests, and it may make that finding only if it is shown by clear and convincing evidence that.

**Replace:**

mental or physical needs or conditions deem it improbable that the child would have

**with**

needs or situation prohibit the child or youth from.

**Change the citation to §19-3-703 to § 19-3-702(5)(a).**

**F273**

**Add new last bullet:**

- ❑ Foster care prevention services.

## **REINSTATEMENT OF THE PARENT CHILD LEGAL RELATIONSHIP**

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**F275**

**In the first sentence, add “or relinquishment” in between “termination” and “of the parent-child legal relationship”**

## **RELATIVE AND KINSHIP PLACEMENT**

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**F291**

**In the last sentence of the first paragraph of the Permanency and Kin subsection, delete the introductory clause, delete:**

if these options are ruled out,

**Change §19-3-702(4) to §19-3-702(4)(a)(III).**

## **RELINQUISHMENT**

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**F294**

**At the end of the first sentence of the paragraph which starts “Prior”, add**

, and the department must make reasonable attempts to provide relinquishment counseling that is accessible to the parent where a motion for termination has been filed if so requested by the parent.

**At the end of the same sentence, add**

, (4)(c).

**Delete the last sentence of the last tip on the page.**

**F295**

**Delete the remainder of the tip at the top of the page and replace it with:**

When a termination motion has been filed, respondent parents may pursue relinquishment, and relinquishment proceedings should be certified into the dependency and neglect action. § 19-5-103(4)(c).

**Delete the first full tip on the page that starts with “If a parent”.**

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## SIBLINGS

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**F297**

**Add a new practice tip to introductory section:**

**TIP**

HB 19-1288 contains strong declarative language about the importance of being able to continue sibling relationships for youth and children in foster care and the role of all involved adults to promote sibling relationships. *See* section 19-7-202. This legislation also outlines a list of nineteen rights that apply to siblings in foster care, regardless of whether parental rights have been terminated. *See* section 19-7-203(1). These rights include, but are not limited to joint placement, placement in close geographical distances, prompt notification of changes in sibling placement, frequent and meaningful contact with siblings and opportunities to be actively involved in each other's lives, foster and adoptive placements who are trained on the importance of sibling relationships, and GALs who advocate for frequent and meaningful contact. *Id.* The legislation makes clear that these rights do not apply when they are not in the best interests of each sibling. *Id.* Revisions to Volume 7 reinforce this important legislation and can serve as a helpful tool in advocating for sibling placement and contact with department staff. *See* 12 CCR 2509-4:7.301.24; 12 CCR 2509-4:7.304.201, 12 CCR 2509-1:700 et seq., 12 CCR 2509-2:7.106.121(A)(2).

OCR's Youth Center contains a siblings bill of rights that GALs can distribute to children/youth and use as a communication tool. *See* <https://coloradochildrep.org/youth-center/>. OCR can also make these materials available in printed form upon request.

**Delete the last sentence of Sibling, Biological Sibling, and Half Sibling section and replace with:**

For the purposes of arranging visits for siblings in foster care, “sibling” means a biological sibling, a step-sibling or former step-sibling, or an adoptive sibling

**Delete the following from Sibling Group definition:**

who have been raised together or have lived together.

**Add the following tip:**

**TIP**

HB 18-1288 eliminated the requirement that siblings needed to be raised together or have lived together in order to qualify for the protections applicable to sibling groups.

**In the Visits Between Siblings in Foster Care, add after the first sentence:**

The department must ensure that timely and regularly scheduled sibling visits are outlined in case plans based on individual circumstances and needs of youth. Section 19-7-204(2)(d). The department must provide information on sibling contact in the visiting plan and must consult the youth about the youth’s wishes as to sibling contact. Section 19-7-204(1). If in the best interest of each sibling, the department must promote frequent contact between siblings (including in-person visits, phone calls, texts, etc.). Section 19-7-204(2)(a). Sibling contact should not be limited to time or duration of contact with parents, and restrictions of sibling visits should not be a consequence for a behavior problem, unless the visit is contrary to the best interests of one of the siblings. 19-7-204(2)(b), (c).

**In first sentence in first complete paragraph, delete:**

and his or her sibling mutually.

**In first complete paragraph, change references to §19-1-128(1), (2), and (3) to § 19-7-204(3), (4), and (5).**

**Delete first sentence of practice tip and replace with:**

For the purposes of sibling visits, § 19-7-204(7) defines “sibling” to include a biological sibling, a -step sibling or former step-sibling, or an adoptive sibling.

**Following second to last sentence on the page, change reference to § 19-1-128(3) to § 19-7-204(5).**

**F302**

**At the end of the first (incomplete) sentence, change reference to § 19-3-702(9)(e) to § 19-3-702(6)(f).**

**Add new next sentence:**

In determining whether a child is in a permanent home, the court shall consider placement of the children or youth together as a sibling group. 19-3-702(4)(f).

**Change cite at the end of the subsequent sentence from § 19-3-702(2.7) to § 19-3-702(3).**

**F304**

**Add another resource to Additional Resources section:**

Elevating Connections (a Colorado-based nonprofit organization that hosts Camp to Belong in Colorado and other connecting events): [www.elevatingconnections.org](http://www.elevatingconnections.org).

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## TERMINATION OF JURISDICTION

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**F311**

**Add a new sentence prior to Achievement of Permanency Plan section:**

Prior to closing a case before a child's eighteenth birthday, the court or the child's GAL must notify the child that the child will lose the right to continue to receive Medicaid until the maximum age set

by federal law if the case closes before the child's eighteenth birthday. Section 19-3-702(4)(c).

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## TRAFFICKING

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**F316**

**In Immunity/Safe Harbor section, delete While from the first sentence.**

**In the first sentence, delete:**

Colorado has not passed such legislation.

**Add the following sentence:**

SB 19-185 provides an affirmative defense to many charges for a minor who can prove by a preponderance of the evidence that he or she was, at the time of the offense, a victim of human trafficking for involuntary or sexual servitude and was forced or coerced into engaging in the criminal act charged. *See* Section 18-1-713.

**Delete the first sentence of second paragraph; replace with:**

Additionally,

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## TRANSITION TO ADULTHOOD AND INDEPENDENT LIVING

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**F319**

**Insert new tip:**

**TIP**

HB18-1139 clarified that county departments may provide resources and support to former foster youth who have exited the system. *See* Section 26-5-113. This legislation also established a steering committee to develop an implementation plan and to make recommendations on successfully supporting foster youth in a successful transition to adulthood. *See* Section 26-5-114. The committee's report, available at [https://co4kids.org/sites/default/files/FFCY%20Steering%20Committee%20Recommendations\\_FINAL.pdf](https://co4kids.org/sites/default/files/FFCY%20Steering%20Committee%20Recommendations_FINAL.pdf), makes "bold recommendations" to improve the lives of youth exiting foster care. An Older Youth Case Closure and Reentry Work Group has been established and is now working to implement the recommendations in the report.

**F322****Add the following sentences to end of the second paragraph:**

Note that the Preventing Sex Trafficking and Strengthening Families Act replaced the term “independent living” with “transition planning for successful adulthood.” *See* 42 U.S.C. Section 675(1)(D), (5(C)(i)–(ii). Colorado also refers to this plan as a “Roadmap for Success.” *See* 12 CCR 2509-4: 7.305.2(C).

**F323****In the Vital Health Documents subsection, add the following to the end of the first sentence:**

, and proof of foster care

**and add the following cite to the citations at the end of the sentence:**

§ 19-3-702(4)(d).

**In the next sentence, after “Health Insurance Passport,” add**

, health insurance information,

**and add the following cite to the end of that sentence:**

§ 19-3-702(4)(d).

**In Medicaid subsection, add a new sentence:**

Prior to closing a case before a child's eighteenth birthday, the court or the child's GAL must notify the child that the child will lose the right to continue to receive Medicaid until the maximum age set by federal law if the case closes before the child's eighteenth birthday. Section 19-3-702(4)(c).

**F325****Prior to Independent Living Services section, add a new subsection 9:****9. Driver's License**

HB19-1023 eliminated significant barriers for foster youth in obtaining a driver's permit and license. It permits minors sixteen years of age or older to independently contract for motor vehicle insurance. Youth in foster care may now submit their own proof of insurance

and obtain their driver's license without the signature of a responsible adult, GAL, or representative of the department or DYS. § 42-2-108(1)(a)(I)(A). This is in addition to the previously existing process by which youth in foster care may submit their own proof of insurance and a GAL or a representative of the county department or DYS may sign the application without signing an affidavit of liability. *See* 42-2-108(1)(a)(II). The GAL or representative must notify the court, obtain consent from the foster parent if the youth is under seventeen, and consult with the foster parent if the youth is seventeen or older. *Id.* The legislation also clarifies that minors sixteen years of age or older may independently contract for motor vehicle insurance. § 10-4-104.

The bill also allows foster children who obtain a driver's instruction permit to drive with any person who holds a valid driver's license and is at least 21 years of age. *See* § 42-2-106(1)(h).

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## VISITS

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F338

**Under Visits with Grandparents, add the following after the second sentence:**

In situations where a parent has either been determined to be fit or not yet found unfit, courts must apply the *Troxel* presumption in that the parent is acting in the child's best interests when evaluating requests for grandparent visitation. *See People in Interest of N.G.G.*, 459 P.3d 664, 669 (Colo. App. 2019). In such circumstances, grandparents carry the burden of showing, by clear and convincing evidence, that the parent's decision should not be afforded the *Troxel* presumption and that the visitation requested is in the best interests of the children. *Id.*

**After second to last sentence in Visits with Grandparents section, add the following cite:**

*People in the Interest of C.N.*, 2018 COA 165.