



Addendum
To
Report to the Legislature Concerning Out of Home Placement
Deviations

December, 2002

Colorado State Judicial Department

Basis of the Report: C.R.S. §§ 19-2-907(5)(a), 19-3-508(5)(b), and 19-3-701(6) require individual districts to report when a judge deviates from the recommendations of social services in a dependency and neglect or a delinquency case. These deviations are to be reported to the Chief Justice of the Supreme Court, who in turn is to report to the Joint Budget Committee and the Health, Environment, Welfare, and Institutions Committees of both the Senate and the House.

The Judicial Department submitted a report in September of 2002 detailing judicial deviations from the recommendations of the local departments of social/human services in dependency and neglect (D&N) and delinquency cases. The court is statutorily mandated to report when it deviates from the recommendations of the local departments in placement matters. The judicial department is then to prepare a report to the legislature detailing the costs of these deviations.

Because of an oversight and incomplete data, the September 2002 report for Weld County did not include complete information. The report submitted in September 2002 only detailed the deviations for part of 2001.¹ Weld County submitted an updated report that included the deviations from July of 2001 to July of 2002. Both the original report, and this addendum, should be read together. This addendum does not supplant the original report, but merely adds information for Weld County only to the original report.² Below are the additional deviations reported by the Weld County Department of Social Services (WCDSS) for the period of July 2001 to July 2002.

- 01JV352 – The department requested temporary legal custody of the infant because of concerns that the mother would continue to let the father (a registered sex offender) see the child. The judicial officer denied this request and instead put protective orders in place to protect the child. There was no cost of this deviation to the department. It is unclear whether there was a cost savings, but there would have been if the child was to have been placed in foster care or a residential treatment center.

¹ The September report reported deviations from calendar year 2001 and 2002. For the sake of consistency this addendum is detailing calendar year 2001 and 2002 as well for Weld County, starting with January of 2001 and ending with July of 2002. July of 2002 is the most recent deviation report received from Weld County.

² Although this addendum does not supplant the original report, the original report stated that the courts deviated from the recommendations of the Weld County Department of Social Services in 2.1% of the cases. With the additional numbers provided on more recent deviations, that number is amended. Weld County had 293 dependency and neglect cases in Fiscal year 2001 and 2002. Looking at all of the deviation reports for fiscal year 2001 and 2002, there were 30 court ordered deviations in that time period. Thus, the court overruled the department's recommendations in a little more than 1 out of every 10 cases, or 10.2 percent of the time.

- In the Interest of SP et.al. – The department requested the minor children be removed from the parents and placed with another couple. The court denied this request and placed the children with their father. There was no cost of this placement to the department, though it is unclear whether there was a cost savings, due to the unknown relationship of the couple with whom the department was requesting placement.
- In the Interest of RQ – The minor child in this case had a lengthy history of substance abuse, delinquencies, non-compliance with any treatment plans, and running from placements. The department requested that the child be committed to DYC. The GAL appointed in this case did not agree with this recommendation. The court placed the child with his sister. There was no cost of this deviation to the department.
- In the Interest of AA – The department requested placement of the child in a foster home due to a recent suicide in the family, and an open D&N case on one of the family members. The court, instead, placed the child with a relative. There was no cost of this deviation to the department, and may have resulted in a cost savings to the department.

Year 2002:

- In the interest of KL et.al. – The court denied the department's request to remove the child and vest custody with the department. There was no cost of this deviation to the department, and may have resulted in a cost savings to the department.
- In the Interest of CM – The court returned the minor child to the mother in opposition to the department's request. The child had been in foster care before being reunited with the mother. As such, there was no cost to the department of this deviation, though there was a cost savings to the department.
- In the Interest of JS et.al. – The department requested custody of the infant due to a positive drug test for cocaine. The court denied this request, instead, placing the children with the father. There were concerns that the father was not a fit placement due to a criminal history. The court determined that the criminal history was far enough in the past to not be a factor in placement of the children. There was no cost of this deviation to the department.
- In the Interest of RH et.al. – The Department requested custody of the minor child due to a positive drug test by the mother. Although the court determined the mother was not in compliance with her treatment plan, the court decided the father was in compliance, and determined the children could still remain with the parents. There was no cost to the department of this deviation, and may have been a cost savings if the department had been planning on placing the children in a foster home.
- In the Interest of SC – The court requested placement of the child in the Division of Youth Corrections (DYC) pursuant to a decision of their placement review team. The court denied this request and ordered custody with the department. The cost of this placement to the department was \$78.91 per day. If the child had

been placed in DYC the county would not have been responsible for the cost of placement. This cost is instead levied against the state's general fund.

- In the Interest of RRD et.al. – The department requested custody of the children and placement in foster care. The court denied this request and placed the children with grandparents. There was no cost of this deviation to the department, but instead a cost savings from the denial of foster care.
- In the Interest of CW – The court denied the request of the department to place the minor child until a background check could be performed. The court, instead, placed the child with relatives. There was no cost of this deviation to the department.
- In the Interest of CG et.al. – The department requested that all three children be removed from the home due to allegations of abuse on one of the children. The court denied this request, instead ordering that two of the children be returned home, with the other child being placed in foster care. There was no cost of this deviation to the department.
- In the Interest of MRD – The court denied the request of the department to continue the child in an out of home placement. The mother had left the child with an unknown person, did not return to pick the child up, and then did not contact the department for several days. The court ordered the child returned to the mother with protective orders in place. There was no cost of this deviation to the department, though there may have been a cost savings if the child had been in foster care.
- In the Interest of BL et.al. – The department filed a D&N action due to the infant testing positive for cocaine. The department requested the child be placed with the grandmother. The court denied this request and placed the child with the father. There was no cost of this deviation to the department.
- In the Interest of Unborn Baby T. – The department requested custody of the child once the baby was born. The court declined to rule on the request at that time, reserving the ruling for a later date. There was no cost of this deviation to the department.
- In the Interest of DM – The department requested full custody of the minor child. The court granted the department custody of the child, but ordered that if a drug screen on the mother came back negative, the child should be returned to the mother. There was no cost of this deviation to the department.
- In the Interest of LR et.al. – The department requested custody of the children due to positive drug tests on the mother. The court denied this request, instead putting protective orders in place ordering the mother out of the home and placing the child with the father. There was no cost of this deviation to the department.
- In the Interest of Unborn Baby C – The department requested custody of the unborn baby once it was born due to the mother's repeated positive drug tests, as well as the fact that there had been other D&N cases involving the mother. The court denied this request, finding that the mother should be given more time to work on her treatment plan. There was no cost of this deviation to the department.
- In the Interest of MA – The department requested custody of the child due to the mother not following through on recommendations of her doctor, as well as not

- following previous court orders. The court denied this request and continued placement with the mother. There was no cost of this deviation to the department.
- In the interest of Unborn Baby S et.al. – The department requested custody of the infant at birth due to reports that the mother was corporally punishing other children in the home. The mother stated the father was the one using this type of discipline. The court denied the request to remove the infant at birth, and instead ordered the father out of the home. The court also requested placement of the four other children due to the allegations of corporal punishment. As noted above, the court ordered the father/boyfriend out of the home. There was no cost of this deviation to the department.

Of the twenty reported deviations from the department's recommendations contained in this addendum, only one of the reports resulted in an additional cost to the department. The remaining deviations either had no cost, or resulted in a cost savings to the department. The department reported some deviations where it was unclear whether there was a cost savings. As noted in the September 2002 report, the court is guided by what is in the best interests of the child.³ There is an extremely fine line for the court to walk between these best interests standards and the wishes of all the parties in the case. The court takes the testimony of, not only the local departments of social/human services, but also the parents, guardian ad litem, court appointed special advocate (if appointed), foster parents, grandparents, other kin, probation, and other professionals. The court then takes this information, carefully weighs it, and makes a decision based on the child's best interests. This line that judicial officers walk help protect, not only the interests of children, but also the due process rights of the parents involved in the case. The judicial discretion that judges have in these cases, and the resulting deviations from a

³ See e.g. C.R.S. §§ 19-1-102(1)(c), 19-1-109(1)(c), 19-1-111(2)(a)(III), 19-1-111.5, 19-1-114(3)(b), 19-2-906.5, 19-2-907(5)(a), 19-3-213(1), 19-3-403(3.6), 19-3-505, 19-3-507, 19-3-508, and 19-3-702. (This is by no means an exhaustive list, but merely demonstrates the court's mandate to be bound by the best interests standard for the child.)

department's recommendation, are a necessary part of the D&N case and help protect all the parties to the case.