



Report to the Legislature Concerning Out of Home Placement Deviations

December, 2003

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.

I. Introduction

The issue of out of home placement discussed in this report occurs when a judge or magistrate does not agree with the placement recommendation of the department of social/human services and orders a different placement than the one advocated by the department. This is informally called a deviation. Local departments of social/human services, and subsequently county commissioners, opine that judges and magistrates are partly responsible for forcing over-expenditures in the departments' budgets. When the judicial officer does not agree with the placement agency's recommendation, she or he is to report this to the Chief Justice of the Supreme Court, who in turn is to report to the Joint Budget Committee and the HEWI committees from both the Senate and House.¹ The State Court Administrator's Office, at the direction of the Chief Justice, is given the responsibility to file this report. The following pages detail reports of deviations submitted by individual districts.

II. Overview of the State

Very few jurisdictions in the state report deviations from the recommendations of their local department. It is assumed in this report, and indeed confirmed by the judges in the districts, that if there is no report from their district, there have been was no deviations.² Several judicial officers responded that they do not report a deviation unless it costs the department money. So it is very likely that the courts are saving the departments money on out of home placements and not alerting anyone of this. The following information is from October of 2002 to December of 2003.

¹ The Senate's Committee is called the Health, Environment, Children & Families Committee. However, the statutes still reference the HEWI committees from both the Senate and House. For the sake of statutory conformity, HEWI will be referred to as meaning both committees from the House and Senate.

² One judicial officer comments that, "In 8 ½ years I have done an override maybe three or four times." The perception from judicial officers is that they do not disagree with the recommendations of the local department more than a handful of times every year. This, of course, depends on the jurisdiction, and certain districts will have more than others.

1st Judicial District (Jefferson and Gilpin)

- 02JD2017, 02JD 421 & 02JD 548 – The JCDSS recommended a return home for this child. The judicial officer, instead, ordered a placement with the San Juan Wilderness program. The cost of this placement is approximately \$119.00 per day.
- 03JD77 – The JCDSS recommended placement with the DYC. The judicial officer instead placed the child with the Youthtrack program. The cost of this placement varies between \$87.38, \$109.23, and \$131.38 depending on the level of care the child needs.³
- 03JV1262 – The JCDSS recommended placement with the grandparents in this shaken baby case. Because of safety concerns, and the pending nature of the criminal case, the judicial officer declined to place two children according to the department's wishes. No costs were reported in this deviation.
- 02JV1210 - The court did not place a child who was near-death, due to the immigration status of the father. There was concern that the father was not a stable or suitable placement for this medically fragile child. No costs were reported in this deviation.
- 02JD1156 – The court referred the child to probation and day treatment instead of the county recommendation of an RTC level of care. No costs were reported for this deviation.

2nd Judicial District (Denver)

- 03JD64 – The DDHS and GAL in the case recommended placement with Savio House, while probation, the D.A. and other recommended Youthtrack. The court agreed with the placement recommendation of probation, and referred the child to Youthtrack. The price difference between the two placements yields a cost-savings to the department of \$29.61 per day (using the highest level of care.)

3rd Judicial District (Las Animas and Huerfano)

- No Deviations Reported

4th Judicial District (El Paso and Teller Counties)

- No Deviations Reported

³ Youthtrack is an RTC, and as such is a therapeutic setting. One of the requirements for an RTC is that the child have a psychological diagnosis. Medicaid pays for half the cost of placement if the child has a diagnosis. Generally the outright cost of committing a child to DYC is greater than placing the child with Child Welfare. For example in FY 00 the cost of a DYC commitment in a state operated facility was \$157.61. Residential Treatment Center (RTC) and Residential Child Care Facility (RCCF) prices vary widely and there is no average. However, the highest price RTC is Mountain Star at \$171.36 per month, based on a B level of care. The lowest priced RTC is Adventures in Change I at \$118.69 per month, based on a B level of care. **As noted, children in RTCs may be eligible for Medicaid, and as such, Medicaid can pay half the price of the placement.** Therefore, using Mountain Star as an example, the individual county department would be responsible for \$85.68 of that cost. As for RCCFs, the most expensive is the San Juan Youth Works/Wilderness Experience at \$119.00 per month. All of the RCCFs are well below this rate, with the least expensive being Third Way House – Lincoln Emancipation at \$35.28 per month. Most RCCFs are in the \$70-80 range. This being said, RCCFs may negotiate their rate, and as such charge more for their services.

5th Judicial District (Eagle, Summit, and Clear Creek Counties)

- Reports from Eagle County indicate no deviations

6th Judicial District (La Plata and Archuleta Counties)

- No Deviations Reported

7th Judicial District (Delta, Gunnison, Montrose, Ouray, San Miguel, and Hinsdale Counties)

- No Deviations Reported.

8th Judicial District (Larimer and Jackson Counties)

- No Deviations Reported

9th Judicial District (Rio Blanco, Garfield, and Pitkin Counties)

- No Deviations Reported.

10th Judicial District (Pueblo County)

- No Deviations Reported.

11th Judicial District (Park, Chaffee, Freemont, and Custer Counties)

- 01JD80 & 02JD3 – The Freemont County Department of Human Services (FCDHS) asked for the sentencing hearing on this child to be continued in order for them to obtain an RTC placement for the child. They did obtain a placement, but at the next hearing they reversed their initial recommendation and requested placement with the DYC. Probation agreed with this recommendation. The district attorney, GAL, Senate Bill 94 Coordinator, and the father of the child requested placement at Youthtrack. The court agreed with this recommendation, over that of the FCDHS. The average cost of placement at DYC is \$160.12 per day. The average cost of placement at Youthtrack in Colorado Springs is \$109.23, thereby yielding a cost savings to the state of \$50.89 per day.⁴
- 03JD130, 03JD83, 03JD99, & 03JD98. The child in this case was in detention for 35 days. The FCDHS recommended release from detention to a Senate Bill 94 detention alternative bed so that he could receive mental health and substance abuse evaluations in the community. There was no detention bed vacancy at the time. The Senate Bill 94 Coordinator, Probation Officer, Defense Counsel, Mother, and Child agreed with the FCDHS recommendation, except that a foster care placement be substituted for the detention bed due to unavailability. The FCDHS disagreed with this recommendation, though it is unclear what they wished substituted for the foster care placement. The Court placed the child in foster care with custody to the FCDHS. The approximate cost

⁴ In this current example, because the child was placed at an RTC, the local county is responsible for the cost of the placement. If the child had been placed with the DYC, the state, and not the county is responsible for the placement costs. The total cost of placement for this child over the 18 month sentence in DYC would have been \$87,265.40. The RTC, Youthtrack, will cost the county \$59,858.04 over a one year period. The total cost savings to the state as a whole in this example is \$27,407.36. Of course, the total cost savings in this example would be greater if the child were Medicaid eligible. See *supra* n. 3

of county foster care is between \$800 and \$1,600 a month and the average cost of detention is \$3,678.00 a month. The monthly cost of a Senate Bill 94 detention alternative bed through Gateway Youth and Family Services is \$1,673.00, when available. It is unknown what the cost savings, or costs incurred by the county are, as the county's recommendation was not made clear.

- 01JD79 - The Child in this case has a drug addiction, has failed in out-patient treatment, and was sentenced on a probation revocation. The District Attorney, Probation Officer, Senate Bill 94 Coordinator, Director of Gateway Youth and Family Services, the Guardian ad litem, the Foster Mother, the Child, his Mother, and his Father recommended a re-grant of probation with the child being placed in foster care pending his admission to the Youth Recovery Center (YRC) for in-patient drug treatment. Although not present, it was reported that the Child's therapist at West Central Mental Health, Inc. also concurred with this placement recommendation. All present recommended that upon his discharge from YRC he be placed back in foster care for implementation of his aftercare program. Although the FCDHS caseworker was present when the hearing was set, FCDHS did not appear at the hearing. However, FCDHS previously recommended that the Child be committed to the Division of Youth Corrections. The approximate cost of Gateway CPA foster care is \$1,600.00 a month. The cost of a DYC commitment averages \$58,443.80 per year. The cost of the 45 day drug treatment program at YRC had not been disclosed to the court. The court adopted the placement recommendations of all of those present at the hearing.
- 98JD224, 98JD225 & 02JD219 - The FCDHS recommended the Trailhead Wilderness RTC but the D.A., GAL, Probation, the Child's Grandmother, and the child's Foster Mother recommended foster placement. The foster placement was ordered at an approximate cost of between \$800 and \$1,600 per month in a county foster home (Approximately \$53.33 per day for the highest rates). The FCDHS recommended placement would have cost approximately \$144.78 per day.
- 02JD208, 02JD209, 02JD221 & 02JD225 - The stipulated RTC placement at the Trailhead Wilderness Program was approved. However the child couldn't start until 12/3/02. Fremont County Department of Human Services recommended that he remain in DYC detention until placement at an approximate cost of \$3,678.00 per month to the state. The child was instead placed in foster care temporarily at an approximate cost of \$1,700.00 per month.
- 02JD53 – This child was placed in foster care without FCDHS objection in December of 2002 as a result of a failed placement with a friend of Mother. At the placement review on 3/18/03 FCDHS recommended return of the Child to the same friend of Mother. The D.A., GAL, CPA Director, and Foster Mother appeared and recommended that the Child remain in foster care until compliant with drug treatment and school requirements as previously recommended in a Court Facilitation Conference report. Neither the Mother nor the Friend appeared at the hearing. The Court adopted the later recommendation at an approximate cost of \$1,600.00 a month.

- 01JD66 & 02JD166 - The child in these cases is also the subject of a second dependency or neglect case filed in 1998. He has been a victim of physical as well as sexual abuse and has spent most of the time since in a high level of care due to his mental illness. He picked up two delinquency cases, one for hitting another child with a bar of soap and one for criminal mischief less than \$100.00. His first felony charge, a property offense, is pending. FCDHS recommended that he be committed to the Division of Youth Corrections. The Court declined and ordered an out-of-home placement to be determined in the D&N case. The cost of commitment is \$160.12 a day, or \$4,803.60 a month. County foster care costs approximately \$800.00 a month. CPA foster care costs approximately \$1,600.00 a month. The cost of a residential treatment center varies widely at approximately \$950.00 to \$2,500.00 a month.
- 02JD122 - The child in this case is also the subject of a recently dismissed dependency and neglect case. The child was permitted to move from the state with her family. As soon as they arrived at their new home, she ran back to Colorado where she was arrested on a warrant out of her delinquency case. The District Attorney, the GAL, Senate Bill 94 Coordinator, and Probation recommended out-of-home placement in a high level of care due to her previous treatment in an RTC. FCDHS obtained a dismissal of the dependency or neglect case and recommended that the child be returned to her parents out of state. The immediate alternatives were for the child to remain in detention or to be placed in foster care. The court ordered the later, with the cost of foster care at \$800.00 to \$1,600.00 and the cost of detention at approximately \$3,678.00 a month. The child's stay in foster care was extremely brief due to her out of control behavior and she was returned to detention.
- 02JD210 - The child in this case was ordered admitted into the Youth Recovery Center (YRC) in Glenwood Springs for in-patient drug treatment with the full agreement of all concerned, including FCDHS. FCDHS and the family recommended that he remain with his Mother pending admission to YRC. The District Attorney, GAL, Probation Officer, Senate Bill 94 Coordinator recommended that he be placed in foster care pending his admission in a few weeks. Foster care was ordered at a cost of \$800.00 to \$1,600.00 a month while the child remained on the waiting list. This decision was based on the fact that his Mother could not control her own methamphetamine addiction, was periodically in county jail for violating her own felony drug court conditions, would leave the child with a methamphetamine addicted boyfriend (who was a drug supplier for the family), the Mother was recently suicidal, and the family was being evicted from their home.
- 03JD84 - The child in this case was out of control at school and at home. His Mother was unable to supervise him due to her abuse of prescription medication. His mental health treatment has been unsuccessful. The Community Review Team consisting of the Senate Bill 94 Coordinator and representatives of the school district, mental health agency, and drug treatment agency recommended placement in a foster home. FCDHS recommended the child stay home. Foster care was ordered at a cost of \$800.00 to \$1,600.00 a month.
- 02JD64 - This case involved a child stuck in detention for lack of an appropriate

placement. The GAL, District Attorney, Senate Bill 94 Coordinator, Probation Officer, Mother, and Child recommended that she go through the program at the Adolescent and Family Institute in Wheatridge, Colorado. FCDHS recommended that she be released from detention to the home of her Mother. The child was ordered placed at the Institute. The cost of detention is \$122.60 a day, or \$3,678.00 a month. The cost of the Institute is approximately \$147.15 per day based on an intermediate level of therapy.

12th Judicial District (Saguache, Mineral, Rio Grande, Alamosa, Conejos, and Costilla Counties)

- No Deviations Reported

13th Judicial District (Sedgwick, Phillips, Logan, Morgan, Washington, Yuma and Kit Carson Counties)

- No Deviations Reported

14th Judicial District (Moffat, Routt and Grand Counties)

- No Deviations Reported

15th Judicial District (Cheyenne, Kiowa, Prowers, and Baca Counties)

- No Deviations Reported

16th Judicial District (Otero, Bent, and Crowley Counties)

- No Deviations Reported

17th Judicial District (Adams and Broomfield Counties)

- No Deviations Reported

18th Judicial District (Arapahoe, Douglas, Lincoln, and Elbert Counties)

- 01JD1617 - In July of 2002 Pathways recommended a placement with NYC. The individual caseworker, probation officer, and the pre-sentence report recommended juvenile intensive supervision probation (JISP). At sentencing on September 20, 2002, the child was ordered home with JISP with in-home Savio House services. There was no out of home placement cost; however there was treatment cost that would not have been incurred by ACDHS if the child was committed. A NYC placement would have had even higher cost, but from the overall state's budget. The ACDHS did not report any incurred treatment costs.
- 00JD035 – Child was sentenced to NYC rather than RTC as recommended by Pathways. This child was on probation with a previously stayed NYC sentence. The DA & Probation now requested NYC. There was no cost incurred by the ACDHS, as the cost of the NYC placement is incurred by the state.
- 99JV1466 – The court returned the child to the parents and denied the county's request for an out of home placement, resulting in a cost savings to the department.
- 03JV781 – Once again the court returned the child to the parents and denied the county's request for an out of home placement, resulting in a cost savings to the department.

- 02JV1148 - The recommendation from Pathways was for the children to remain home. The in court recommendation on 10/28/02 by the department was for out of home placement. Placement was thus a deviation for 5 days for 5 kids at a cost of \$570. The GAL had also recommended an out of home placement.
- 02JV1232 – The child was placed with the grandparents at the request of GAL instead of the non-relative foster care recommended by ACDHS. Foster care can range in cost up to \$800 per month. There was thus a cost savings to the department in this case.

19th Judicial District (Weld County)

- 03JV53 – The local department recommended custody of all three children be placed with the Weld County Department of Social Services (WCDSS). The court ordered custody of only one child to DSS, thereby yielding an overall cost savings to the county of approximately \$870 per month.
- 03JV56 – The local department recommended custody of the minor children be placed with the WCDSS. The court, instead, granted custody to grandparents. The cost savings to the county because of this placement is \$435 per child per month.
- 03JV143 - The local department recommended custody of the minor child be placed with the WCDSS. Instead, the court recommended Custody to father, thereby yielding a cost savings to the county of \$435 per child per month.
- 03JV193 - The local department recommended custody of the minor child be placed with the WCDSS. As with the case above, the court ordered placement with the father. The resulting cost savings to the local department was \$435 per child per month.
- 03JV321 - The local department recommended custody of the minor children be placed with the WCDSS. The court placed the two children with the father instead, yielding a cost savings to the county of \$870 per month.
- 03JV378 - The local department recommended custody of the minor children be placed with the WCDSS. The court ordered custody of the four children with the parents, thereby saving the county \$1740 per month.
- 03JV398 - The local department recommended custody of the minor children be placed with the mother in the case. The court ordered custody to remain with the WCDSS at a cost of \$870 per month to the county. (The department was relieved of custody one month later.)
- 03JV284 - The local department recommended custody of the minor child be placed with the WCDSS. Custody, instead, was granted to the special respondents in the case, with a resulting cost savings to the county of \$435 per month.

- 03JV416 - The local department recommended custody of the minor children be placed with the WCDSS, though the court ordered the children to remain in the care of the mother. The cost savings to the county in this case was \$870 per month.
- 02JV579 - The local department recommended custody of the minor children be placed with the WCDSS in a foster home different than the one ordered by the court. There was no cost associated with this deviation.
- 03JV576 - The local department recommended custody of the minor child be placed with her aunt. Instead, the court ordered placement to remain with the parents. There is no cost associated with this deviation.
- 03JV444 - The local department recommended custody of the minor child be placed with the WCDSS. The court ordered placement with the mother, though, with a resulting cost savings to the department of \$435 per month.
- 03JV514 - The local department recommended custody of the minor child be placed with the WCDSS. The court ordered the child placed with the father instead, thereby yielding a \$435 cost savings per month for the department.
- 03JV470 – As with the previous case, the local department recommended custody of the minor child be placed with the WCDSS. The court ordered the child placed with the father instead, thereby yielding a \$435 cost savings per month for the department.
- 03JD1020 – The WCDSS recommended placement of the child with the DYC. The court ordered the child placed in an RTC instead. The cost incurred by the county on this case is unclear and was not reported.
- 03JV757 - The local department recommended custody of the minor child be placed with the WCDSS. The court ordered placement with the mother, though, with a resulting cost savings to the department of \$435 per month.

20th Judicial District (Boulder County)

- No Deviations Reported

21st Judicial District (Mesa County)

- No Deviations Reported

22nd Judicial District (Montezuma & Delores Counties)

- No Deviations Reported

III. Cost Differential

It is important to realize that there is a cost differential between committing a child to the

Division of Youth Corrections (DYC) and granting custody to the local department of social/human services.⁵ If the court commits the child to DYC, the state as a whole is responsible for the cost out of the General Fund. When a court grants custody to the department, the local department incurs the financial responsibility for the child. Judicial officers, social workers, and all county attorneys are bound to do what is in the best interests of the child(ren). Judicial officers as a whole are beholden to this tenet, and should not consider what will save the county money. Instead they consider what will best help the child in each case.

Judicial officers are many times presented with differing opinions as to what is in the best interests of the child. Although the local department's recommendations are to be accorded "great weight"⁶ in making these decisions, the judicial officer is not bound to follow the department's suggestions.⁷ If the court were bound by the department's recommendations, the department would effectively have veto power over the court's decisions. That is not consistent with the system of checks and balances we have in Colorado and around the United States. In those districts where there are a number of deviations, the court was presented with differing opinions as to what was in the best interests of the child. Knowledgeable people can disagree as to the most appropriate treatment for the child, and it is up to the court to determine what is in the best interests of the child.

Freemont and Weld Counties are good examples to study for the cost of placements to the local departments. From the reports generated out of Freemont, for example, the total cost of placements where the court overruled the recommendation of the local department was \$715.36 per day. This figure comprises the total of each individual placement deviation where the court's

⁵ See *supra* n.3

⁶ See C.R.S. § 19-2-907(5)(b)

⁷ The Colorado Court of Appeals has held that "the recommendations of the social workers are not binding on the court..." *In the Interest of R.J.A.*, 38 Colo. App. (1976). Each court carefully weighs the recommendations of the department to determine if it is in the child's best interests.

ruling cost the county money. In one of the cases, the court's ruling saved the county \$91.45 per day, thus subtracting \$91.45 from \$715.36 yields the figure of \$623.91 per day that the court forced the local department to spend.

Last year this report noted that the court's rulings had an overall cost savings associated with them.⁸ This occurs in cases where the court returns the child to their caregiver or another relative against the county's wishes, and as such, the county incurs no cost. This overall cost savings is then compared against the number of cases where the court's ruling cost the county more money. This, however, could not be done for this year's report in Fremont County. The court in Fremont only tracks the number of cases where its ruling costs the county money. It does not keep track of the number of rulings where it saved the county money. It is very likely that, like last year's report noted, the court is actually saving the county money by its recommendations.

Another issue to raise in discussion of costs is the cost shifting associated with placing a child with DYC versus placing in the child welfare system with the local department. Using Fremont County as an example, the recommended placements with DYC would have cost the State of Colorado \$848.16 per day. The placements with the local department cost the county \$715.36 per day, a difference of \$116.64. Extrapolating this to a 30-day month, the cost savings to the state is \$3,499.20 per month, and then \$41,990.40 per year. This is simply in one county, and is not considered unusual in Colorado. As noted last year the savings from the placements

⁸ See Report to the Legislature Concerning Out of Home Placement Recommendations September 2002. The report noted that, in Arapahoe County, "...the total cost of placements where the court overruled the recommendation of the local department was \$18,424 per month. However, the savings generated when the court overruled the recommendation and sent the child home instead of placement was \$19,100 per month. The total savings to the department therefore, taking into consideration costs and savings, was \$675 per month." Report to the Legislature p.

with child welfare instead of DYC negate any potential excessive costs incurred by the local departments in placing children.

Weld County is a good example of cost *savings* to the department due to deviations from the recommendations of the local department. Twelve of the 16 deviations reported by the court resulted in a cost savings for the county. This cost savings occurred when the court did not place the child with the WCDSS – instead keeping custody with the parents or another relative. The total costs saved for the Department, when the court did not place the child with the Department, were \$7,830 per month.

Importantly, only 1 of the 16 deviations resulted in a cost to the county. The cost of an average placement is \$157.93 per day, or \$4737.90 per month.⁹ As the total cost savings to the Department was \$7,830, subtracting the cost of the deviated placement, \$4737.90 from \$7830 still leaves a cost savings of approximately \$3092.10 per month for the county. As noted last year, that the courts deviate from the recommendations of the local departments is invariably true; that they always cost the counties money is questionable.

IV. Conclusion

The reports from the districts indicate that, while the court may deviate from the recommendations of the local departments, taking all things into consideration, these deviations may save the individual counties money (in the case of Weld County, the cost savings was \$3,092.10 per month). This is not to mention the cost savings generated to the State of Colorado as a whole. DYC placements are almost uniformly more expensive than RTC, RCCF, and foster care placements. When the department recommends placement at DYC versus an RTC, the state is responsible for the DYC commitment out of the general fund. RTC, RCCF, and foster care placements are paid for out of the individual department's budget. While a placement other than

⁹ The RTC of Denver Children's Home is exactly this amount.

DYC may be an additional cost to the county itself, it represents an overall savings, and a significant savings to the state's budget.

It is hoped that this report can continue to help facilitate discussion between State Judicial, the Colorado Department of Human Services, local departments, and individual judicial districts. A more comprehensive look at the issue still needs to be undertaken; one in which local departments collaborate with their districts to obtain accurate figures as to deviations and their true costs. Local department directors and supervisors should work with the individual districts to develop procedures that ensure adequate reporting of deviations. Judicial districts are unable to report on the cost of placements when they are not provided with accurate financial information.

In conclusion, all parties need to be mindful that the child's best interests should be protected and evaluated in all of these placement decisions. The judge, as ultimate arbiter of the child's best interests, needs to be mindful of different placements and is ultimately responsible for ensuring the child receives an appropriate and safe temporary residence. These difficult decisions are made even more difficult in times of required fiscal austerity.