Report to the Legislature Concerning Out of Home Placement Deviations

December, 2013

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 deviations discussed in this report occur when a judge or magistrate does not agree with the placement recommendation of the county department of human services ("the Department") and orders a different placement than the one advocated by the Department. This is informally called a deviation. Judicial officers (i.e. judges and magistrates) are required to report deviations 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. In the past, the legislature and county commissioners have shown interest in the number of times that judges disagree with the original recommendation of local social services agencies. In addition, they have asked that the Judicial Department track deviations and any resulting cost or savings that accrue.

II. Overview of the State

Judicial officers, social workers, and all county attorneys are bound to do what is in the best interests of the child. Judicial officers as a whole are beholden to this tenet, and can not primarily consider what will save 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 Department's recommendations are to be accorded weight in making these decisions, the judicial officer is not bound to follow the Department's suggestions.[2] If the court were bound by the Department's recommendations, the Court would

[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] 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.

not be serving as an oversight to the Department. 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.

Two jurisdictions in Colorado reported one placement deviation from the recommendations of their Department during the current reporting period from July 2012 through June 2013 (Attachment A). Although this report does include deviations which save the department money, several judicial officers also responded that they do not report a deviation unless it costs the Department money. Therefore, it is reasonable to conclude that in some instances deviations saving the Department money have not been reported.

III. Calculating the Cost of Placement Deviations

An important point worth noting when discussing the cost associated with the two placement deviations reported statewide is that the true cost of the placement recommendation and the true cost of the deviation are rarely provided to the court by the Department at the time of hearing. This dynamic makes it untenable for the Judicial Department to report the true cost differential between a placement recommendation and a placement order. Efforts to calculate the true cost of each deviation would at best result in marginal estimates.

Due to the disparity of information contained in the deviations reported to the Colorado Supreme Court, this report does not attempt to calculate the true cost associated with placement deviations for fears that the information would not be reliable or accurate. However, the report

does accurately depict the location and number of deviations reported from July 2012 through June 2013.

IV. Conclusion

It is hoped that this report can continue to help facilitate discussion between the Judicial Department, 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 judicial officers in the individual districts to develop procedures that ensure adequate reporting of the cost 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.