

CHAPTER 138

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**CHILDREN AND DOMESTIC MATTERS**

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**SENATE BILL 97-071**

BY SENATORS Hopper, Arnold, Hernandez, Pascoe, Perlmutter, Rupert, and Wham;  
also REPRESENTATIVES George and Mace.

**AN ACT**

CONCERNING PROCEDURES TO EXPEDITE DEPENDENCY AND NEGLECT CASES.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 14-10-123, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**14-10-123. Commencement of custody proceedings - jurisdiction.** (1) A child custody proceeding is commenced in the district court or as otherwise provided by law:

(a) By a parent:

(I) By filing a petition for dissolution or legal separation; or

(II) By filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found; or

(b) By a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found, but only if the child is not in the physical custody of one of his parents; ~~or~~

(c) By a person other than a parent who has had physical custody of a child for a period of six months or more, if such action is commenced within six months of the termination of such physical custody; OR

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(d) BY A PARENT OR PERSON OTHER THAN A PARENT WHO HAS BEEN GRANTED CUSTODY OF A CHILD THROUGH A JUVENILE COURT ORDER ENTERED PURSUANT TO SECTION 19-1-104 (6), C.R.S., BY FILING A CERTIFIED COPY OF THE JUVENILE COURT ORDER IN THE COUNTY WHERE THE CHILD IS PERMANENTLY RESIDENT. SUCH ORDER SHALL BE TREATED IN THE DISTRICT COURT AS ANY OTHER CUSTODY DECREE ISSUED IN A CHILD CUSTODY PROCEEDING.

(2) EXCEPT FOR A PROCEEDING COMMENCED PURSUANT TO PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION, notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

**SECTION 2.** 19-3-102, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-3-102. Neglected or dependent child.** (1) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has abandoned the child or has subjected him OR HER to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

(b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(c) The child's environment is injurious to his OR HER welfare;

(d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his OR HER health, guidance, or well-being;

(e) The child is homeless, without proper care, or not domiciled with his OR HER parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;

(f) The child has run away from home or is otherwise beyond the control of his OR HER parent, guardian, or legal custodian.

**SECTION 3.** 19-1-104, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**19-1-104. Jurisdiction.** (6) WHEN THE JUVENILE COURT MAINTAINS JURISDICTION IN A CASE INVOLVING A CHILD WHO IS DEPENDENT OR NEGLECTED AND NO CHILD CUSTODY ACTION CONCERNING THE SAME CHILD IS PENDING IN A DISTRICT COURT IN THIS STATE, UPON THE PETITION OF A PARTY TO THE DEPENDENCY OR NEGLECT CASE, THE JUVENILE COURT MAY ENTER AN ORDER AWARDING SOLE OR JOINT CUSTODY AND ADDRESSING PARENTING TIME AND CHILD SUPPORT MATTERS. THE PARENT OR PERSON OTHER THAN A PARENT WHO HAS BEEN GRANTED CUSTODY OF A CHILD PURSUANT TO THE JUVENILE COURT'S ORDER SHALL FILE A CERTIFIED COPY OF

THE ORDER IN THE DISTRICT COURT IN THE COUNTY WHERE THE CHILD IS PERMANENTLY RESIDENT. SUCH ORDER SHALL BE TREATED IN THE DISTRICT COURT AS ANY OTHER CUSTODY DECREE ISSUED IN A CHILD CUSTODY PROCEEDING.

**SECTION 4.** 19-1-108 (3) and (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**19-1-108. Magistrates - qualifications - duties.** (3) (a) Magistrates shall conduct hearings in the manner provided for the hearing of cases by the court. During the initial advisement of the rights of any party, the magistrate shall inform the party that, EXCEPT AS PROVIDED IN THIS SUBSECTION (3), he OR SHE has the right to a hearing before the judge in the first instance and that he OR SHE may waive that right but that, by waiving that right, he OR SHE is bound by the findings and recommendations of the magistrate, subject to a request for review as provided in subsection (5) of this section. THE RIGHT TO REQUIRE A HEARING BEFORE A JUDGE SHALL NOT APPLY TO HEARINGS AT WHICH A CHILD IS ADVISED OF HIS OR HER RIGHTS PURSUANT TO SECTION 19-2-706, DETENTION HEARINGS HELD PURSUANT TO SECTIONS 19-2-507 AND 19-2-508, PRELIMINARY HEARINGS HELD PURSUANT TO SECTION 19-2-705, AND DETENTION HEARINGS HELD PURSUANT TO SECTION 19-3-403.

(b) IN PROCEEDINGS UNDER ARTICLE 2 OF THIS TITLE, unless a request is made by a party at the outset of a hearing that the hearing be held before the judge, such right where applicable shall be deemed waived. ~~The right to require a hearing before a judge shall not apply to hearings at which a child is advised of his rights pursuant to section 19-2-402, detention hearings held pursuant to sections 19-2-203 and 19-2-204, preliminary hearings held pursuant to section 19-2-404, and detention hearings held pursuant to section 19-3-403.~~

(c) IN PROCEEDINGS UNDER ARTICLE 3 OF THIS TITLE, THE RIGHT TO REQUIRE A HEARING BEFORE A JUDGE SHALL BE DEEMED WAIVED UNLESS:

(I) A REQUEST IS MADE BY A PARTY THAT THE HEARING BE HELD BEFORE THE JUDGE AT THE TIME THE MATTER IS SET FOR HEARING, IF COUNSEL FOR THE PARTY IS PRESENT AT THE TIME THE MATTER IS SET; OR

(II) A REQUEST IS MADE IN WRITING WITHIN FIVE DAYS AFTER RECEIPT OF NOTICE OF THE SETTING IF THE MATTER IS SET FOR HEARING OUTSIDE OF THE PRESENCE OF COUNSEL FOR A REPRESENTED PARTY OR IF THE MATTER IS SET ON NOTICE.

(5) A request for review shall be filed within fifteen days FOR PROCEEDINGS UNDER ARTICLE 2 OF THIS TITLE OR WITHIN FIVE DAYS FOR PROCEEDINGS UNDER ARTICLE 3 OF THIS TITLE after the parties have received notice of the magistrate's ruling and shall clearly set forth the grounds relied upon. Such review shall be solely upon the record of the hearing before the magistrate and shall be reviewable upon the grounds set forth in rule 59 of the Colorado rules of civil procedure. A petition for review shall be a prerequisite before an appeal may be filed with the Colorado court of appeals or Colorado supreme court. The judge may, on his OR HER own motion, remand a case to another magistrate after action is taken on a petition for review.

**SECTION 5.** 19-3-207, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-3-207. Inadmissibility of certain evidence.** (1) Upon the request of the county attorney, special county attorney, or the city attorney of a city and county, the court shall set a hearing to determine the admissibility in a subsequent criminal proceeding arising from the same episode of information derived directly from testimony obtained pursuant to compulsory process in a proceeding under this article. The district attorney of the judicial district in which the matter is being heard shall be given five days' written notice of the hearing by the clerk of the court. Such hearing shall be held in camera, and the district attorney shall have the right to appear at the hearing and to object to the entry of the order holding such information inadmissible. The court shall not enter such an order if the district attorney presents prima facie evidence that the inadmissibility of such information would substantially impair his OR HER ability to prosecute the criminal case. The provisions of this subsection (1) shall not be construed to prevent any law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in any criminal prosecution.

(2) No professional shall be examined in any criminal case without the consent of the respondent as to statements made pursuant to compliance with court treatment orders, including protective orders, entered under this article; except that such privilege shall not apply to any discussion of any future misconduct or of any other past misconduct unrelated to the allegations involved in the treatment plan. THE ADMISSIBILITY OF TESTIMONY AS SET FORTH IN THIS SUBSECTION (2) SHALL NOT BE SUBJECT TO THE HEARING AND NOTICE PROVISIONS OF SUBSECTION (1) OF THIS SECTION.

(3) NO ADMISSION MADE BY A RESPONDENT IN OPEN COURT OR BY WRITTEN PLEADING FILED WITH THE COURT TO A PETITION IN DEPENDENCY OR NEGLECT MAY BE USED AGAINST HIM OR HER IN ANY CRIMINAL PROSECUTION, EXCEPT FOR PURPOSES OF IMPEACHMENT OR REBUTTAL.

**SECTION 6.** 19-3-403 (3.5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-3-403. Temporary custody - hearing - time limits - restriction.** (3.5) When temporary custody is placed with the county department of social services pursuant to this section OR SECTION 19-3-405 OR WHEN AN EMERGENCY PROTECTION ORDER IS ENTERED PURSUANT TO SECTION 19-3-405, the court shall hold a hearing WITHIN SEVENTY-TWO HOURS AFTER PLACEMENT, EXCLUDING SATURDAYS, SUNDAYS, AND COURT HOLIDAYS, to determine further custody of the child OR WHETHER THE EMERGENCY PROTECTION ORDER SHOULD CONTINUE. ~~within seventy-two hours, excluding Saturdays, Sundays, and court holidays.~~ Such a hearing need not be held if a hearing has previously been held pursuant to subsection (2) of this section.

**SECTION 7.** 19-3-405, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-3-405. Temporary protective custody.** (1) In addition to other powers granted to the court for the protection of children, the court may issue verbal or written temporary protective custody orders OREMERGENCY PROTECTION ORDERS, OR BOTH. Each judicial district shall be responsible for making available a person

appointed by the judge of the juvenile court, who may be the judge, a magistrate, or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the court to issue such orders.

(2) (a) ~~Such~~ TEMPORARY PROTECTIVE CUSTODY orders may be requested by the county department of social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him OR HER a child he OR SHE reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the circumstances or conditions of the child are such that continuing ~~his~~ THE CHILD'S place of residence or in the care and custody of the person responsible for ~~his~~ THE CHILD'S care and custody would present a danger to that child's life or health in the reasonably foreseeable future.

(b) EMERGENCY PROTECTION ORDERS MAY BE REQUESTED BY THE COUNTY DEPARTMENT OF SOCIAL SERVICES, A LAW ENFORCEMENT OFFICER, AN ADMINISTRATOR OF A HOSPITAL IN WHICH A CHILD REASONABLY BELIEVED TO HAVE BEEN NEGLECTED OR ABUSED IS BEING TREATED, OR ANY PHYSICIAN WHO HAS BEFORE HIM OR HER A CHILD THE PHYSICIAN REASONABLY BELIEVES HAS BEEN ABUSED OR NEGLECTED, WHETHER OR NOT ADDITIONAL MEDICAL TREATMENT IS REQUIRED, IF SUCH PERSON OR DEPARTMENT BELIEVES THAT THE CHILD IS ABLE TO REMAIN SAFELY IN THE CHILD'S PLACE OF RESIDENCE OR IN THE CARE AND CUSTODY OF THE PERSON RESPONSIBLE FOR THE CHILD'S CARE AND CUSTODY ONLY IF CERTAIN EMERGENCY PROTECTION ORDERS ARE ENTERED. AN EMERGENCY PROTECTION ORDER MAY INCLUDE BUT IS NOT LIMITED TO:

(I) RESTRAINING A PERSON FROM THREATENING, MOLESTING, OR INJURING THE CHILD;

(II) RESTRAINING A PERSON FROM INTERFERING WITH THE SUPERVISION OF THE CHILD; OR

(III) RESTRAINING A PERSON FROM HAVING CONTACT WITH THE CHILD OR THE CHILD'S RESIDENCE.

(3) The county department of social services shall be notified of such action immediately by the court-appointed official in order that child protection proceedings may be initiated.

(4) In any case, such temporary protective custody OR EMERGENCY PROTECTION shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays.

**SECTION 8.** The introductory portion to 19-3-508 (1) and 19-3-508 (1) (e) (I) and (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**19-3-508. Neglected or dependent child - disposition.** (1) When a child has been adjudicated to be neglected or dependent, the court may enter a decree of disposition the same day, but in any event it shall do so within forty-five days unless

the court finds that the best interests of the child will be served by granting a delay. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall enter a decree of disposition within thirty days after the adjudication and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child will be served by granting the delay. It is the intent of the general assembly that the dispositional hearing be held on the same day as the adjudicatory hearing, whenever possible. If a delay is granted, the court shall set forth the reasons why a delay is necessary and the minimum amount of time needed to resolve the reasons for the delay and shall schedule the hearing at the earliest possible time following the delay. WHEN THE PROPOSED DISPOSITION IS TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP, THE HEARING ON TERMINATION SHALL NOT BE HELD ON THE SAME DATE AS THE ADJUDICATION AND THE TIME LIMITS SET FORTH ABOVE FOR DISPOSITIONAL HEARINGS SHALL NOT APPLY. WHEN THE PROPOSED DISPOSITION IS TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP, THE COURT MAY CONTINUE THE DISPOSITIONAL HEARING TO THE EARLIEST AVAILABLE DATE FOR HEARING IN ACCORDANCE WITH THE PROVISIONS OF PART 6 OF THIS ARTICLE. When the decree does not terminate the parent-child legal relationship, the court shall approve an appropriate treatment plan that shall include but not be limited to one or more of the following provisions of paragraphs (a) to (d) of this subsection (1):

(e) (I) EXCEPT WHERE THE PROPOSED DISPOSITION IS TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP, the court shall approve an appropriate treatment plan involving the child named and each respondent named and served in the action. However, the court may find that an appropriate treatment plan cannot be devised as to a particular respondent because the child has been abandoned as set forth in ~~subsection (4) of this section~~ SECTION 19-3-604 (1) (a) and the parents cannot be located OR DUE TO THE UNFITNESS OF THE PARENTS AS SET FORTH IN SECTION 19-3-604 (1) (b).

~~(4) When a child has been adjudicated neglected or dependent because the child has been abandoned by the child's parent or parents, the court may enter a decree terminating the parent-child legal relationship if it finds one of the following:~~

~~(a) That the parent or parents have surrendered physical custody for a period of six months and, during this period, have not manifested to the child, the court, or the person having physical custody a firm intention to resume or obtain physical custody or to make permanent legal arrangements for the care of the child;~~

~~(b) That the identity of the parent or parents of the child is unknown and has been unknown for a period of ninety days and that reasonable efforts to identify and locate the parents in accordance with section 19-3-603 have failed.~~

**SECTION 9.** 19-3-603, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-3-603. Notice - abandonment.** Before a termination of the parent-child legal relationship based on abandonment can be ordered, ~~under any of the criteria set forth in section 19-3-508 (4);~~ the petitioner shall file, only if the location of a parent remains unknown, an affidavit stating what efforts have been made to locate the

parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

**SECTION 10.** The introductory portion to 19-3-604 (1) and 19-3-604 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**19-3-604. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon the finding BY CLEAR AND CONVINCING EVIDENCE of any one of the following:

(b) That the child is adjudicated dependent or neglected and the court ~~has found by clear and convincing evidence~~ FINDS that no appropriate treatment plan can be devised to address the unfitness of the parent or parents. In making such a determination, the court shall find one of the following as the basis for unfitness:

(I) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs and conditions of the child;

(II) A single incident resulting in a gravely disabling injury or disfigurement of the child;

(III) Long-term confinement of the parent of such duration that the parent is not eligible for parole for at least six years after the date the child was adjudicated dependent or neglected or, in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the long-term confinement of the parent of such duration that the parent is not eligible for parole for at least thirty-six months after the date the child was adjudicated dependent or neglected and the court has found by clear and convincing evidence that no appropriate treatment plan can be devised to address the unfitness of the parent or parents;

(IV) Gravely disabling injury or death of a sibling due to proven parental abuse or neglect.

**SECTION 11. Effective date.** This act shall take effect July 1, 1997.

**SECTION 12. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 14, 1997