

CHAPTER 351

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 07-033

BY SENATOR(S) Brophy, Gordon, Harvey, Keller, Kopp, Penry, Renfroe, Sandoval, Schultheis, Schwartz, Shaffer, Tochtrop, Ward, Wiens, Williams, and Spence;
also REPRESENTATIVE(S) Frangas, Carroll T., Casso, Gardner B., Green, Jahn, Kerr J., Lambert, Madden, Marshall, Merrifield, Primavera, Roberts, Romanoff, Stafford, Stephens, Todd, Kefalas, and Labuda.

AN ACT**CONCERNING ADOPTION OF HIGH-RISK CHILDREN.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares:

(a) That although the state of Colorado encourages the adoption of children in foster care, a family that adopts or seeks to adopt a foster child with challenging behaviors and emotional problems is frequently provided inadequate support to address the long-term needs of the child;

(b) There will be a decrease in the number of adoptions of children with challenging behaviors and emotional problems and an increase in the number of failed adoptions of these children unless adoptive families are provided with adequate support to meet the unique needs of these children;

(c) Adopted children are disproportionately represented in the population of children diagnosed with behavioral or mental disorders. More often than not, these behaviors are related to a history of maltreatment and prolonged stays in foster care;

(d) It is in the state's best interest to provide a continuum of services to adoptive families to meet the needs of adopted children with serious challenging behaviors, emotional problems, or mental illness. These services should be provided without requiring the adoptive family to relinquish custody of the adopted child to the state or county and without charging the adoptive family for support payments in excess of the child's monthly adoption subsidy payment to pay for the cost of services.

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

SECTION 2. 19-1-103 (30), Colorado Revised Statutes, is amended to read:

(30) "Cost of care" ~~as used in section 19-2-114,~~ means the cost to the department or the county FOR A CHILD PLACED OUT OF THE HOME OR charged with the custody of the juvenile for providing room, board, clothing, education, medical care, and other normal living expenses FOR A CHILD PLACED OUT OF THE HOME OR to a juvenile sentenced to a placement out of the home, as determined by the court. AS USED IN THIS TITLE, "COST OF CARE" ALSO INCLUDES ANY COSTS ASSOCIATED WITH MAINTENANCE OF A JUVENILE IN A HOME DETENTION PROGRAM, SUPERVISION OF PROBATION WHEN THE JUVENILE IS GRANTED PROBATION, OR SUPERVISION OF PAROLE WHEN THE JUVENILE IS PLACED ON PAROLE.

SECTION 3. 19-2-114 (1), Colorado Revised Statutes, is amended to read:

19-2-114. Cost of care. (1) (a) Notwithstanding the provisions of section 19-1-115 (4) (d), where a juvenile is sentenced to a placement out of the home or is granted probation as a result of an adjudication, deferral of adjudication, or direct filing in or transfer to district court, the court may order the juvenile or the juvenile's parent to make such payments toward the cost of care as are appropriate under the circumstances. In setting the amount of such payments, the court shall take into consideration and make allowances for any restitution ordered to the victim or victims of a crime, which shall take priority over any payments ordered pursuant to this section, and for the maintenance and support of the juvenile's spouse, dependent children, any other persons having a legal right to support and maintenance out of the estate of the juvenile, or any persons having a legal right to support and maintenance out of the estate of the juvenile's parent. The court shall also consider the financial needs of the juvenile for the six-month period immediately following the juvenile's release, for the purpose of allowing said juvenile to seek employment.

(b) FOR AN ADOPTIVE FAMILY WHO RECEIVES AN APPROVED TITLE IV-E ADOPTION ASSISTANCE SUBSIDY PURSUANT TO THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 673 ET SEQ., OR AN APPROVED PAYMENT IN SUBSIDIZATION OF ADOPTION PURSUANT TO SECTION 26-7-103, C.R.S., THE COST OF CARE, AS DEFINED IN SECTION 19-1-103 (30), SHALL NOT EXCEED THE AMOUNT OF THE ADOPTION ASSISTANCE PAYMENT.

SECTION 4. 19-1-115 (4) (d), Colorado Revised Statutes, is amended, and the said 19-1-115 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

19-1-115. Legal custody - guardianship - placement out of the home - petition for review for need of placement. (4) (d) (I) A decree vesting legal custody of a child or providing for placement of a child with an agency in which public moneys are expended shall be accompanied by an order of the court ~~which~~ THAT obligates the parent of the child to pay a fee, based on the parent's ability to pay, to cover the costs of the guardian ad litem and of providing for residential care of the child. When custody of the child is given to the county department of social services, such fee for residential care shall be in accordance with the fee requirements as provided by rule of the department of human services, and such fee shall apply, to the extent unpaid, to the entire period of placement. When a child

is committed to the department of human services, such fee for care and treatment shall be in accordance with the fee requirements as provided by rule of the department of human services, and such fee shall apply, to the extent unpaid, to the entire period of placement.

(II) FOR AN ADOPTIVE FAMILY WHO RECEIVES AN APPROVED TITLE IV-E ADOPTION ASSISTANCE SUBSIDY PURSUANT TO THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 673 ET SEQ., OR AN APPROVED PAYMENT IN SUBSIDIZATION OF ADOPTION PURSUANT TO SECTION 26-7-103, C.R.S., THE COST OF CARE, AS DEFINED IN SECTION 19-1-103 (30), SHALL NOT EXCEED THE AMOUNT OF THE ADOPTION ASSISTANCE PAYMENT.

(8)(a) WHENEVER IT APPEARS NECESSARY THAT THE PLACEMENT OF A CHILD OUT OF THE HOME WILL BE FOR LONGER THAN NINETY DAYS, THE PLACEMENT IS VOLUNTARY AND NOT COURT-ORDERED, AND THE PLACEMENT INVOLVES THE DIRECT EXPENDITURE OF FUNDS APPROPRIATED BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF HUMAN SERVICES, A PETITION FOR REVIEW OF NEED FOR PLACEMENT SHALL BE FILED BY THE DEPARTMENT OR AGENCY WITH WHICH THE CHILD HAS BEEN PLACED BEFORE THE EXPIRATION OF NINETY DAYS IN THE PLACEMENT. A DECREE PROVIDING FOR VOLUNTARY PLACEMENT OF A CHILD WITH AN AGENCY IN WHICH PUBLIC MONEYS ARE EXPENDED SHALL BE RENEWABLE IN CIRCUMSTANCES WHERE THERE IS DOCUMENTATION THAT THE CHILD HAS AN EMOTIONAL, A PHYSICAL, OR AN INTELLECTUAL DISABILITY THAT NECESSITATES CARE AND TREATMENT FOR A LONGER DURATION THAN NINETY DAYS AS PROVIDED PURSUANT TO THIS PARAGRAPH (a). THE COURT SHALL NOT TRANSFER OR REQUIRE RELINQUISHMENT OF LEGAL CUSTODY OF, OR OTHERWISE TERMINATE THE PARENTAL RIGHTS WITH RESPECT TO, A CHILD WHO HAS AN EMOTIONAL, A PHYSICAL, OR AN INTELLECTUAL DISABILITY AND WHO WAS VOLUNTARILY PLACED OUT OF THE HOME FOR THE PURPOSES OF OBTAINING SPECIAL TREATMENT OR CARE SOLELY BECAUSE THE PARENT OR LEGAL GUARDIAN IS UNABLE TO PROVIDE THE TREATMENT OR CARE. WHENEVER A CHILD FIFTEEN YEARS OF AGE OR OLDER CONSENTS TO PLACEMENT IN A MENTAL HEALTH FACILITY PURSUANT TO SECTION 27-10-103, C.R.S., THE REVIEW UNDER SECTION 27-10-103 (3.3), C.R.S., SHALL BE CONDUCTED IN LIEU OF AND SHALL FULFILL THE REQUIREMENTS FOR REVIEW UNDER THIS PARAGRAPH (a).

(b) (I) THE PETITION AND ALL SUBSEQUENT COURT DOCUMENTS IN ANY PROCEEDINGS BROUGHT UNDER PARAGRAPH (a) OF THIS SUBSECTION (8) SHALL BE TITLED "THE PEOPLE OF THE STATE OF COLORADO, IN THE INTEREST OF _____, A CHILD (OR CHILDREN) AND CONCERNING _____, RESPONDENT." THE PETITION SHALL BE VERIFIED, AND THE STATEMENTS IN THE PETITION MAY BE MADE UPON INFORMATION AND BELIEF.

(II) THE PETITION SHALL SET FORTH PLAINLY THE FACTS THAT BRING THE CHILD WITHIN THE COURT'S JURISDICTION, SPECIFYING THAT THE CHILD IS SUBJECT TO IMMEDIATE PLACEMENT OUT OF THE HOME OR HAS BEEN IN VOLUNTARY PLACEMENT OUT OF THE HOME AND IT APPEARS THAT CONTINUATION OF THE PLACEMENT IS NECESSARY FOR A TIME EXCEEDING NINETY DAYS AND CONTINUATION OF THE PLACEMENT IS NECESSARY AND IS IN THE BEST INTEREST OF THE CHILD, THE FAMILY, AND THE COMMUNITY. THE PETITION SHALL ALSO STATE THE NAME, AGE, AND RESIDENCE OF THE CHILD AND THE NAMES AND RESIDENCES OF HIS OR HER PARENTS, GUARDIAN, OR OTHER LEGAL CUSTODIAN OR OF HIS OR HER NEAREST KNOWN

RELATIVE IF NO PARENT, GUARDIAN, OR OTHER LEGAL CUSTODIAN IS KNOWN.

(III) ALL PETITIONS FILED PURSUANT TO THIS SUBSECTION (8) SHALL INCLUDE THE FOLLOWING STATEMENT: "IF THE CHILD IS PLACED OUT OF THE HOME FOR A PERIOD OF TWELVE MONTHS OR LONGER, THE COURT SHALL HOLD A PERMANENCY HEARING WITHIN SAID TWELVE MONTHS TO DETERMINE THE FUTURE STATUS OF THE CHILD. THE REVIEW OF ANY DECREE OF PLACEMENT OF A CHILD SUBSEQUENT TO THE THREE-MONTH REVIEW REQUIRED BY SECTION 19-1-115 (4)(a), MAY BE CONDUCTED AS AN ADMINISTRATIVE REVIEW BY THE DEPARTMENT OF HUMAN SERVICES. IF YOU ARE A PARTY TO THE ACTION, YOU HAVE A RIGHT TO OBJECT TO AN ADMINISTRATIVE REVIEW, AND, IF YOU OBJECT, THE REVIEW SHALL BE CONDUCTED BY THE COURT."

(c) AFTER A PETITION HAS BEEN FILED, THE COURT SHALL PROMPTLY ISSUE A SUMMONS RECITING BRIEFLY THE SUBSTANCE OF THE PETITION. THE SUMMONS SHALL BE SUBSTANTIALLY IN THE FORM SPECIFIED IN SECTION 19-3-502 AND BE DEALT WITH IN THE MANNER PROVIDED IN SECTION 19-3-503 AND SHALL SET FORTH THE CONSTITUTIONAL AND LEGAL RIGHTS OF THE CHILD, HIS OR HER PARENTS OR GUARDIAN, AND ANY OTHER RESPONDENT, INCLUDING THE RIGHT TO HAVE AN ATTORNEY PRESENT AT THE HEARING ON THE PETITION. THE PETITIONER SHALL SEND THE SUMMONS TO THE CHILD AND HIS OR HER PARENTS, GUARDIAN, OR LEGAL CUSTODIAN BY CERTIFIED MAIL. NOTICE OF THE HEARING SHALL BE GIVEN BY THE COURT TO THE DIRECTOR OF THE FACILITY OR AGENCY IN WHICH THE CHILD IS PLACED AND ANY PERSON WHO HAS PHYSICAL CUSTODY OF THE CHILD AND ANY ATTORNEY OR GUARDIAN AD LITEM OF RECORD. NOTHING IN THIS SUBSECTION (8) SHALL REQUIRE THE PRESENCE OF ANY PERSON BEFORE THE COURT UNLESS THE COURT SO DIRECTS.

(d) THE COURT SHALL APPOINT A GUARDIAN AD LITEM TO PROTECT THE INTEREST OF THE CHILD FOR ANY CHILD WHO IS THE SUBJECT OF A PETITION FOR REVIEW OF PLACEMENT, UNLESS THE COURT MAKES SPECIFIC FINDINGS THAT NO USEFUL PURPOSE WOULD BE SERVED BY SUCH APPOINTMENT.

(e) FOR PURPOSES OF DETERMINING PROPER PLACEMENT OF THE CHILD, THE PETITION FOR REVIEW OF PLACEMENT OR SOCIAL STUDY SHALL BE ACCOMPANIED BY AN EVALUATION FOR PLACEMENT PREPARED BY THE DEPARTMENT OR AGENCY THAT RECOMMENDS PLACEMENT OR WITH WHICH THE CHILD HAS BEEN PLACED. THE EVALUATION FOR PLACEMENT SHALL INCLUDE AN ASSESSMENT OF THE CHILD'S PHYSICAL AND MENTAL HEALTH, DEVELOPMENTAL STATUS, FAMILY AND SOCIAL HISTORY, AND EDUCATIONAL STATUS. THE PETITION SHALL ALSO BE ACCOMPANIED BY RECOMMENDED PLACEMENTS FOR THE CHILD AND THE MONTHLY COST OF EACH AND A TREATMENT PLAN THAT CONTAINS, AT A MINIMUM, THE GOALS TO BE ACHIEVED BY THE PLACEMENT; THE SERVICES TO BE PROVIDED; THE INTENSITY, DURATION, AND PROVIDER OF THE SERVICES; IDENTIFICATION OF THE SERVICES THAT CAN BE PROVIDED ONLY IN A RESIDENTIAL SETTING; AND THE RECOMMENDED DURATION OF THE PLACEMENT. THE PETITION OR SOCIAL STUDY SHALL ALSO BE ACCOMPANIED BY THE REQUIRED FEE TO BE CHARGED TO THE PARENTS PURSUANT TO PARAGRAPH (d) OF SUBSECTION (4) OF THIS SECTION. IN ADDITION, IF A CHANGE IN LEGAL CUSTODY IS RECOMMENDED, THE EVALUATION FOR PLACEMENT SHALL INCLUDE OTHER ALTERNATIVES THAT HAVE BEEN EXPLORED AND THE REASON FOR THEIR REJECTION, AND THE EVALUATION FOR PLACEMENT SHALL CONTAIN AN EXPLANATION OF ANY PARTICULAR PLACEMENTS THAT WERE CONSIDERED AND

REJECTED AND THE REASON FOR THEIR REJECTION.

(f) THE PETITION FOR REVIEW OF NEED FOR PLACEMENT SHALL REQUEST THE COURT TO DETERMINE, BY A PREPONDERANCE OF THE EVIDENCE, WHETHER PLACEMENT OR CONTINUED PLACEMENT IS NECESSARY AND IN THE BEST INTEREST OF THE CHILD, THE FAMILY, AND THE COMMUNITY AND WHETHER REASONABLE EFFORTS HAVE BEEN MADE TO RETURN THE CHILD TO A SAFE HOME OR WHETHER THE CHILD SHOULD BE PERMANENTLY REMOVED FROM HIS OR HER HOME. IF THE COURT MAKES SUCH FINDINGS, IT SHALL ENTER A DECREE ORDERING THE CHILD'S PLACEMENT OUT OF THE HOME IN THE FACILITY OR SETTING THAT MOST APPROPRIATELY MEETS THE NEEDS OF THE CHILD, THE FAMILY, AND THE COMMUNITY. IN MAKING ITS DECISION AS TO PROPER PLACEMENT, THE COURT SHALL UTILIZE THE EVALUATION FOR PLACEMENT PREPARED PURSUANT TO SECTION 19-1-107 OR THE EVALUATION FOR PLACEMENT REQUIRED BY PARAGRAPH (e) OF THIS SUBSECTION (8) THAT SHALL STATE THE COST OF RECOMMENDED PLACEMENT. IF THE EVALUATION FOR PLACEMENT RECOMMENDS PLACEMENT IN A FACILITY LOCATED IN COLORADO THAT CAN PROVIDE APPROPRIATE TREATMENT AND THAT WILL ACCEPT THE CHILD, THEN THE COURT SHALL NOT PLACE THE CHILD IN A FACILITY OUTSIDE THIS STATE. IF THE COURT DEVIATES FROM THE RECOMMENDATIONS OF THE EVALUATION FOR PLACEMENT IN A MANNER THAT RESULTS IN A DIFFERENCE IN THE COST OF THE DISPOSITION ORDERED BY THE COURT AND THE COST OF THE DISPOSITION RECOMMENDED IN THE EVALUATION, THE COURT SHALL MAKE SPECIFIC FINDINGS OF FACT RELATING TO ITS DECISION, INCLUDING THE MONTHLY COST OF THE PLACEMENT, IF ORDERED. A COPY OF SUCH FINDINGS SHALL BE SENT TO THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT, WHO SHALL REPORT ANNUALLY TO THE JOINT BUDGET COMMITTEE AND THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND SENATE OF THE GENERAL ASSEMBLY, OR ANY SUCCESSOR COMMITTEES, ON SUCH ORDERS. IF THE COURT COMMITS THE CHILD TO THE DEPARTMENT OF HUMAN SERVICES, IT SHALL NOT MAKE A SPECIFIC PLACEMENT, NOR SHALL THE PROVISIONS OF THIS PARAGRAPH (f) RELATING TO SPECIFIC FINDINGS OF FACT BE APPLICABLE. IF THE COURT MAKES A FINDING THAT CONTINUED PLACEMENT IS NOT NECESSARY AND IS NOT IN THE BEST INTEREST OF THE CHILD, THE FAMILY, AND THE COMMUNITY, THE COURT SHALL DISMISS THE PETITION FOR REVIEW OF NEED FOR PLACEMENT AND SHALL ORDER THAT THE CHILD BE RETURNED HOME. THE COURT MAY REQUIRE A CONTINUED HEARING OF THE PETITION FOR REVIEW OF NEED FOR PLACEMENT FOR A PERIOD NOT TO EXCEED FOURTEEN DAYS IF IT FINDS THAT THE MATERIALS SUBMITTED ARE INSUFFICIENT TO MAKE A FINDING AS PROVIDED IN THIS PARAGRAPH (f).

(g) A PETITION FOR REVIEW OF NEED FOR PLACEMENT SHALL NOT BE HANDLED AS AN INFORMAL ADJUSTMENT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 19-3-501 (2).

SECTION 5. Repeal. 19-3-701, Colorado Revised Statutes, is repealed.

SECTION 6. 26-7-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-7-104. Administration. (5) FOR AN ADOPTIVE FAMILY WHO RECEIVES AN APPROVED TITLE IV-E ADOPTION ASSISTANCE SUBSIDY PURSUANT TO THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 673 ET SEQ., OR AN APPROVED PAYMENT

IN SUBSIDIZATION OF ADOPTION PURSUANT TO SECTION 26-7-103, THE COST OF CARE, AS DEFINED IN SECTION 19-1-103 (30), C.R.S., SHALL NOT EXCEED THE AMOUNT OF THE ADOPTION ASSISTANCE PAYMENT.

SECTION 7. 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: May 31, 2007