



OFFICE OF RESPONDENT
PARENTS' COUNSEL
Protecting the Fundamental Right to Parent

Representative Dafna Michaelson Jenet, Chair
Representative Emily Sirota, Vice Chair
Public & Behavioral Health & Human Services Committee

Melanie Jordan, Esq.
Office of Respondent Parents' Counsel

Friday, March 4, 2022

Opposition to HB 22-1231, Foster Parents Bill of Rights

On behalf of the Office of Respondent Parents' Counsel, I write to you in opposition to House Bill 22-1231. I am the Case Strategy Director for the Office of Respondent Parents' Counsel where I advocate for policies and laws that promote family reunification and ensure equal protection under the law for indigent parents facing permanent separation from their children through government action. I am also the child of foster parents who ended up adopting a child, my brother, through the child welfare system. I have worked within this system for the last two decades in Colorado both prior to law school and as a county attorney, respondent parent attorney, and GAL after graduating from law school.

While the ORPC agrees that foster parents should be treated with dignity and respect, foster parents in Colorado have many protections in statute and regulation that address the concerns of this legislation. For ease of reference, I have provided citations to the statutes and regulations that provide rights and protections for foster parents as they currently exist below. Unfortunately, parents often lack even basic legal protections to access their children's treatment records or maintain a relationship with their children through visitation.

Yesterday, the Court of Appeals issued an opinion in a termination of parental rights case where a mother had been denied face-to-face visitation and provided only virtual visitation with her infant child from March 2020 to July 2020 and again from November 2020 through December 2020 due to blanket orders that suspended in person visitation during the pandemic. The mother was not able to hold her baby for six months. The Court of Appeals held that the mother had no statutory right to in person visitation under these circumstances.

As I reviewed the statutes and regulations enshrining protections for foster parents, I noticed that CDHS took the time to update their foster licensing regulations to ensure that foster parents could take CPR classes online so foster parents had one less barrier to certification during the pandemic. You will not find any regulations that made modifications to ensure parents continued to have meaningful visitation with their children during the pandemic. Regulations changed to protect caseworkers and foster parents, but not parents. We should not create a bill of rights for foster parents who already have extensive protections when we do not even have basic statutory protections to ensure parents can visit with their children when they are separated from them.



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The following statutes, caselaw, and regulations currently protect foster parents:

- Right to notice of court hearings and to be heard at such hearings - § 19-3-502(7), C.R.S.; 12 CCR 2509-4-7.304.62(N).
- Right to intervene when child has been in their care for 3 or more months - § 19-3-507(5)(a), C.R.S.
- Right to participate fully as an intervenor at termination of parental rights hearings, including questioning of witnesses and presentation of evidence. *A.M. v. A.C.*, 296 P.3d 1026 (Colo. 2013).
- Right to request their identifiable information not be disclosed. § 19-1-303(2.7)(a), C.R.S.
- Right to information about the child to include social, medical, educational history, behavioral issues, court involvement, parental visitation plans. 12 CCR 2509-4-7.304.61(D); 7.708.61(F), (H).
- Right to receive necessary information regarding the foster child and instructions about keeping it confidential. 12 CCR 2509-4-7.710.45.
- Right to notice and to be heard at any Administrative Review. 12 CCR 2509-4-7.304.62(N).
- Extensive grievance and appeal processes for denials of licensure (throughout Volume 7).

Foster parents have all these rights and protections under existing statute and regulation even though the U.S. Supreme Court has continually rejected any recognition of foster parents having Constitutional protections. See *Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 816 (1977). In contrast, the Supreme Court has recognized repeatedly and for over a century the fundamental right of parents to direct the care and upbringing of their children:

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.

Santosky v. Kramer, 455 U.S. 745 (1982).

The ORPC accordingly opposes the Foster Parents Bill of Rights and asks this committee to focus on ensuring that parents' basic rights are protected before adopting another law to protect the rights of foster parents that are already protected in statute and regulation.

Best regards,

Melanie Jordan
ORPC Case Strategy Director