My name is Melanie Jordan, and I am the Case Strategy Director for the Office of Respondent Parents' Counsel. Prior to joining the ORPC, I was a trial and appellate attorney serving as counsel for indigent parents, Guardian ad Litem for children, and county attorney representing county departments of human services. On behalf of the ORPC, I am submitting written testimony requesting that this committee amend HB 21-1220 to ensure that parents and children have representation when parentage decisions are being made that will impact the proceedings in a dependency and neglect case.

Unfortunately, our office was not previously contacted regarding this bill, despite it greatly affecting parents' right to counsel in dependency and neglect proceedings. Once we learned of the bill, we reached out to the Child Support Commission to discuss our concerns. Because an agreement was not reached during that meeting, we believe it is imperative that we bring the concerns to you on behalf of indigent parents.

Many times, the parentage decisions made in dependency and neglect cases are not easy calls. It is not just a matter of determining genetics or biology. Our trial attorneys handle situations where a child may have two mothers on their birth certificate and the county names a biological father with no relationship with the child in an action to determine parentage. I have seen cases where we have realized that a twelve-year-old child who believed her whole life that one man was her father actually had a different biological father who was fully able and available to care for her but had no idea she existed.

In these scenarios, courts have to consider a huge number of factors, including the child's relationship with each potential parent, the age of the child, ultimately determining, in the best interests of the child, who should be the legal parent of the child. If a person who has cared for the child for years is determined not to be a legal parent, their parental rights are effectively terminated without any of the legal protections available to a parent in an actual termination proceeding.

In 2018, the Colorado Court of Appeals wisely decided that a "parent is thus denied fundamentally fair procedures in actions under article 4 [parentage or paternity proceedings] when there's an open dependency and neglect case." *People in re D.C.C.*, 2018 COA 98. As recognized by the Court, indigent parents have respondent parent counsel available to represent them at the trial and appellate levels in dependency and neglect cases. Similarly, children have GALs representing their best interests in the dependency and neglect case.

HB 21-1220 bill seeks to reverse *D.C.C.* and to again permit one court to make decisions in the dependency and neglect case while another court, where parents and children do not have lawyers, makes the parentage decisions. This is a step in the wrong direction. When we reached out to respondent parent counsel, here is what they had to say about this change:

From an experienced trial and appellate RPC: "*Other than the opportunity for notice and to be heard, the parent is not provided the due process protection of counsel in an Article 4 proceeding. If a parent elects to challenge the proceeding, they again, are without court appointed counsel and placed at a disadvantage*."

From the trial attorney who represented the father at issue in DCC: "*One of my concerns was that a part-time magistrate was interfering in a legal process that was being overseen by a district court judge. There was a question as to the sufficiency of notice of the child support case to my client. In effect, the magistrate was terminating my client's parental rights*."

From a trial attorney in El Paso County: "*While fighting paternity issues in D&Ns is not my favorite thing to do, allowing that to happen in a different court can only cause confusion and delay, neither of which is good for the child(ren) or our clients. There's already enough delay in getting paternity tests done and dealing with possible conflicting presumptions, which can hold up adjudication, services, and bonding among other things. The D&N court retaining exclusive jurisdiction while the case is open is important to ensure that the cases move forward as smoothly as possible and issues can be resolved for families*."

We agree with these respondent parent attorneys: this bill must be amended to account for these concerns and to ensure that when courts make these important decisions in cases where children are placed out of their homes that due process is afforded to all participants. To that end, the ORPC requests one of the following reasonable solutions:

1. Delete Section 5 of the bill from lines 14-26 which would allow *D.C.C.* to stand and ensure that parents and children have representation at the trial and appellate levels when parentage decisions are made in dependency and neglect cases.

2. Add to Section 5 a provision that allows any party to move a pending or completed parentage action from juvenile court to the dependency and neglect case. That is what currently occurs with Allocation of Parental Responsibilities (APR) actions initiated in a

domestic relations or juvenile court when a dependency and neglect case is filed. The language in § 19-1-104(4) could be used as a model. The ORPC proposes that "If a motion to determine parentage is pending in juvenile court or if continuing jurisdiction has been previously acquired by the juvenile court, the district court shall certify the question of parentage to the juvenile court hearing the matter under Article 3 upon motion of any party."

These are common sense solutions that ensure that parents and children have the judge who knows the family best making the parentage decision while also ensuring that parents and children have counsel in these proceedings. Thank you for the opportunity to express our concerns on behalf of the ORPC, attorneys who represent parents during the hardest time in their lives, and parents facing permanent deprivation of their parental relationships.

Testimony to the Public and Behavioral Health and Human Services Committee of the Colorado House of Representatives

Re: HB21-1220

Jeff Ball, Chair, Colorado Child Support Commission

Wednesday, April 21, 2021

Chair Fields, Vice Chair Ginal, and Members of the Committee,

Thank you for this opportunity to testify. My name is Jeff Ball, and I am the chair of the Colorado Child Support Commission. I am also the child support administrator for El Paso and Teller Counties. I have been an attorney for 40 years and have focused exclusively on child support for 34 years at the federal, state, and local level.

The Child Support Commission is a statutorily-authorized body whose members are appointed by the Governor and the General Assembly leadership. Our job is to review child support laws in general to see where improvements can be made, and specifically to review our child support guidelines at least every four years. The Commission has included Representatives Singer and Froehlich,

Senators Crowder and Smallwood, and we now are fortunate to have Senator Fields as a member. Other members include judges, magistrates, parent representatives, a county human services director, the state child support director Larry Desbien, the state judicial liaison to child support, and public and private child support attorneys.

The Commission worked for the past two years to craft the recommendations that are the basis of HB21-1220. We feel that the bill has provisions that will markedly enhance the child support program and clarify some points in existing law.

The current interest rate in Colorado for delinquent child support is twelve percent, compounded monthly. This percentage is tied with three other states as the highest child support interest rate in the country. We recommend lowering the interest rate to ten percent, compounded annually. Interest can be fully or partially waived by a court if the court finds good cause. Interest can bury a low-income payor who accrues significant arrearages.

Another provision adds contract workers to the definition of employees for the purpose of new hire reporting. Since welfare reform in 1996, employers have had to report new hires to a state new hire directory, which allows child support workers to issue income assignments to the employer soon after hire of the person who pays support. Adding the "gig" or contract worker will close up a significant and growing loophole.

Also, the bill allows for life insurance claims or settlements to be reported to the state child support agency, and after state review an administrative lien may be placed on the proceeds if they are owed to a child support payor, and the proceeds are in excess of $1,000. The law currently allows for worker compensation and personal injury claims and settlements to be subject to lien and levy after medical and legal expenses are deducted.

To those who practice family law, the income assignment statute represents a multi-page monster of overlapping statutes and effective dates. This

bill cleans it up and makes this key statute clear and concise. It also clarifies that lump-sum payments are subject to income assignments.

An important restoration of the *status quo ante* is the concurrent jurisdiction of Paternity courts and Dependency and Neglect courts to hear paternity cases. This gives the child welfare and child support programs the ability to jointly determine who should bring a paternity action in a case if a paternity action has not yet been filed, and allows a Paternity Court action to proceed if a Dependency and Neglect action is filed afterwards. This arrangement worked well for many years before a Court of Appeals decision determined exclusive jurisdiction resides in dependency and neglect proceedings, even though jurisdiction determination is the prerogative of the General Assembly. For over 45 years, hundreds of parentage cases have been handled by Colorado's child support attorneys each year. The overlap with D & N cases is rare and easily resolved between the attorneys.

Finally, the bill includes some technical amendments to clarify several situations that were ambiguous and subject to more than one interpretation.

In closing, I respectfully ask that you vote in favor of HB21-1220 so that our child support program can take several steps forward.