

# At the Intersection

Handling Dependency and Neglect and Juvenile Delinquency Issues in Family Law Cases

BY AMY M. GOSCHA AND ELIZABETH ROSE HARDMAN





*This article discusses the interplay between family law cases and dependency and neglect and juvenile delinquency cases. It provides an overview of dependency and neglect and juvenile delinquency proceedings and offers suggestions for family law attorneys on addressing common dependency and neglect and juvenile delinquency issues that arise during the pendency of family law cases.*

Family lawyers routinely handle child-related issues in the course of their work. Topics such as parenting time, decision-making responsibilities, and child support are part of the typical family law practice. But what happens if a Department of Human Services (DHS) caseworker contacts your divorce client during the divorce proceeding? Or what if your client informs you that one of her children was just arrested for showing up to school with marijuana, in the middle of an allocation of parental responsibilities (APR) case? Family lawyers must understand such issues to properly advise clients.

This article focuses on the interplay between family law cases and dependency and neglect and juvenile delinquency cases. It provides a brief overview of the structure of dependency and neglect and juvenile delinquency processes. It also offers suggestions for handling dependency and neglect and juvenile delinquency issues that commonly arise in family law cases.

### **Dependency and Neglect**

Dependency and neglect (D&N) cases concern child abuse or neglect. These are civil cases that do not involve the criminal prosecution of parents, but there could be a concurrent criminal case. The D&N court has jurisdiction over children for their safety, protection, stability, and family preservation.

### ***When is a Child Dependent or Neglected?***

A child is dependent or neglected when:

- a parent, guardian, or legal custodian abandoned the child or subjected the

child to mistreatment or abuse; or a parent, guardian, or legal custodian 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.

- the child lacks proper parental care through the actions or omissions of a parent, guardian, or legal custodian.
- the child's environment is injurious to his or her welfare.
- 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 the child's health, guidance, or well-being.
- the child is homeless, without proper care, or not domiciled with a parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian.
- the child is a runaway or is otherwise beyond the control of a parent, guardian, or legal custodian.
- the child was born affected by alcohol or substance exposure, except when a substance was prescribed or recommended and monitored by a licensed health care provider, and the newborn child's health or welfare is threatened by substance use.
- a parent, guardian, or legal custodian subjected another child to an identifiable pattern of habitual abuse; such parent, guardian, or legal custodian was the respondent in another court proceeding where a court adjudicated a child neglected or dependent based on allegations of sexual or physical abuse, or a court

of competent jurisdiction determined that such parent's, guardian's, or legal custodian's abuse or neglect caused the death of another child; and that pattern and type of habitual abuse poses a current threat to the child.<sup>1</sup>

### *Parties to a D&N Case*

D&N cases necessarily involve governmental as well as private parties. All parties, including parents and children, are entitled to a lawyer at all stages of the proceedings. In addition, a court-appointed special advocate (CASA) volunteer may be assigned to assist the court in deciding issues concerning the children. The parties and their roles are:

**Lawyers.** Parents, guardians, or legal custodians named in a D&N case as respondents may hire counsel or, if they cannot afford a lawyer, the court will determine their eligibility for a state-funded lawyer to represent them. The Colorado Office of Respondent Parent Counsel oversees all state-funded attorneys.

**DHS caseworker.** DHS caseworkers coordinate services and maintain contact with the family. They also provide the court with written reports (family service plans), which provide updates, including progress toward completing the treatment plan, and recommend services that should be provided to the family.<sup>2</sup> All parties should receive a copy of the family service plan before the hearing.

**Guardian ad litem (GAL).** The GAL is the lawyer assigned to represent the child's best interests.<sup>3</sup> The GAL must advocate on behalf of the child's health, safety, and well-being. The GAL does not have an attorney-client relationship with the child.<sup>4</sup> The GAL is responsible for investigating the allegations, including interviewing all involved professionals and making recommendations to the court regarding the child's best interests. GALs visit parents, guardians, legal custodians, the child, and anyone else involved in the case.<sup>5</sup>

**County attorney.** The county attorney (or city attorney of a city and county)<sup>6</sup> represents DHS and is responsible for initiating the D&N case. County attorneys work with caseworkers to make recommendations to the court regarding the child's best interests.

**CASA volunteer.** CASA volunteers are appointed by a judge to gather information about the child and make recommendations to inform the judge's decision-making. CASA volunteers advocate solely for the child's best interests and safety. They are not required to be attorneys.

### *The D&N Process*

D&N cases are governed by CRS Title 19, the Colorado Rules of Juvenile Procedure, and 12 CCR 2509-1 to -7 (Rule Manual Volume 7). Procedurally, a D&N case begins much like a criminal case, with the respondent's response to the allegations. If the allegations are proven, the case concludes with an allocation of parental rights order, guardianship to a third party, or termination of parental rights.

**Initial matters.** A D&N case begins when the county attorney or, in Denver and Broomfield, the city/county attorney, files a petition. The parents, guardians, or legal custodians named in the petition are the respondents and are required to appear in court to admit or deny the allegations against them. Respondents may request that the case be heard by a six-member jury,<sup>7</sup> a judge, or a juvenile magistrate. Otherwise, respondents who admit to the allegations advance immediately to the disposition phase to set the respondent's treatment plan.

**Preliminary protection proceeding.** If DHS removes a child from the home based on alleged abuse or neglect, the court must hold a preliminary protection hearing.<sup>8</sup> At this hearing, the judge or magistrate must decide if the child should be temporarily removed from the home because it is unsafe. The court may order the child to take physical and mental health tests. This hearing must take place within 72 hours after placement outside the home, excluding Saturdays, Sundays, and court holidays.<sup>9</sup>

**Adjudicatory hearing.** The court decides at the adjudicatory hearing if the child is dependent or neglected.<sup>10</sup> If the court adjudicates the child dependent or neglected, it can order the child to remain in DHS custody or the family to remain under DHS supervision. This hearing should be held within 60 to 90 days of the date of service of the petition. If the child is adjudicated, the court then approves a case treatment plan.<sup>11</sup>

**Reviews.** The court periodically reviews a D&N case as long as the child remains in DHS custody or under its supervision.<sup>12</sup> The court must determine at each review hearing whether the respondent and DHS are complying with the case treatment plan.

**Permanency plan.** If the child remains in an out-of-home placement, the court must hold a permanency planning hearing.<sup>13</sup> If the court decides that the child cannot be returned home or to a relative it must adopt a permanent plan for the child. If the respondent fails to comply with or successfully complete the case treatment plan, the court may terminate the parent-child relationship.

### **Scenarios Involving Family Law and D&N Cases**

The scenarios below illustrate common D&N situations that arise during dissolution of marriage or other family law proceedings. All scenarios assume that the client has a family law proceeding pending and requests advice on how to proceed. Family law practitioners who are not up to speed on D&N law should consult with counsel experienced in this area. Practitioners may also consult the Colorado Guided Reference in Dependency, a helpful resource on the D&N process.<sup>14</sup>

#### *A DHS caseworker makes initial contact with the client.*

The family lawyer needs to determine whether or not to advise the client to cooperate with the caseworker. In this regard, attorneys should consider contacting the caseworker directly to determine if there is an open investigation. In some circumstances, it is best for the family lawyer to advise the client to cooperate with the caseworker. In other circumstances, such as when the client is accused of incest, the family lawyer should be mindful of the client's Fifth Amendment rights and not advise the client to immediately cooperate with the caseworker. If there is serious bodily injury to the child, the family lawyer should proceed cautiously for the same reason.

CRS § 19-3-207 provides a form of protective order that disallows a client's statements made during treatment or testimony in the D&N case



from being used in the criminal case, subject to a hearing on admissibility. In the metro-Denver jurisdictions, the district attorneys usually waive the hearing request and will abide by the protection order.

Further, information should not be released to third parties without a signed release of information, so family lawyers should have the client sign the appropriate information release form.

***The DHS caseworker contacts the client to arrange a visit with the child.***

DHS must make contact with the child within 72 hours of the referral to DHS. If the client does not make the child available, the caseworker may contact the child at school or obtain a court order to interview the child, which can negatively impact both the client's and child's emotional well-being. Therefore, the family law attorney should advise the client to make the child available. In this situation it is also crucial to advise the client not to coach the child about what to say to the caseworker.

***The DHS caseworker requests that the client schedule a family meeting.***

DHS uses the "family meeting" as a way to reach a resolution with respondents without having the county attorney file a formal D&N petition. Respondents may voluntarily opt in for DHS to monitor and provide services to the family under the CRS § 19-3-308.3 differential response program (often referred to as the family assessment response). Family law attorneys may decide to be present at the family meeting and use it as an opportunity to resolve issues when setting up the family treatment plan. DHS can issue safety plans that require a parent's contact with the child to be supervised or suspended during the assessment period. The family law attorney can use the safety plan as an exhibit attached to a motion to restrict. On its own, the DHS safety plan has no "teeth," but filing it in the domestic relations case may result in enforceable provisions.<sup>15</sup>

***The client is in the process of undergoing a parental responsibility evaluation when a DHS caseworker makes contact.***

If the county attorney files a D&N petition, the D&N case will move forward and essentially put the child-related issues in the family law proceeding on hold. If a formal D&N petition has not been filed, DHS may still require the client to participate in a family meeting or other action, such as the differential response program. In this situation, it is imperative for the family law attorney to determine the nature of DHS's involvement. Attorneys should also request all DHS records and provide them to the parental responsibility evaluator.

***There is a simultaneously pending D&N case.***

Whether the case is pre- or post-decree, new APR orders will be entered in the D&N case, and those orders are certified back into the domestic relations case pursuant to CRS § 19-1-104(1) (b) and (4). In *In re Marriage of Eckman*,<sup>16</sup> the Court found that the certification of custody issues from the domestic relations court into juvenile court is mandatory. The Colorado Supreme Court in *City and County of Denver v. District Court of Second Judicial District* stated that when there is an "inevitable conflict which arises from the fact that juvenile and district courts may exercise concurrent jurisdiction over cases affecting the interests of a particular child," CRS § 19-1-104(5) establishes the "supremacy of the jurisdiction of the juvenile court . . . and requires certification into the juvenile court of any issue of custody which may arise."<sup>17</sup>

Orders regarding allocation of parental responsibilities often involve non-parents such as grandparents, an aunt, or an uncle. The court can also close the D&N case with guardianship to a third person or termination of parental rights. Uniform Dissolution of Marriage Act standing does not necessarily apply in D&N cases.<sup>18</sup>

***The client has been determined to be a person responsible for abuse or neglect under CRS § 19-3-308 and § 12 CCR 2509-2-7.104.132.***

If the client is listed on the state database as a person responsible for abuse or neglect and is documented as such in the DHS file, this can negatively impact the family law case. The family lawyer should consider appealing

the finding for the client or refer the client to an attorney experienced in those matters (this is an administrative law process with appeal deadlines under § 12 CCR 2509-2-7.111).

**Juvenile Delinquency Proceedings**

Juvenile delinquency cases arise when a child is accused of engaging in an act that would constitute a crime if committed as an adult. In Colorado, absent limited circumstances, the juvenile delinquency court hears cases concerning delinquent acts committed by a child between the ages of 10 and 17.<sup>19</sup> In 1903, the Denver Juvenile Court became the first such court west of the Mississippi and the second in the United States.<sup>20</sup>

Initially, juvenile courts purported to focus on the rehabilitation of juveniles and were considered civil, rather than criminal, in nature.<sup>21</sup> The juvenile courts served in *parents patriae*—i.e., as "parent of the country"—and were charged with rendering decisions in the best interests of the child.<sup>22</sup> The child held no legal rights in this process.<sup>23</sup> However, over ensuing decades, courts recognized the inherent similarities between the juvenile justice system and the adult criminal justice system, and the lack of adequate constitutional protections for juveniles that their adult counterparts enjoyed. This prompted several US Supreme Court rulings beginning in the late 1960s establishing due process rights for juveniles, including the right to confront witnesses, the right against self-incrimination, the right to counsel and effective assistance of counsel, and the right to have the charges against them proven beyond a reasonable doubt.<sup>24</sup> In the 2000s, another series of US Supreme Court cases highlighted the significant differences between adults and juveniles, including the juvenile's undeveloped prefrontal cortex and frontal lobe areas of the brain, which leads to a lack of impulse control, risk-taking behaviors, extreme emotions, and peer pressure and supports the general idea that children should be given an opportunity to rehabilitate.<sup>25</sup>

Today, the legislative declaration for the Colorado Juvenile Justice System evidences a mixed intent between the competing ideals of punishment and rehabilitation.<sup>26</sup> Instead

of solely focusing on the best interests of the child, courts also consider the best interests of the alleged victim and the community.<sup>27</sup>

#### *Parties to a Juvenile Delinquency Case*

The parties to juvenile delinquency case and their roles are:

**Juvenile defense attorney.** Juveniles, like adults, have a right to counsel.<sup>28</sup> This right belongs to the child, so the court may appoint an attorney for the child when the child's parent is not indigent but refuses to hire and pay for a private attorney. If the child's parent is indigent, the court may appoint an attorney from the Office of the Colorado State Public Defender (or the Office of the Alternate Defense Counsel if a conflict exists) to represent the child. The juvenile defense attorney represents the child's stated interests.

**GAL.** As in D&N proceedings, the GAL is an attorney appointed to represent the child's best interests, rather than what the child wants. The court may appoint a GAL in any case, but most courts appoint a GAL when a parent's and child's interests conflict, typically due to the nature of the charge (e.g., the child allegedly assaulted a parent or sexually abused a sibling), or when a parent lacks involvement in the child's life.

**District attorney (DA).** The DA represents the State of Colorado and is responsible for, among other things, filing and proving formal charges against the juvenile.

**Victim's advocate/representative.** The named victim and his or her advocate/representative may appear at court proceedings. The named victim has the right and opportunity to speak to the magistrate or judge concerning the alleged crime and appropriate sentencing.<sup>29</sup>

**DHS caseworker.** DHS is not involved in every juvenile delinquency case. The court may make a referral to DHS when a family needs support and services for a child, which may include treatment, respite care, or the like. Additionally, DHS performs out-of-home placement evaluations for juveniles and coordinates these placements when ordered by the court. When DHS is involved, the city or county attorney often represents it in the proceedings.

**Child's parents, legal guardians, or legal custodians.** Generally, attendance by the child's

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Parents who are  
listed as a party  
to delinquency  
proceedings may  
be ordered to be  
involved in the  
child's treatment  
plan, by, for example,  
participating  
in parental  
responsibility  
training. Courts have  
contempt powers  
over parents and may  
issue arrest warrants  
for a parent's failure  
to appear without  
good cause or failure  
to comply with  
other court imposed  
requirements.”

parent or other responsible adult is mandated at all juvenile proceedings.<sup>30</sup> Nevertheless, many courts permit juvenile proceedings to move forward without a parent when a GAL has been appointed and is present. The court often questions parents regarding issues such as the child's behaviors and ongoing problems in the home, possible sources of support for the child and family, and additional resources that may be helpful. Parents who are listed as a party to delinquency proceedings may be ordered to be involved in the child's treatment plan, by, for example, participating in parental responsibility training.<sup>31</sup> Courts have contempt powers over parents and may issue arrest warrants for a parent's failure to appear without good cause or failure to comply with other court imposed requirements.<sup>32</sup>

#### *The Juvenile Delinquency Process*

To obtain a basic understanding of how juvenile delinquency proceedings might affect a family law matter, family law practitioners must be familiar with the general terminology and procedure in the juvenile proceedings. Although juvenile delinquency terminology and proceedings can mirror adult criminal terminology and proceedings, with which family law practitioners might be more familiar, they also deviate from them in several respects.

**Terminology.** To make the juvenile justice system appear less punitive, many terms differ from those commonly used in adult criminal court. For example, instead of being charged with the commission of a “crime,” a juvenile is charged with the commission of a “delinquent act.” When a juvenile takes a plea offer admitting to the commission of a delinquent act or is otherwise found to have committed a delinquent act, the juvenile is “adjudicated delinquent” instead of “found guilty.” Similarly, rather than having a record of a “conviction,” a juvenile's record shows an “adjudication.”

**Court setting.** Generally, delinquency proceedings are public,<sup>33</sup> but the court has discretion to close the courtroom to the public in the child's best interests (e.g., where a sex offense is charged).<sup>34</sup> All delinquency hearings are recorded.<sup>35</sup>

**Arrest.** Law enforcement may arrest a juvenile on a warrant supported by probable cause or when there are “reasonable grounds to believe that the juvenile has committed a delinquent act.”<sup>36</sup> Absent cases involving domestic violence, law enforcement has discretion to determine whether to arrest a juvenile or obtain the juvenile’s written promise to appear in court at a later date.<sup>37</sup> Upon arrest, law enforcement transports the juvenile to a detention facility or other temporary holding facility. A screening team notifies the child’s parents or legal guardian of the arrest. The screening team also speaks with the juvenile and completes a detention risk screening to recommend whether the juvenile should remain detained.<sup>38</sup>

**Detention hearing.** Following arrest, the court must hold a detention hearing within 48 hours, excluding weekends and legal holidays, to determine whether to continue to hold the juvenile or release him or her and set any release conditions.<sup>39</sup> When determining whether to detain a juvenile, the court must impose the least restrictive setting<sup>40</sup> and order detention only when the juvenile “poses a substantial risk of serious harm to others or a substantial risk of flight from prosecution and community-based alternatives to detention are insufficient to reasonably mitigate the risk.”<sup>41</sup> Certain offenses or circumstances create a rebuttable presumption of substantial risk of serious harm to others,<sup>42</sup> and some limited instances require a juvenile’s release.<sup>43</sup> If the court orders detention, it must make specific findings on issues including the best interests of the juvenile and the community, reasonable efforts made to “prevent or eliminate the need for removal of the juvenile from the home,” and “procedural safeguards [that] have been applied [to preserve parental rights] in connection with the removal of the juvenile from the home.”<sup>44</sup> The court may release the juvenile to his or her parents, legal guardian, or other appropriate family member or custodian, granting that person temporary legal custody of the juvenile. The court may alternatively place the juvenile into a temporary shelter facility or refer the case to DHS so the child may be assessed for out-of-home placement.<sup>45</sup> The court may order pre-trial release (PTR) conditions such



as home arrest, electronic home monitoring, GPS tracking, curfew, school attendance, no alcohol or drugs, and no new offenses.<sup>46</sup>

**Mandatory protection order (MPO).** In every delinquency case the court must issue an MPO<sup>47</sup> against the juvenile and his or her responsible adult that restrains the juvenile and the responsible adult from “harassing, molesting, intimidating, retaliating against, or tampering with any witness to or victim of the delinquent act charged.”<sup>48</sup> The MPO may include other provisions, such as a provision prohibiting contact with the named victim. An MPO violation may result in new delinquency charges against the juvenile or criminal charges against the responsible adult.

**Advisement hearing.** The advisement hearing<sup>49</sup> is typically the first court appearance for

juveniles who were not arrested and the second court appearance (following the detention hearing) for juveniles who were arrested. At this hearing, the court advises the juvenile of the charges formally filed against him or her and associated penalties. The court also advises the juvenile of his or her constitutional and other legal rights, including the right to counsel.

**Preliminary hearing.** The preliminary hearing<sup>50</sup> is an evidentiary hearing that serves to weed out weak cases. Only certain juveniles are entitled to a preliminary hearing: juveniles charged with a class 1, 2, or 3 felony; juveniles charged with a class 4, 5, or 6 felony that constitutes a crime of violence, a sex offense, or that is subject to mandatory sentencing; and any other juvenile charged with a class 4, 5, or 6 felony, provided that the juvenile is in custody.



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The DA must prove at the preliminary hearing that probable cause exists to find that a crime was committed and that the juvenile committed it. Otherwise, the case is dismissed.

The right to a preliminary hearing can be waived, so the juvenile should file a written request for preliminary hearing within 14 days after the advisement hearing.<sup>51</sup>

**Status hearings.** Many status hearings may occur throughout the case. These court appearances allow the court to monitor the juvenile during plea negotiations and to determine whether the case must be set for trial. The court appearances allow the court to monitor the juvenile's behaviors and actions pending resolution of the case or progress in certain treatment or facilities. If a juvenile has issues while out of custody, the court could remand the juvenile to detention or put the child in out-of-home placement.

**Negotiations.** Negotiations between the juvenile, his or her counsel, and the DA provide an opportunity for the juvenile to resolve the case without a trial. Negotiated plea agreements may result in pleas to lesser or reduced charges and provide certainty on the sentencing outcome (e.g., probation versus detention). In cases involving mitigating circumstances or low-risk juveniles, the DA may agree to allow the juvenile to participate in a diversion program,

involving dismissal of the charges, or to receive a deferred adjudication whereby the juvenile pleads guilty to a delinquent act but, so long as the juvenile successfully completes the terms of the deferral (e.g., probation), the guilty plea later is withdrawn and the case dismissed.<sup>52</sup>

**Adjudicatory trial.** Absent a plea agreement, the case is set for trial. Juveniles have the right to a trial under Colorado law, but typically only to a bench trial.<sup>53</sup> Colorado law also provides the right to a speedy trial in delinquency cases.<sup>54</sup> Bench trials are usually held within 60 days after entry of a juvenile's not-guilty plea (or the date of a detention order, if applicable), and jury trials must occur within six months of such plea.<sup>55</sup> The issue at the adjudicatory trial is whether the DA has proven, beyond a reasonable doubt, that the juvenile committed the delinquent act charged.<sup>56</sup>

**Sentencing.** Sentencing occurs after the juvenile pleads guilty to or is found guilty of a delinquent act. The court must order a presentence investigation that includes a recommendation to the court for sentencing.<sup>57</sup> However, the court may waive this requirement, and usually does so, in less serious or less complex juvenile cases.<sup>58</sup> The court's sentence must be based on “best serving the interests of the juvenile and the public.”<sup>59</sup> Sentencing options in juvenile cases are wide-ranging and may include, for example, detention (akin to jail), commitment

(akin to prison) followed by a period of parole, out-of-home placement through DHS or with a relative, supervised or unsupervised probation, mental health services, substance use services or classes, useful public service, restitution, and fines.<sup>60</sup> The court may order the parent to pay the juvenile's costs of care for out-of-home placement or probation or for the juvenile's restitution.<sup>61</sup>

**Transfers to and direct filing in district court.** Depending on various factors, including the severity of the offense and the juvenile's age and delinquency history, the DA may initially charge a juvenile in adult court or may seek to transfer a case originally filed in juvenile court into adult court.<sup>62</sup>

### Juvenile Delinquency Issues in Family Law Cases

Juvenile delinquency considerations are important when determining APRs, which encompass both parenting time and parental decision-making, and when crafting a parenting plan or making arguments for temporary or permanent orders. The court must determine the APR “in accordance with the best interests of the child giving paramount consideration to the child's safety and the physical, mental, and emotional conditions and needs of the child.”<sup>63</sup> Several “best interests” factors may be implicated for clients with a child in the delinquency system.<sup>64</sup> Accordingly, practitioners should be familiar with the delinquency system functions to gather relevant information from the juvenile matter for use in the divorce or APR case and to generally advise the client.

Family law attorneys should independently investigate the delinquency matter to the extent that it may affect the divorce proceedings by:

- contacting the child's attorney, the GAL, and DHS caseworker, if any, to help monitor progress in the juvenile court and learn information to assist in the family law matter, keeping in mind that parents may blame each other for their child's conduct. Parents should be cautioned, however, to avoid using the delinquency case to their advantage in the family law case to the detriment of the child and the child's best interests.

- gathering pertinent documentation from the delinquency case, including but not limited to the discovery in the case, the child's bond paperwork, the MPO issued by the juvenile court, and any pertinent evaluations or risk assessments concerning the child. This information helps guide parenting plans and assists the family law court with including appropriate provisions in temporary or permanent orders. The bond conditions or MPO may contain restrictions on the child's contact with certain people, movement to different states or certain locations within Colorado, requirements for substance use testing, or other pertinent information for the family law attorney's consideration. For example, the family law attorney may need to contact the child's defense attorney to inquire about filing a motion to allow the child to travel or move out of state for parenting time. Additionally, if the family law attorney plans to involve a parental responsibilities evaluator, child and family investigator, child's legal representative/GAL, or similar professional in the family law case, he or she may wish to provide the professional with pertinent evaluations performed on the child in the juvenile case. These evaluations may shed light on which parent is better suited to care for the child, given the child's current legal, emotional, or other needs. It may be hard to obtain these evaluations for youth who are 14 years of age and older because they may not want evaluations released to third parties, including parents. Additionally, the juvenile defense attorney may wish to keep some of these evaluations private for purposes of defending the juvenile.
- requesting transcripts of any relevant juvenile delinquency proceedings, which may contain statements made by the parents or the child for use in the family law matter.

Family law practitioners should also take steps to ensure continuity between the family law and juvenile delinquency court orders to the extent reasonably possible by:

- reminding the professionals at hearings that there is an APR case pending and parents are doing their best to make sure the orders in the domestic relations case dovetail with the juvenile delinquency case.
  - accounting for the child's sentencing in the family law matter. This may mean waiting for the juvenile matter to resolve before resolving the family law matter. If this is not feasible, the family law attorney may advise the client to include language in the parenting plan allowing the parties to revisit the plan at the conclusion of the delinquency case and again when the child completes the sentence. Specific language may also be added regarding when each parent will be responsible for signing the child up for required useful public service or classes; for taking the child to and from court appearances, probation appointments, therapy, or treatment; and for requiring the child to make required calls to probation.
- Finally, practitioners should advise clients to:
- seek legal counsel for the child immediately. Parents often try to avoid hiring an attorney for the child, direct the child to speak with the police and DA, and encourage the child to admit to the offense or otherwise take responsibility for his or her actions. But clients must understand the serious and long-lasting ramifications of a juvenile case. For example, it is a common misconception that all juvenile adjudications are expungable. This is not true, and a defense attorney should be involved to adequately protect the child and his or her future.
  - refrain from discussing the underlying allegations with the child, despite how tempting that may be. The child's private statements to his or her attorney remain privileged and confidential. However, no blanket parent-child privilege exists in Colorado for statements made by a child to his or her parent.<sup>65</sup> Under CRS § 13-90-107(1)(I)(1), only those statements made by a child to the parent when the child and parent are in the presence of the

child's attorney may be protected. Further, although Colorado law may keep those limited communications safe, parents must understand that children need to be allowed to speak privately with their attorney because children often refrain from providing important details to the attorney in the parents' presence due to worries about the parents' reactions.

- appear at all court appearances and participate in the child's treatment plans as ordered by the juvenile court. Opposing family law counsel may use a parent's lack of involvement or cooperation in the juvenile case against the parent in the family law matter.
- take steps to ensure the child's health, safety, and well-being. In particular, parents should take reasonable precautionary measures to mitigate the chances of another incident involving the police. This may include increasing hands-on supervision of the child, placing the child into therapy or treatment, encouraging the child to refrain from affiliating with negative peer groups, or enrolling the child in a new school. If the allegations occurred on the client's watch, the opposing family law attorney will likely try to use the incident against the client to argue that the client should have fewer parenting responsibilities. It is thus imperative that the client demonstrate an appropriate parental response. On the other hand, if the allegations occurred during a client's spouse's parenting time, a family law practitioner may want to file a motion to restrict parenting time or for temporary orders to reduce the amount of time the child spends with the spouse, depending on the circumstances.
- be flexible in fashioning parenting plans. For example, if a client, a client's spouse, or another family member is the alleged victim, the juvenile court may restrict the child's ability to live in the same household as the alleged victim. If the juvenile is accused of engaging in sexual misconduct with a sibling, the accused may not be able to return to the house so



long as the sibling lives there or until the child and the sibling complete treatment or therapy. Such restrictions may last for months or longer. Accordingly, parenting plans or other proposals concerning parenting time must meet the needs of all involved children and ensure that the client maintains meaningful contact with each child.

- regularly maintain contact with the child, particularly where the child is ordered to remain in detention or out-of-home placement, or is ultimately sentenced to detention or commitment. A client may contact the detention facility, out-of-home placement provider, or commitment facility to schedule regular phone calls and/or in-person visits with the child. This will benefit the child's mental health, facilitate the transition back home, and demonstrate to the family law court that the client has the child's best interests at heart.

## Conclusion

Family law attorneys must be prepared to confront any D&N and juvenile delinquency issues that arise in their family law cases. General knowledge regarding these areas helps when advising clients. Still, family law attorneys should consult competent counsel in any areas that exceed their knowledge. <sup>CL</sup>



**Amy M. Goscha** is a founding partner of Kalamaya | Goscha in Denver, where she practices family law—amy@kalamaya.law. **Elizabeth Rose Hardman** is an associate attorney at Kalamaya | Goscha who practices family law and criminal defense—elizabeth@kalamaya.law. Bonnie E. Saltzman of the Law Office of Bonnie E. Saltzman assisted in the review and editing of this article—saltzmanlaw@aol.com.

**Coordinating Editors:** Halleh Omid, hto@mcguanehogan.com; Courtney Allen, allen@epfamilylawattorneys.com

## NOTES

1. CRS § 19-3-102.
2. CRS § 19-1-107.
3. CRS § 19-3-203.
4. *People v. Gabriesheski*, 262 P.3d 653 (Colo. 2011); CJD 04-06 § V.B.
5. CJD 04-06 § V.D. The Colorado Office of the Child's Representative oversees all GALs. CJD 04-06 (amended Oct. 1, 2021).
6. CRS § 19-3-206.
7. CRS § 19-3-202.
8. CRS § 19-3-312.
9. *Id.*
10. CRS § 19-3-505.
11. CRS § 19-3-209.
12. CRS § 19-3-702.5.
13. CRS § 19-3-508.
14. The Colorado Guided Reference in Dependency is published by the Colorado Office of the Child's Representative, <https://coloradochildrep.org/attorney-center/grid>.
15. CRS § 19-3-309.5.
16. *In re Marriage of Eckman*, 645 P.2d 866, 867 (Colo.App. 1982).
17. *City and Cty. of Denver v. Dist. Court of Second Judicial Dist.*, 675 P.2d 312, 314 (Colo. 1984).
18. *People in the Interest of J.G.*, 2021 COA 47, ¶ 13.
19. See CRS § 19-2.5-103.
20. See Judge Benjamin Barr Lindsey (1869-1943), DenverLibrary.org, <https://history.denverlibrary.org/colorado-biographies/judge-benjamin-barr-lindsey-1869-1943>; Slater, "Ben Lindsey and the Denver Juvenile Court: A Progressive Looks at Human Nature," *Am. Quarterly*, vol. 20, no. 2 at 211-23 (Summer 1968), <https://doi.org/10.2307/2711032>.
21. *In re Gault*, 387 U.S. 1, 17 (1967), *abrogated on other grounds as recognized in Allen v. Ill.*, 478 U.S. 364. See also Puritz, A Call for Justice: An Assessment of Access to Counsel and Quality Representation in Juvenile Delinquency Proceedings (Am. Bar Ass'n Juvenile Justice Center 2002).
22. See Wang, "The Continuing Turbulence Surrounding the Parens Patriae Concept in American Juvenile Courts (Part I)," 18 *McGill L.J.* 219 (1972).
23. See *id.*
24. *E.g.*, *Gault*, 387 U.S. 1 (due process rights); *In re Winship*, 397 U.S. 358 (1970) (reasonable doubt).
25. See, *e.g.*, *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Fla.*, 560 U.S. 48 (2010); *Miller v. Ala.*, 567 U.S. 460 (2012); *Montgomery v. La.*, 577 U.S. 190 (2016). *But see Jones v. Miss.*, 593 U.S. \_\_\_ (2021).
26. See CRS § 19-2.5-101.
27. *Id.*
28. *Gault*, 387 U.S. 1. See CRS § 19-2.5-305(2).
29. CRS § 19-2.5-106.
30. CRS §§ 19-2.5-602, -107.
31. See CRS § 19-2-113(2).
32. CRS §§ 19-2.5-602, -107.
33. CRS § 19-2.5-604.
34. *Id.*
35. See CRS § 19-2.5-602(3).
36. CRS §§ 19-2.5-209, -204.
37. CRS § 19-2.5-303.
38. CRS § 19-2.5-305(3)(a)(II).
39. CRS § 19-2.5-305.
40. CRS § 19-2.5-301.
41. See CRS § 19-2.5-305(3)(a)(IV)(C). See also CRS § 19-2.5-304(3) (listing limitations on continued detention).
42. CRS § 19-2.5-305(3)(a)(V).
43. See CRS §§ 19-2.5-305(3)(a)(IV)-(V), -304(2).
44. CRS § 19-2.5-305(3)(a)(XI).
45. See CRS § 19-2.5-305(3)(a)(VII).
46. CRS § 19-2.5-606.
47. CRS § 19-2.5-607(1)(a).
48. *Id.*
49. CRS § 19-2.5-605.
50. CRS § 19-2.5-609.
51. CRS § 19-2.5-609(1)(a).
52. See CRS §§ 19-2.5-402, -401, -903.
53. See CRS § 19-2.5-610. *But see* CRS §§ 19-2.5-1125, -1127(3)(a).
54. See CRS §§ 19-2.5-904(1), -902, -610.
55. CRS §§ 19-2.5-904(1), -306(4)(b), -902(2); CRS § 18-1-405; Crim. P. 48(b).
56. See CRS § 19-2.5-907(1).
57. CRS § 19-2.5-1101.
58. *Id.*
59. CRS § 19-2.5-1102(1)(a).
60. CRS §§ 19-2.5-1102, -1103.
61. CRS § 19-2.5-1120(1)(a).
62. See CRS §§ 19-2.5-801, -802.
63. CRS § 14-10-124(1.5).
64. *Id.*
65. *People v. Agado*, 964 P.2d 565, 568 (Colo. App. 1998).