

**AGENDA**  
**COLORADO SUPREME COURT**  
**RULES OF JUVENILE PROCEDURE COMMITTEE**

Friday, April 7, 2023, 9:00 AM  
Videoconference Meeting via Webex

- I. Call to Order
- II. Chair's Report
  - A. Minutes of 2/3/2023 meeting [pages 2–5]
  - B. **June 2<sup>nd</sup> meeting cancelled**
- III. Old Business
  - A. Drafting Subcommittee (Judge Welling & Judge Furman)
    - 1) Oral Update
  - B. ICWA Subcommittee (Judge Furman & Justice Gabriel)
    - 1) Oral Update
  - C. HB22-1038 Review of Draft Rules Subcommittee (Anna Ulrich)
    - 1) Request for Vetting of Form Order Appointing CFY & GAL
      - Emails on Form Order Appointing CFY [pages 6–7]
      - Finalized Form Order
        - Redlined [pages 8–10]
        - Clean [pages 11–13]
  - D. Subcommittee to redraft Re Order to Interview or Examine Child (Anna Ulrich)
    - 1) Voting on Proposals for new rule on Order to Interview or Examine Child; Investigation
      - Memo [pages 14–15]
      - Redlined Rule [page 16]
      - Clean Rule [page 17]
      - Feedback gathered by David Ayraud [pages 18–19]
- IV. New Business
  - A. Any new business?
- V. Adjourn

*2023 Meeting Schedule: August 4; October 6; December 1*

**Colorado Supreme Court Rules of Juvenile Procedure Committee  
Minutes of February 3, 2023 Meeting**

**I. Call to Order**

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference. Members present or excused from the meeting were:

| <b>Name</b>                      | <b>Present</b> | <b>Excused</b> |
|----------------------------------|----------------|----------------|
| Judge Craig Welling, Chair       | X              |                |
| Judge (Ret.) Karen Ashby         |                | X              |
| David P. Ayraud                  | X              |                |
| Jennifer Conn                    |                | X              |
| Traci Engdol-Fruhworth           | X              |                |
| Judge David Furman               | X              |                |
| Ruchi Kapoor                     |                | X              |
| Magistrate Randall Lococo        |                | X              |
| Judge Priscilla J. Loew          |                | X              |
| Judge Ann Gail Meinster          | X              |                |
| Trent Palmer                     |                | X              |
| Josefina Raphael-Milliner        | X              |                |
| Professor Colene Robinson        |                | X              |
| Zaven "Z" Saroyan                | X              |                |
| Judge Traci Slade                |                | X              |
| Anna Ulrich                      | X              |                |
| Pam Wakefield                    | X              |                |
| Abby Young                       |                | X              |
|                                  |                |                |
| <b>Non-voting Participants</b>   |                |                |
| Justice Richard Gabriel, Liaison | X              |                |
| Terri Morrison                   | X              |                |
| J.J. Wallace                     | X              |                |

**Meeting Materials:**

- (1) Draft Minutes of 12/2/2022 meeting**
- (2) Emails on Form Order Appointing CFY & Form Order**
- (3) Updated Memo & Redlined and Clean Rule Proposals on Order to Interview or Examine the Child**
- (4) Emails on Trial by Jury Rule and Rule Proposal**

## II. Chair's Report

- A. The 12/2/22 meeting minutes were approved without amendment.

## III. Old Business

- A. Drafting Subcommittee (Judge Welling and Judge Furman)

The Chair reported that the subcommittee has established a good pace—meeting every other week—and continues to make slow and steady progress. The Chair thanked the subcommittee members for all they've done and their dedicated effort. He also related that this subcommittee has been closely coordinating with the 1038 subcommittee in order to avoid duplicating efforts. He reports coordination has gone well.

- B. Proposed ICWA Rules (Judge Furman)

Judge Furman stated that the subcommittee is finalizing its work and there appears to be light at the end of the tunnel.

- C. Vision Subcommittee (Judge Welling)

Work has been tabled for now in favor of focusing on the drafting committee.

- D. HB22-1038 Right to Counsel for Youth (Anna Ulrich)

Anna Ulrich reminded the committee that “1038” refers to the bill number of the law, effective as of last month, that authorizes children 12+ to now have client-directed counsel instead of a GAL. The subcommittee is reviewing the draft rules with the new role of counsel for youth in mind.

The subcommittee has almost completed the rule for counsel of record. Judge Welling asked if the subcommittee believed that the counsel of record rule needed to be approved soon (and earlier than the other rules). The chair of the subcommittee felt that approval with the other rules would be fine.

Along with the rule, the subcommittee looked at a proposed appointment order, which is being vetted by several groups. The form order was provided with the meeting materials so that this committee could review it and offer comments. It is anticipated that the form would go through SCAO as a JDF form because that process offers an efficient route for updating (rather than as a form approved by the supreme court and adopted with the rules, which is a slower process for making updates and amendments).

One GAL member reported that she had used the form order for one of her cases but added language to reflect that she was the educational surrogate for the youth.

Judge Welling asked for reports from the field on how the new role was going. One GAL reported that she has a 16-year-old client and that she advised the client of her new role, which requires keeping client confidences and direction from client, but she's uncertain the client fully understands. The GAL member also reported having a 17-year-old client, but she stayed the GAL because of the client's diminished capacity and a new lawyer was appointed to serve as CFY. Several members indicated it was too early to tell how things were going.

The Chair thanked members for their reports. He expects that any need for rules will come from the ground up and will rely on members to offer their insights to the committee.

The Chair also thanked the 1038 subcommittee members, who, like the drafting subcommittee members (many of whom are the same), are meeting every other week. Their diligent efforts are appreciated.

E. Subcommittee to redraft Rule on Order to Interview or Examine Child (Anna Ulrich)

Anna Ulrich thanked the subcommittee members for their help in coming up with a strong proposal. She recapped that the committee had asked the subcommittee to revise the draft rule based on a recommendation of the drafting subcommittee. The goal was to stick to the statute and create a uniform process for applying for a court order under section 19-3-308(3), C.R.S. (2022). The only portion of the rule not specifically set out in statute is (b), which sets out the minimum kinds of information required and that the information be sworn. Since the statute authorizes incarceration to secure compliance with the order, the subcommittee felt this should be required for such orders.

Anna mentioned that there were no county attorneys on the subcommittee and, since this rule primarily involved DHS, she felt county attorney feedback would be useful. The Chair suggested and the committee agreed that final voting on the rule would be put off until the next meeting in April so that committee members could think about the draft rule and solicit feedback from others. The agenda item was tabled until the next meeting.

**IV. New Business**

A. Waiver of Jury Trial (Judge Meinster/Judge Moultrie)

Judge Meinster stated that she and Judge Moultrie have discussed the rule covering jury trials in relation to problems faced by trial courts. She explained that trial courts set several trials (and other matters) because, on the trial date, there is no certainty which jury trials (if any) would be going forward. She felt there was currently a lack of clarity regarding waiver of the jury trial right.

They reviewed the current version of the draft rule (approved by the committee some time ago) and felt it provided more clarity but offered two suggestions: (1) dropping “in person” from (b)(3) to reflect the prevalence of virtual hearings and (2) consider defining “pretrial conference” to provide a little more clarity. In looking at the draft rule, another member also asked whether “a child through their guardian ad litem or counsel for youth” reflects the new state or representation for children (best interests for children < 12; client directed for children > 12).

The Chair said the suggestions will be forwarded to the drafting committee and reminded committee members that the draft rules, after being polished by the drafting subcommittee, will come back to the larger committee.

## **V. Adjourn**

The Chair observed that the meetings lately have been short. He attributes this to all the hard work being done by subcommittees and thanked everyone for their hard work. Justice Gabriel, on behalf of the supreme court, also thanked everyone for their efforts.

The meeting adjourned just around 9:45 AM. The next meeting is April 7, 2023 at 9 AM via Webex.

*Respectfully Submitted,*

*J.J. Wallace*

*Staff Attorney, Colorado Supreme Court*

**wallace, jennifer**

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**From:** Sheri Danz [REDACTED]  
**Sent:** Thursday, December 29, 2022 6:20 AM  
**To:** o'leary, kelley  
**Cc:** wallace, jennifer; Anna Ulrich; loew, priscilla; welling, craig  
**Subject:** [External] RE: Order of Appointment CFY Draft for SCAO review.doc

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

That works for OCR. Thank you so much.

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**From:** o'leary, kelley <[REDACTED]>  
**Sent:** Tuesday, December 27, 2022 4:42 PM  
**To:** Sheri Danz [REDACTED]  
**Cc:** wallace, jennifer [REDACTED] Anna Ulrich [REDACTED] loew, priscilla [REDACTED] welling, craig [REDACTED]  
**Subject:** RE: Order of Appointment CFY Draft for SCAO review.doc

Hi Sheri,

Thanks so much for sending this along. I spoke with Terri and we agreed that, although the process may be slower than we'd all like, the form order really should be vetted through Juvenile Rules. So stay the course over there.

That said, we agree that it would be hugely beneficial for judges and clerks to see a copy of the proposed order before the live date on 1/9/23. Therefore, along with counterparts in our Court Services Division, we would like to send a statewide email to Juvenile Judges and all Clerks of Court with a copy of the proposed order. For now we will leave the statutory language in the draft (instead of adopting ORPC's proposed modification) and will emphasize that this is only a proposed form at this time.

Please let me know if you have any objections to this plan.

Happy New Year!

Kelley O'Leary, JD, LLM  
Assistant Legal Counsel  
Colorado Judicial Department  
1300 Broadway Suite 1200 | Denver, CO 80203  
Office: [REDACTED]

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**From:** Sheri Danz [REDACTED]  
**Sent:** Wednesday, December 21, 2022 2:10 PM  
**To:** morrison, terri [REDACTED] o'leary, kelley <[REDACTED]>  
**Cc:** wallace, jennifer [REDACTED] Anna Ulrich [REDACTED] loew, priscilla [REDACTED] welling, craig [REDACTED]  
**Subject:** [External] Order of Appointment CFY Draft for SCAO review.doc

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Terri and Kelley,

I hope all is well with you. I am emailing to give you an update on where we are with the Juvenile Rules 1038 subcommittee review of the CFY appointment order and the attach the current working draft for your review.

This week, the 1038 subcommittee met and was able to discuss the proposed appointment order. The magistrate and judges in attendance (3 total) believe that a form appointment order would be extremely beneficial for courts when this legislation goes into effect 1/9/23. I am copying Judge Loew on this email, who can provide more information if that is helpful.

The draft order that is attached is OCR's original draft, with a few modifications to respond to ORPC feedback. We worked on this language during our meeting and in subsequent correspondence with ORPC. The attached draft incorporates ORPC's feedback, with one exception, which I have flagged in a comment. OCR does not agree with ORPC's modification, as we pulled the language straight from the statute and have put in other language to address ORPC concerns (language that was added to the legislation to address ORPC's concerns with the flagged section during the legislative process). I am happy to continue to explain more, I just am sharing this for now in the interest of being fully transparent with the stakeholder feedback we have received.

Please note that the attached order has not been reviewed by the full Juvenile Rules committee. I am sending it based on our conversation with Kelley last week, in which we stated we would keep you updated on the status of the draft proposed order. I believe the two of you were going to discuss whether this should be vetted through Juvenile Rules or some other process, given the preferred timelines for getting a form appointment order finalized.

While you will likely get an out of office reply from me starting soon, I am actually checking emails and am happy to continue to work on this order this week and next if the State Judicial is interested in getting a form appointment order finalized before 1/9/23. I'm also available to be reached by cell: 303-588-2325.

Thank you.

|                                                                                                                                                        |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>[DISTRICT or JUVENILE] COURT, [CITY], COLORADO</b><br>Address: [#####]<br>Telephone: [#####]                                                        |  |
| The People of the State of Colorado,<br>In the Interest of:<br>[Name]<br>Child(ren),<br>and Concerning:<br>[Names]<br>Respondents.                     |  |
| <b>▲ COURT USE ONLY ▲</b>                                                                                                                              |  |
| Case Number: [#####]<br>Div. [#####]                                                                                                                   |  |
| [Name]<br>Counsel for Youth for [youth name]<br>Attorney Reg. #: [#####]<br>Name: [#####]<br>Address: [#####]<br>Telephone: [#####]<br>E-mail: [#####] |  |
| <b>ORDER OF APPOINTMENT FOR COUNSEL FOR YOUTH</b>                                                                                                      |  |

THE COURT, pursuant to §19-3-203(2), C.R.S., hereby appoints [ATTORNEY NAME] (“Attorney”) as:

- **Counsel for Youth (“CFY”) (“CFY”)** for the following youth:

- **Name: [#####], D.O.B.: [#####]**

**Guardian ad litem** for the following youth:

- **Name: [#####], D.O.B.: [#####]**

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1-25-233.8.23

CFY-As CFY, Attorney is appointed to provide specialized client-directed legal representation for a youth and owes the same duties, including undivided loyalty, confidentiality, and competent representation, to the youth as is due an adult client.

As GAL, Attorney is appointed to represent the best interests of the child(ren)/youth.

~~ATTORNEY NAME~~ ATTORNEY, and their legal team, including the ~~CFY's~~ Case Consultant (CC), ~~[INSERT NAME(S) IF DESIRED — OR DELETE]~~, are entitled, without further authorization or release, to information, including confidential information, regarding the child(ren)/youth. Pursuant to C.R.S. 19-3-203 (4) this includes but is not limited to:

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Commented [A1]: It seems that that bolding this sentence rather than "youth" over and over again in bullet points would be more consistent with the way parent disclaimer is bolded below.

- the child(ren)/youth's educational, medical, and mental health records;
- the child(ren)/youth's social service agency files;
- ~~the youth's~~ the child(ren)/youth's court records, including court files involving allegations of abuse or neglect of the youth;
- delinquency records ~~involving the youth~~ involving the child(ren)/youth;
- reports that form the basis of recommendations made to the court; and
- any other information ~~specifically regarding the youth~~ specifically regarding the child(ren)/youth relevant to the issues in the proceeding.

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This order does not confer an independent right for CFY-Attorney to obtain a parent's information or a parent's records that are confidential or that are otherwise privileged under state or federal law. CFY-Attorney must have a separate court order or release to obtain a parent's confidential or privileged information.

The court and county department shall keep CFY-Attorney apprised of significant developments in the case pursuant to §19-3-203(4), including placement notification pursuant to §19-3-213(1)(a). The county department shall share with Attorney the reports of fingerprint-based criminal history record checks from the Colorado Bureau of Investigation and from the Federal Bureau of Investigation pursuant to § 19-3-203(4).

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AttorneyCFY and their legal team shall have access to the child(ren)/youth (§19-3-203 (4)) and shall attend meetings and staffings concerning the child(ren)/youth as needed (CJD 04-06 (V)(D)(1)(d)).

1.25.233.8.23

~~CFY~~-Attorney shall provide developmentally appropriate notice to the child(ren)/youth of all hearings related to the child(ren)/youth's case pursuant to §19-3-502 (4.5).

DONE AND ORDERED this [##] day of [Month], 202[##][Year].

BY THE COURT:

\_\_\_\_\_  
[Judge/Magistrate Name]

Example

~~1.25.23~~3.8.23

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <p><b>[DISTRICT or JUVENILE] COURT, [CITY], COLORADO</b></p> <p>Address:        [#####]<br/> Telephone:      [#####]</p> <hr/> <p>The People of the State of Colorado,</p> <p>In the Interest of:</p> <p>[Name]</p> <p>Child(ren),</p> <p>and Concerning:</p> <p>[Names]</p> <p>Respondents.</p> <hr/> <p>[Name]<br/> Counsel for Youth for [youth name]<br/> Attorney Reg. #: [#####]<br/> Name:            [#####]<br/> Address:        [#####]<br/> Telephone:      [#####]<br/> E-mail:         [#####]</p> | <p><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case Number: [#####]<br/> Div. [#####]</p> |
| <p><b>ORDER OF APPOINTMENT FOR COUNSEL FOR YOUTH</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                      |

THE COURT, pursuant to §19-3-203(2), C.R.S., hereby appoints [ATTORNEY NAME] (“Attorney”) as:

- Counsel for Youth (“CFY”)** for the following youth:
  - **Name:** [#####], **D.O.B.:** [#####]
  
- Guardian ad litem** for the following youth:
  - **Name:** [#####], **D.O.B.:** [#####]

As CFY, Attorney is appointed to provide specialized client-directed legal representation for a youth and owes the same duties, including undivided loyalty, confidentiality, and competent representation, to the youth as is due an adult client.

As GAL, Attorney is appointed to represent the best interests of the child(ren)/youth.

**ATTORNEY and their legal team, including their Case Consultant, are entitled, without further authorization or release, to information, including confidential information, regarding the child(ren)/youth.** Pursuant to C.R.S. 19-3-203 (4) this includes but is not limited to:

- the child(ren)/youth's educational, medical, and mental health records;
- the child(ren)/youth's social service agency files;
- the child(ren)/youth's court records, including court files involving allegations of abuse or neglect of the youth;
- delinquency records involving the child(ren)/youth;
- reports that form the basis of recommendations made to the court; and
- any other information specifically regarding the child(ren)/youth relevant to the issues in the proceeding.

This order does not confer an independent right for Attorney to obtain a parent's information or a parent's records that are confidential or that are otherwise privileged under state or federal law. **Attorney must have a separate court order or release to obtain a parent's confidential or privileged information.**

The court and county department shall keep Attorney apprised of significant developments in the case pursuant to §19-3-203(4), including placement notification pursuant to §19-3-213(1)(a). The county department shall share with Attorney the reports of fingerprint-based criminal history record checks from the Colorado Bureau of Investigation and from the Federal Bureau of Investigation pursuant to § 19-3-203(4).

Attorney and their legal team shall have access to the child(ren)/youth (§19-3-203 (4)) and shall attend meetings and staffings concerning the child(ren)/youth as needed (CJD 04-06 (V)(D)(1)(d)).

Attorney shall provide developmentally appropriate notice to the child(ren)/youth of all hearings related to the child/(ren)/youth's case pursuant to §19-3-502 (4.5).

DONE AND ORDERED this [##] day of [Month], [Year].

BY THE COURT:

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[Judge/Magistrate Name]

Example

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Memorandum

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To: C.R.J.P. Committee

From: Drafting Subcommittee

Re: Order to Interview or Examine Child

Date: 9/22/22; Updated 1/27/2023 by Subcommittee formed to Redraft the Rule—redlined and clean rule proposals are attached at the end of the memo.

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**SUMMARY:** The Subcommittee recommends forming a subcommittee to redraft this rule.

**EXPLANATION:** The Subcommittee recognizes that procedures around securing an order to interview or examine a child would be helpful. However, the draft rule does not precisely track the process laid out in section 19-3-308(3), C.R.S. (2022) (e.g., there's no mention of the proceeding to show cause). The current draft rule also requires an affidavit, which the statute does not. The draft rule also seems to suggest that the interviewer can enter the home to investigate (which the Subcommittee believes would require a search warrant). The Subcommittee generally feels the rule's language authorizing "investigation" may be too broad.

Present (9/22/2022) Draft Rule:

Order to Interview or Examine Child

- (a) If there is a report of a child being abused or neglected and if the department is denied the ability to interview, observe, or examine the child or the child's residence or location of the reported abuse by the child's parent, caretaker, or other responsible person, the department may apply for an order with the juvenile court or district court having jurisdiction for an order that the department be allowed to interview, observe, or examine the child and to conduct any necessary investigation. Such application must be in the form of an affidavit, sworn to or affirmed to before the judge. The affidavit must:
- (1) identify why the department has determined it necessary to interview, observe, or examine the child or the child's residence or location of the reported abuse;
  - (2) explain why the department has been unable to interview, observe, or examine the child or to conduct a necessary investigation;
  - (3) identify the person or persons responsible for not allowing the department to interview, observe, or examine the child or the child's residence or location of the reported abuse; and,
  - (4) identify or describe, as nearly as may be, the premises to be observed or examined.
- (b) If good cause is shown to the court to grant the application, the court must issue an order granting the application. The order must inform the responsible party or parties that failure to comply with the court's order may constitute contempt and subject the responsible party or parties to incarceration in the county jail until the responsible party or parties comply with the court's order.

Excerpt of section 19-3-308(3):

(3)(a) The investigation shall include an interview with or observance of the child who is the subject of a report of abuse or neglect. The investigation may include a visit to the child's place of residence or place of custody or wherever the child may be located, as indicated by the report. In addition, in connection with any investigation, the alleged perpetrator shall be advised as to the allegation of abuse and neglect and the circumstances surrounding such allegation and shall be afforded an opportunity to respond.

(b) If admission to the child's place of residence cannot be obtained, the juvenile court or the district court with juvenile jurisdiction, upon good cause shown, shall order the responsible person or persons to allow the interview, examination, and investigation. Should the responsible person or persons refuse to allow the interview, examination, and investigation, the juvenile court or the district court with juvenile jurisdiction shall hold an immediate proceeding to show cause why the responsible person or persons shall not be held in contempt of court and committed to jail until such time as the child is produced for the interview, examination, and investigation or until information is produced that establishes that said person or persons cannot aid in providing information about the child. Such person or persons may be held without bond. During the course of any such hearing, the responsible person or persons, or any necessary witness, may be granted use immunity by the district attorney against the use of any statements made during such hearing in a subsequent or pending criminal action.

## Order to Interview or Examine Child; Investigation

~~(a) If there is a report of a child being abused or neglected and if the department is denied the ability to interview, observe, or examine the child or the child's residence or location of the reported abuse by the child's parent, caretaker, or other responsible person, the department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by with the juvenile court or district court having jurisdiction for an order that the department be allowed to interview, observe, or examine the child and to conduct any necessary investigation. submitting an affidavit. Such application must be in the form of an affidavit, sworn to or affirmed to before the judge.~~

~~(b) The affidavit must, at a minimum:~~

~~(1) provide identifying information about the child. Identify:~~

~~(2) explain why the department has determined it is necessary to interview or examine the child, or to conduct the investigation; w, observe, or examine the child or the child's residence or location of the reported abuse;~~

~~(3) identify the person or persons responsible for refusing the interview, examination or investigation; and~~

~~(2) explain the circumstances preventing the department from why the department has been unable to interview, observe, or examine the child, or to conducting the a necessary investigation;~~

~~(3) identify the person or persons responsible for not allowing the department to interview, observe, or examine the child or the child's residence or location of the reported abuse; and,~~

~~(4)~~

~~(4) identify or describe, as nearly as may be, the premises to be observed or examined.~~

~~(c) If good cause is shown to the court to grant the application, the court must issue an order the responsible person or persons granting the application to allow the interview, examination, and investigation.~~

~~(d) The order must inform the responsible person or persons party or parties that failure to comply with the court's order may result in being held in contempt of court and constitute contempt and committed to jail subject the responsible party or parties to incarceration in the county jail without bond until the responsible person or persons party or parties complies with the court's order.~~

**Commented [AU1]:** See People v Dyer 2019 COA 161, 457 P.3d 783 and People in Interest of K.K., No 22CA210 (Colo. App. Sept. 29, 2022) (unpublished) for context.

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**Commented [AU2]:** After discussion, Sub Comm agrees that affidavit is appropriate since remedy for failure to comply is punitive contempt

**Commented [AU3]:** This phrase promoted significant discussion at 11/18/22 meeting. Question is whether there is any ability for dep't to obtain access to home for investigation purposes, through this section or otherwise? Z would say no; JJ believes they can obtain search warrant, but this statute is not a search warrant statute; ANU wants to conduct add'l research into whether there is authority for department to access home prior to adjudication and to ensure we are not eliminating only statutory authority for investigation into conditions of home with the language in this rule.

**Commented [AU4R3]:** See CRS 19-3-308(2), (3)

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## Order to Interview or Examine Child; Investigation

- (a)** The department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by submitting an affidavit, sworn or affirmed to before the judge.
- (b)** The affidavit must, at a minimum:
  - (1)** provide identifying information about the child;
  - (2)** explain why it is necessary to interview or examine the child, or to conduct the investigation;
  - (3)** identify the person or persons responsible for refusing the interview, examination or investigation; and
  - (4)** explain the circumstances preventing the department from interviewing or examining the child, or conducting the investigation.
- (c)** If good cause is shown to the court to grant the application, the court must order the responsible person or persons to allow the interview, examination, and investigation.
- (d)** The order must inform the responsible person or persons that failure to comply with the court's order may result in being held in contempt of court and committed to jail without bond until the responsible person or persons complies with the court's order.

wallace, jennifer

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**From:** David Ayraud [REDACTED]  
**Sent:** Monday, February 6, 2023 10:43 AM  
**To:** wallace, jennifer  
**Subject:** [External] OTI Rule

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

JJ - I circulated the proposed OTI Rule for County Attorney comment. Below is the proposed rule and the feedback.

Order to Interview or Examine Child; Investigation

(a) The department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by submitting an affidavit, sworn or affirmed to before the judge.

(b) The affidavit must, at a minimum:

(1) provide identifying information about the child;

(2) explain why it is necessary to interview or examine the child, or to conduct the investigation;

(3) identify the person or persons responsible for refusing the interview, examination or investigation; and

(4) explain the circumstances preventing the department from interviewing or examining the child, or conducting the investigation.

(c) If good cause is shown to the court to grant the application, the court must order the responsible person or persons to allow the interview, examination, and investigation.

(d) The order must inform the responsible person or persons that failure to comply with the court's order may result in being held in contempt of court and committed to jail without bond until the responsible person or persons complies with the court's order.

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There is a question/concern about (b)(2) - C.R.S. 19-3-308(3)(a) says "The investigation shall include an interview with or observance of the child who is the subject of a report of abuse or neglect." While it is likely a motion for an OTI may include some of this information, it appears the proposed rule is adding requirements for an OTI and could be viewed to conflict with the statute. The statute requires an interview/observation.

(b)(3) and (4) could almost be combined. The assumption is that a specific person may be preventing or refusing, but that is not always the case. As an example, there have been circumstances where it's known that a child is at a DV shelter and after discussing the situation with the DV shelter, they have said they need to stick to their policy of not disclosing if someone is at the shelter, but they agree if there is a court order they will comply. We would want to support DV shelters sticking to their policies and are fine obtaining an order, but this does not specifically fit with how the proposed (b)(3) and (4) are worded - maybe only (4) is needed.

Finally, it is understood why the final provision about advising a party of the possibility of contempt if they violate an OTI may be helpful. There were two questions about this: First, this presumes the only remedy is contempt, when really there is no statute or case law that clarifies this, so there is a bit of concern on the rule possibly "making law". Second, along that same line, it was recommended this be changed to "may" advise. Making a mandatory procedural statement in a rule that does not exist anywhere else does appear to go into the "making law" realm, but also seems to possibly create appeal issues by creating a mandatory procedure. Making the advisement discretionary/encouraged makes the most sense.

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I wasn't sure who else this should go to if it's not to go to the full committee. Thanks.

David

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