

Title of Proposed Rule: SB22-1038 (Right to Counsel) 2509-1

CDHS Tracking #: 22-07-14-04

Office, Division, & Program:  
OCYF/ DCW/ Permanency

Rule Author: Korey Elger

Phone: 303-249-5662

E-Mail:

[Korey.Elger@state.co.us](mailto:Korey.Elger@state.co.us)

### RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

- a.        x | Board     Executive Director
- b.        x | Regular    Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

- AG Initial Review
- Initial Board Reading
- AG 2<sup>nd</sup> Review
- Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

- Number
- 1   Amended Rules
- 2   New Rules
- Repealed Rules
- Reviewed Rules

What month is being requested for this rule to first go before the State Board?	December 2022
What date is being requested for this rule to be effective?	January 2023
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director’s Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: \_\_\_\_\_ Date: \_\_\_\_\_

#### REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates:	1st Board 12/9/22	2nd Board <u>1/6/23</u>	Effective Date <u>3/2/23</u>
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### **STATEMENT OF BASIS AND PURPOSE**

#### **Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

House Bill 22-1038 "Concerning client-directed legal representation for youth in court proceedings for youth" was signed into law in April 2022. Current law requires the appointment of a guardian ad litem for children or youth in dependency and neglect cases. The bill requires that client-directed counsel for youth be appointed for children or youth 12 years of age or older to provide specialized client-directed legal representation.

The new law prohibits the waiver of a child's or youth's right to counsel in dependency and neglect proceedings. The bill also allows a child or youth to be a party in a dependency and neglect proceeding. For a child or youth 12 years of age or older with diminished capacity, a guardian ad litem shall remain in the role and separate counsel for the child or youth must be appointed. Due to changes from this new law the rules that govern child welfare practice will need to be updated. This packet includes updates to 12CCR-2509-01 to include definitions of "Counsel for youth" and "Guardian Ad Litem" and include expectations for counsel for youth in responsibilities for children and youth served in child welfare cases as outlined in Colorado Revised Statutes 13-91-103.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

  

to comply with state/federal law and/or

to preserve public health, safety and welfare

Justification for emergency:

#### **State Board Authority for Rule:**

Code	Description
26-1-107(5), (6), C.R.S. (2022)	State Board to promulgate rules.
26-1-109(3), (4), (5), C.R.S. (2022)	State department rules to coordinate with federal programs.
26-1-111(2), C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities.

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**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-1-111(2), C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities.

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Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

The definition for Guardian Ad Litem and Counsel for youth is from Colorado Revised Statute 13-91-103

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## REGULATORY ANALYSIS

### 1. List of groups impacted by this rule.

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Child welfare sub pac, Perm Task Group, Stakeholder meetings, Office of Child Representative, Office of Respondent parent counsel, children, youth, professionals, and families involved in the child cases.

### 2. Describe the qualitative and quantitative impact.

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

Children, youth, professionals, and families involved in the child welfare cases as well as relevant stakeholders will be impacted as these rules will comply with state law, which allows for youth over the age of 12 to have counsel and a voice for themselves in Dependency and Neglect cases. The short and long term consequences will result in compliance with Colorado law.

### 3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact". The answer should include "no impact because...."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

No State impact as this is providing guidance and there are no costs associated with the changes needed to modify state systems and rule changes. This is a planned for and absorbable impact for the state department.

County Fiscal Impact

No County impact as this is providing guidance and there are no costs associated with this change for counties.

Federal Fiscal Impact

No Federal Impact as this is providing guidance and there are no costs associated with this change.

Other Fiscal Impact (such as providers, local governments, etc.)

There will be a fiscal impact on the Office of Child Representative because they are developing training for Guardians Ad Litem due to the change to practice for attorneys.

### 4. Data Description

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied*

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*upon when developing this rule?*

This is not applicable as this is new law passed in April of 2022, so no time has passed for data to be collected.

**Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

There is not an alternative to rule making as the rules will need to have a definition consistent with the statute about the roles of a Guardian Ad Litem and a Counsel for youth in child welfare cases.

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**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
7.000 D	Does not include Counsel for youth	D. It is the responsibility of all adults involved in a child/youth's life, including but not limited to county department personnel, parents, foster parents, adoptive parent/s, Guardians Ad Litem, Court-Appointed Special Advocates, next of kin, treatment providers, and others, to seek opportunities to foster sibling relationships, to promote continuity, and to help sustain family relationships.	D. It is the responsibility of all adults involved in a child/youth's life, including but not limited to county department personnel, parents, foster parents, adoptive parent/s, Guardians Ad Litem, COUNSEL FOR YOUTH, Court-Appointed Special Advocates, next of kin, treatment providers, and others, to seek opportunities to foster sibling relationships, to promote continuity, and to help sustain family relationships.	To include Counsel for youth	
7.000.2	Definitions	None	"COUNSEL FOR YOUTH" MEANS AN ATTORNEY-AT-LAW WHO PROVIDES SPECIALIZED CLIENT-DIRECTED LEGAL REPRESENTATION FOR A CHILD OR YOUTH AND WHO OWES THE SAME DUTIES, INCLUDING UNDIVIDED LOYALTY, CONFIDENTIALITY, AND COMPETENT REPRESENTATION, TO THE CHILD OR YOUTH AS IS DUE AN ADULT CLIENT. COUNSEL FOR YOUTH MAY BE APPOINTED BY A COURT TO REPRESENT A CHILD OR YOUTH IN A PROCEEDING PURSUANT TO ARTICLE 1, 3, OR 7 OF TITLE 19, C.R.S., OR MAY BE ASSIGNED BY THE OFFICE OF THE CHILD'S REPRESENTATIVE PURSUANT TO ARTICLE 7 OF TITLE 19, C.R.S.; COUNSEL FOR YOUTH DOES NOT MEAN DEFENSE COUNSEL FOR A JUVENILE PURSUANT TO ARTICLE 2.5 OF TITLE 19, C.R.S.	To include Counsel for youth	



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7.000.2	Definitions	None	"GUARDIAN AD LITEM" MEANS A PERSON APPOINTED BY A COURT TO ACT IN THE BEST INTERESTS OF A PERSON WHOM THE PERSON APPOINTED IS REPRESENTING IN PROCEEDINGS PURSUANT TO TITLE 19, C.R.S. AND WHO, IF APPOINTED TO REPRESENT A PERSON IN A DEPENDENCY AND NEGLECT PROCEEDING PURSUANT TO ARTICLE 3 OF THIS TITLE 19, MUST BE AN ATTORNEY-AT-LAW LICENSED TO PRACTICE IN COLORADO.		
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**STAKEHOLDER COMMENT SUMMARY**

**Development**

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

Cara Nord, Office of the Child’s Representative

**This Rule-Making Package**

The following individuals and/or entities were contacted and informed that this rulemaking was proposed for consideration by the State Board of Human Services:

Office of Child’s Representative, Office of Respondent Parent Council and Colorado Counties, As well two stakeholder meetings were held November 7<sup>th</sup> and 14, 2022. There were no comments from the stakeholder meetings

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes  No

If yes, who was contacted and what was their input?

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes  No

Name of Sub-PAC Child Welfare

Date presented September 2022

What issues were raised? none

Vote Count

<i>For</i>	<i>Against</i>	<i>Abstain</i>
All voted in agreement		

If not presented, explain why.

**PAC**

Have these rules been approved by PAC?

Yes  No

Date presented October 2022

What issues were raised? none

Vote Count

<i>For</i>	<i>Against</i>	<i>Abstain</i>
All voted in agreement		

If not presented, explain why.

**Other Comments**

Comments were received from stakeholders on the proposed rules:

Yes  No

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*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

M

Melanie Jordan <mjordan@coloradoorpc.org>

Thu, Sep 29,  
10:37 AM

to Gretchen, me, Cara, Sheri, Chris, Zaven, Melissa

Hello everyone,

Thank you for agreeing to meet with the ORPC about our concerns with some of the proposed rules related to HB 22-1038. I am attaching the two PDFs where we had questions or concerns. Our comments are saved on the PDFs, and I have also summarized them below. Please ignore the highlighting – I was trying to highlight to make it easier, and the PDF was being really wonky so I stopped. Sheri, this is giving me flashbacks to editing the GRID with you, but I promise it is not that extensive!

#### **Need Clarity:**

- 7.301.24 – I think there is an error in the new language – I think it is supposed to be deleting 16 and changing it to 12 in S4, but that is not how it reads.
- 7.301.241 – the language seems to exclude parents whose children have been removed but whose rights are still intact. This is not a change, but just noticed it in reading the original rule. Would like to discuss whether this needs to be changed (but not as part of this rule packet).
- 7.304.651 – this QRTP rule lists youth, GAL, and/or CFY specifically as being able to object to QRTP placement, but all parties can (as the rule correctly identifies). Why list out just these parties separately?

#### **Places where RPC should be added**

- 7.301.241 – counsel for youth are being added to the BID meeting, but RPC are not included even though parents are included on the list. CFY represent youth and RPC represent parents, both in client-directed roles, so it does not make logical sense to add one and not the other.
- 7.304.65 – same logic as above.
- 7.704.11 - same logic as above.

#### **Places where parents and RPC should be added**

- 7.304.53 – the requirement to share background checks when ordered by the court should include RPC and parents.
- 7.708.2 – foster parents should have the ability to communicate with parents.
- 7.708.31.1 – parents and RPC should be notified in the same way that GAL/CFY are notified when alternative care is provided.
- 7.714.31 – parents and RPC should be able to obtain a report from facilities who deny children's rights.

We did not have any concerns with packets 2 or 3. I don't think we will need the full time we have allocated for the meeting to discuss these concerns, so I am hoping that we can address these concerns first and then,

Analysis Page

DOCUMENT 4

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if there is enough time, have a separate conversation with CDHS about how our office can better engage in the rule-making process with CDHS. Thank you.

Best regards,

Melanie Jordan, Esq. | Case Strategy Director

OFFICE OF RESPONDENT PARENTS' COUNSEL

1300 Broadway | **Suite 340** | Denver, Colorado 80203 | Cell: (303) 641-9054

To schedule a case consultation, go here: <https://calendly.com/mjordan-orpc>

## 12 CCR 2509-1

### 7.000 OVERVIEW OF CHILD WELFARE SERVICES – PROGRAM AREAS AND TARGET GROUPS FOR 3, 4, 5, 6, AND 7

Child Welfare Services constitutes a specialized set of services defined at Section 26-5-101(3), C.R.S., that are intended to strengthen the ability of families to protect and care for their own children, prevent involvement or continued involvement in the child welfare system, minimize harm to children and youth, and ensure permanency planning. The goal of the treatment/prevention plan shall be to support the intactness of families, when appropriate, through the provision of services aimed at stabilizing the family situation and strengthening the parents/guardians in fulfilling their parental responsibilities to their children. Intervention shall be guided by respect for the family's integrity, knowledge of the legal bases for action, and sound social work practice.

The following principles shall underlie the provision of Child Welfare Services:

- A. Children and youth, including youth who have run away, are experiencing homelessness, or who are unaccompanied, shall have the right to be raised in an environment free from abuse or neglect preferably by their families of origin by providing reasonable efforts to maintain the family unit through the provision of in-home services.
- B. Placement shall be considered when there is evidence that leaving the child in the home would jeopardize the safety of the child or the community. Reasonable efforts shall be made to prevent placement or to reunite the family as soon as safely possible if removal is necessary. In determining reasonable efforts to be made, and in making such reasonable efforts, the child's health and safety shall be the paramount concern. A court may determine that reasonable efforts shall not be required; otherwise, reasonable efforts shall be made to preserve and reunify families.
- C. Appropriate and culturally competent and trauma informed services that promote safety shall be provided to families, children, and youth in their own homes and in out-of-home placements.
- D. Children and youth who have been removed from the care of their parents shall have the right to a diligent search according to Section 7.304.52 (12 CCR 2509-4) for extended family members who can be considered as placement resources, to be placed in a safe environment, to not be moved indiscriminately from one placement to another, and to have the assurance of a permanency plan.

It is the responsibility of all adults involved in a child/youth's life, including but not limited to county department personnel, parents, foster parents, adoptive parent/s, Guardians Ad Litem, COUNSEL FOR YOUTH, Court-Appointed Special Advocates, next of kin, treatment providers, and others, to seek opportunities to foster sibling relationships, to promote continuity, and to help sustain family relationships.

#### 7000.2 Definitions

COUNSEL FOR YOUTH MEANS AN ATTORNEY AT LAW WHO PROVIDES SPECIALIZED CLIENT DIRECTED LEGAL REPRESENTATION FOR A CHILD OR YOUTH AND WHO OWES THE SAME DUTIES, INCLUDING UNDIVIDED LOYALTY, CONFIDENTIALITY, AND COMPETENT REPRESENTATION, TO THE CHILD OR YOUTH AS IS DUE AN ADULTS CLIENT. COUNSEL FOR YOUTH MAY BE APPOINTED BY A COURT TO REPRESENT A CHILD OR YOUTH IN A PROCEEDING PURSUANT TO ARTICLE 1,3, OR 7 OF TITLE 19, C.R.S. OR MAY BE ASSIGNED BY

THE OFFICE OF THE CHILD'S REPRESENTATIVE PURSUANT TO ARTICLE 7 OR TITLE 19, C.R.S. COUNSEL FOR YOUTH DOES NOT MEAN DEFENSE COUNSEL FOR A JUVENILE PURSUANT TO ARTICLE 2.5 OF TITLE 19 C.R.S.

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