



**Title of Proposed Rule:** SB22-1038 (Right to Counsel) 2509-2

**CDHS Tracking #:** 22-07-1402

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)

## **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 will include updates to 12 CCR-2509-02 to include counsel for youth and guardian ad litem and includes rule updates to incorporate language regarding the new law.

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), C.R.S. (2022)	State department rules to coordinate with federal programs.
26-1-111, C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities.

**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.

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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, Permanency Task Group, Stakeholder meetings, Office of the Child Representative, Office of Respondent parent counsel.

### **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?*

This rule will impact the groups listed above because it will allow for youth over the age of twelve to have counsel and a voice for themselves in Dependency and Neglect and Juvenile Justice 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" 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 these changes needed to modify state systems and rule changes 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 of the cost they are incurring to address training for Guardians Ad Litem due to and the change to practice for attorneys.

### **4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

This is not applicable as this is new law so no time has passed for data to be collected.

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### **5. 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 rulemaking as the rules will need to have a definition through the statute about how and what a Guardian Ad Litem and a Counsel for Youth will be doing 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>		
7.104.12	Audio Or Video Recording Of The Interview Or Observation	<p>A. The interview or observation may be audio or video taped except when it is impracticable under the circumstances or will result in trauma to the child, as determined by the county department.</p> <p>B. If audio or video recording is conducted, the following standards shall be followed:</p> <ol style="list-style-type: none"> <li>1. The interview shall be conducted by a competent interviewer, and may occur at a child advocacy center, as defined in Section 19-1-103(19.5), C.R.S., that has a Memorandum of Understanding with the county department responsible for the assessment or by a competent interviewer for the county department.</li> <li>2. The child shall be advised that audio or video taping of the interview is to be conducted and the advisement shall be documented in the state automated case management system. If the child objects to videotaping of the assessment, such taping shall not be conducted by the county department.</li> <li>3. If it is the county department's policy to routinely video or audio tape interviews, and an exception is made, the reason for the exception shall be</li> </ol>	<p>A. The interview or observation may be audio or video taped except when it is impracticable under the circumstances or will result in trauma to the child, as determined by the county department.</p> <p>B. If audio or video recording is conducted, the following standards shall be followed:</p> <ol style="list-style-type: none"> <li>1. The interview shall be conducted by a competent interviewer, and may occur at a child advocacy center, as defined in Section 19-1-103(19.5), C.R.S., that has a Memorandum of Understanding with the county department responsible for the assessment or by a competent interviewer for the county department.</li> <li>2. The child shall be advised that audio or video taping of the interview is to be conducted and the advisement shall be documented in the state automated case management system. If the child objects to videotaping of the assessment, such taping shall not be conducted by the county department.</li> <li>3. If it is the county department's policy to routinely video or audio tape interviews, and an exception is made, the reason for the exception shall be documented in the state automated case management system.</li> <li>4. If there is a request by any party to the action to view or listen to an audio or video tape, the child and/or, the guardian ad litem OR COUNSEL FOR YOUTH shall be notified in advance of the request, when possible.</li> </ol>	To include Counsel for youth	

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		<p>documented in the state automated case management system.</p> <p>4. If there is a request by any party to the action to view or listen to an audio or video tape, the child and/or, the guardian ad litem shall be notified in advance of the request, when possible.</p> <p>5. Access to these audio or video tapes shall be subject to the rules of discovery and governed by the confidentiality provisions under Section 7.605.</p>	<p>5. Access to these audio or video tapes shall be subject to the rules of discovery and governed by the confidentiality provisions under Section 7.605.</p>		
7.104.24	Notice	<p>7.104.24 Notice</p> <p>A. The following individuals shall receive notice:</p> <p>1. The licensing authority or certifying unit shall be notified that a referral concerning abuse and/or neglect has been received within one (1) working day after receipt of the referral.</p> <p>2. The licensing authority or certifying unit shall be notified if the assessment indicates there is an immediate threat to the child(ren)'s health, safety, or welfare within one (1) working day of such determination.</p> <p>3. Custodial agencies, including county departments, other states, and appropriate divisions of the State Department shall be notified as follows:</p> <p>a. Immediately, if there are safety issues or if an injury requires medical treatment; and,</p> <p>b. Following completion of the assessment, if a child in their custody was the subject of a referral or if the assessment reveals concerns regarding the child care practices which could negatively impact the child(ren).</p>	<p>7.104.24 Notice</p> <p>A. The following individuals shall receive notice:</p> <p>1. The licensing authority or certifying unit shall be notified that a referral concerning abuse and/or neglect has been received within one (1) working day after receipt of the referral.</p> <p>2. The licensing authority or certifying unit shall be notified if the assessment indicates there is an immediate threat to the child(ren)'s health, safety, or welfare within one (1) working day of such determination.</p> <p>3. Custodial agencies, including county departments, other states, and appropriate divisions of the State Department shall be notified as follows:</p> <p>a. Immediately, if there are safety issues or if an injury requires medical treatment; and,</p> <p>b. Following completion of the assessment, if a child in their custody was the subject of a referral or if the assessment reveals concerns regarding the child care practices which could negatively impact the child(ren).</p> <p>4. Parents or legal guardians of alleged child(ren) victim(s) shall be notified as follows:</p> <p>a. By the custodial counties when alleged abuse and/or neglect occurs in out-of-home care setting;</p> <p>b. By the assessing county when there is no custodial county;</p>	To include Counsel for youth	

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		<p>4. Parents or legal guardians of alleged child(ren) victim(s) shall be notified as follows:</p> <ul style="list-style-type: none"><li>a. By the custodial counties when alleged abuse and/or neglect occurs in out-of-home care setting;</li><li>b. By the assessing county when there is no custodial county;</li><li>c. By the assessing county when alleged abuse and/or neglect occurs in less than twenty-four (24) hour child care with notification provided prior to an interview with child(ren), when possible;</li><li>d. When an assessment is being or has been conducted on a referral of abuse and/or neglect; and shall include the nature of the alleged abuse and/or neglect and the findings of the assessment; and,</li><li>e. If circumstances do not allow for direct contact, then notification of the allegations of abuse and/or neglect and findings shall be provided in writing.</li></ul> <p>5. Parents or legal guardians of uninvolved children in less than twenty-four (24) hour licensed child care settings shall be given notice of an assessment within seventy-two (72) hours when it has been determined by the State Department or county department that:</p> <ul style="list-style-type: none"><li>a. The incident of alleged child abuse and/or neglect that prompted the assessment is at the level of a moderate, severe, or fatal incident of abuse and/or neglect, or involves sexual abuse;</li></ul>	<p>c. By the assessing county when alleged abuse and/or neglect occurs in less than twenty-four (24) hour child care with notification provided prior to an interview with child(ren), when possible;</p> <p>d. When an assessment is being or has been conducted on a referral of abuse and/or neglect; and shall include the nature of the alleged abuse and/or neglect and the findings of the assessment; and,</p> <p>e. If circumstances do not allow for direct contact, then notification of the allegations of abuse and/or neglect and findings shall be provided in writing.</p> <p>5. Parents or legal guardians of uninvolved children in less than twenty-four (24) hour licensed child care settings shall be given notice of an assessment within seventy-two (72) hours when it has been determined by the State Department or county department that:</p> <ul style="list-style-type: none"><li>a. The incident of alleged child abuse and/or neglect that prompted the assessment is at the level of a moderate, severe, or fatal incident of abuse and/or neglect, or involves sexual abuse;</li><li>b. Notice to the parents or legal guardians of the uninvolved children is essential to the assessment of the specific allegation of abuse and/or neglect or is necessary for the safety of children cared for at the facility; and,</li><li>c. A determination has been made and a state or county department supervisor has provided written approval of the determination for which basis and approval may be in electronic form.</li></ul> <p>6. The director of the facility or director's designee shall be:</p> <ul style="list-style-type: none"><li>a. Apprised of the allegation of abuse and/or neglect; and,</li><li>b. Advised regarding the results of the assessment and provided a verbal report</li></ul>		
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		<p>b. Notice to the parents or legal guardians of the uninvolved children is essential to the assessment of the specific allegation of abuse and/or neglect or is necessary for the safety of children cared for at the facility; and,</p> <p>c. A determination has been made and a state or county department supervisor has provided written approval of the determination for which basis and approval may be in electronic form.</p> <p>6. The director of the facility or director's designee shall be:</p> <p>a. Apprised of the allegation of abuse and/or neglect; and,</p> <p>b. Advised regarding the results of the assessment and provided a verbal report immediately once a determination is made. If the county department is unable to make a determination regarding the person(s) alleged to be responsible for abuse and/or neglect, the director shall also be advised so that decisions regarding the continued employment of the employee can be made by the facility.</p> <p>7. Guardians ad litem of alleged victims, by the custodial county when there is an assessment of an allegation of abuse and/or neglect in out-of-home care.</p>	<p>immediately once a determination is made. If the county department is unable to make a determination regarding the person(s) alleged to be responsible for abuse and/or neglect, the director shall also be advised so that decisions regarding the continued employment of the employee can be made by the facility.</p> <p>7. Guardians ad litem OF ALLEGED VICTIMS AND OR COUNSEL FOR YOUTH of alleged victims, by the custodial county when there is an assessment of an allegation of abuse and/or neglect in out-of-home care.</p>		
7.106.12 1	Additional Actions When a County Department has had prior/current involvement	<p>A. When a county department has custody of the child/YOUTH and/or protective supervision, it shall immediately take the following actions:</p> <p>1. Notify the parents, guardians, and/or legal custodians of the incident. If the parents, guardians, and/or legal</p>	<p>A. When a county department has custody of the child/YOUTH and/or protective supervision, it shall immediately take the following actions:</p> <p>1. Notify the parents, guardians, and/or legal custodians of the incident. If the parents, guardians, and/or legal custodians reside in another county or state, the county</p>	To include Counsel for youth	

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		<p>custodians reside in another county or state, the county department shall coordinate with the county department of residence for the parents, guardians, and/or legal custodians to provide personal notification, whenever possible.</p> <p>2. Notify the sibling/s in an age-appropriate and developmentally appropriate manner of the event and any placement changes from the Department of Human Services directly or indirectly in consideration of the victim's preferences when possible.</p> <p>3. Notify the director of the county department of the incident. The county director shall also be immediately notified if the department has had prior child welfare involvement within the last three (3) years that was directly related to the egregious incident of abuse and/or neglect, near fatality or fatality to include referrals that have been screened out. A complete copy of the child/youth's case record shall be made available to the director of the county department.</p> <p>4. Notify the court, the attorney for the county department, and the Guardian Ad Litem (when one has been assigned) of the incident involving any child/youth who is under the court's jurisdiction.</p>	<p>department shall coordinate with the county department of residence for the parents, guardians, and/or legal custodians to provide personal notification, whenever possible.</p> <p>2. Notify the sibling/s in an age-appropriate and developmentally appropriate manner of the event and any placement changes from the Department of Human Services directly or indirectly in consideration of the victim's preferences when possible.</p> <p>3. Notify the director of the county department of the incident. The county director shall also be immediately notified if the department has had prior child welfare involvement within the last three (3) years that was directly related to the egregious incident of abuse and/or neglect, near fatality or fatality to include referrals that have been screened out. A complete copy of the child/youth's case record shall be made available to the director of the county department.</p> <p>4. Notify the court, the attorney for the county department, and the Guardian Ad Litem (when one has been assigned) AND/OR COUNSEL FOR YOUTH (WHEN ONE HAS BEEN ASSIGNED) of the incident involving any child/youth who is under the court's jurisdiction.</p>		

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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 Child’s Representative

**This Rule-Making Package**

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

\_\_\_\_\_

**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 Sub Pac		
Date presented	September 2022		
What issues were raised?	None by voting members		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	All voted yes		
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 yes		
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.*

The Office Of Respondent Council sent an email as follows :

Thank you! Would it be possible for our agency to provide written feedback? We don't have staff available to attend either of those dates.

Previous to voting the Office of Respondent parent council and the staff from the Division of child welfare meet and went through additional comments that had been brought by this office:

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.

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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, 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.

All of these concerns were talked through with this stakeholder about the proposal prior to voting

#### 7.104.12 Audio Or Video Recording Of The Interview Or Observation [Eff. 1/1/15]

A. The interview or observation may be audio or video taped except when it is impracticable under

the circumstances or will result in trauma to the child, as determined by the county department.

B. If audio or video recording is conducted, the following standards shall be followed:

1. The interview shall be conducted by a competent interviewer, and may occur at a child advocacy center, as defined in Section 19-1-103(19.5), C.R.S., that has a Memorandum of Understanding with the county department responsible for the assessment or by a competent interviewer for the county department.
2. The child shall be advised that audio or video taping of the interview is to be conducted and the advisement shall be documented in the state automated case management system. If the child objects to videotaping of the assessment, such taping shall not be conducted by the county department.
3. If it is the county department's policy to routinely video or audio tape interviews, and an exception is made, the reason for the exception shall be documented in the state automated case management system.
4. If there is a request by any party to the action to view or listen to an audio or video tape, the child and/or, the guardian ad litem OR COUNSEL FOR YOUTH shall be notified in advance of the request, when possible.
5. Access to these audio or video tapes shall be subject to the rules of discovery and governed by the confidentiality provisions under Section 7.605.

#### 7.104.24 Notice

A. The following individuals shall receive notice:

1. The licensing authority or certifying unit shall be notified that a referral concerning abuse and/or neglect has been received within one (1) working day after receipt of the referral.
2. The licensing authority or certifying unit shall be notified if the assessment indicates there is an immediate threat to the child(ren)'s health, safety, or welfare within one (1) working day of such determination.
3. Custodial agencies, including county departments, other states, and appropriate divisions of the State Department shall be notified as follows:
  - a. Immediately, if there are safety issues or if an injury requires medical treatment; and,
  - b. Following completion of the assessment, if a child in their custody was the subject of a referral or if the assessment reveals concerns regarding the childcare practices which could negatively impact the child(ren).
4. Parents or legal guardians of alleged child(ren) victim(s) shall be notified as follows:
  - a. By the custodial counties when alleged abuse and/or neglect occurs in out-of-home care setting;
  - b. By the assessing county when there is no custodial county;
  - c. By the assessing county when alleged abuse and/or neglect occurs in less than twenty-four (24) hour child care with notification provided prior to an interview with child(ren), when possible;
  - d. When an assessment is being or has been conducted on a referral of abuse and/or neglect; and shall include the nature of the alleged abuse and/or neglect and the findings of the assessment; and,
  - e. If circumstances do not allow for direct contact, then notification of the allegations of abuse and/or neglect and findings shall be provided in writing.

5. Parents or legal guardians of uninvolved children in less than twenty-four (24) hour licensed child care settings shall be given notice of an assessment within seventy-two (72) hours when it has been determined by the State Department or county department that:

- a. The incident of alleged child abuse and/or neglect that prompted the assessment is at the level of a moderate, severe, or fatal incident of abuse and/or neglect, or involves sexual abuse;
- b. Notice to the parents or legal guardians of the uninvolved children is essential to the assessment of the specific allegation of abuse and/or neglect or is necessary for the safety of children cared for at the facility; and,
- c. A determination has been made and a state or county department supervisor has provided written approval of the determination for which basis and approval may be in electronic form.

6. The director of the facility or director's designee shall be:

- a. Apprised of the allegation of abuse and/or neglect; and,
- b. Advised regarding the results of the assessment and provided a verbal report immediately once a determination is made. If the county department is unable to make a determination regarding the person(s) alleged to be responsible for abuse and/or neglect, the director shall also be advised so that decisions regarding the continued employment of the employee can be made by the facility.

7. Guardians ad litem OF ALLEGED VICTIMES AND OR COUNSEL FOR YOUTH ~~of alleged victims~~, by the custodial county when there is an assessment of an allegation of abuse and/or neglect in out-of-home care.

7.106.121 Additional Actions When County Department has had Prior/Current Involvement

A. When a county department has custody of the child/YOUTH and/or protective supervision, it shall immediately take the following actions:

1. Notify the parents, guardians, and/or legal custodians of the incident. If the parents, guardians, and/or legal custodians reside in another county or state, the county department shall coordinate with the county department of residence for the parents, guardians, and/or legal custodians to provide personal notification, whenever possible.
2. Notify the sibling/s in an age-appropriate and developmentally appropriate manner of the event and any placement changes from the Department of Human Services directly or indirectly in consideration of the victim's preferences when possible.
3. Notify the director of the county department of the incident. The county director shall also be immediately notified if the department has had prior child welfare involvement within the last three (3) years that was directly related to the egregious incident of abuse and/or neglect, near fatality or fatality to include referrals that have been screened out. A complete copy of the child/youth's case record shall be made available to the director of the county department.
4. Notify the court, the attorney for the county department, and the Guardian Ad Litem (when one has been assigned) AND/OR COUNSEL FOR YOUTH (WHEN ONE HAS BEEN ASSIGNED) of the incident involving any child/youth who is under the court's jurisdiction.