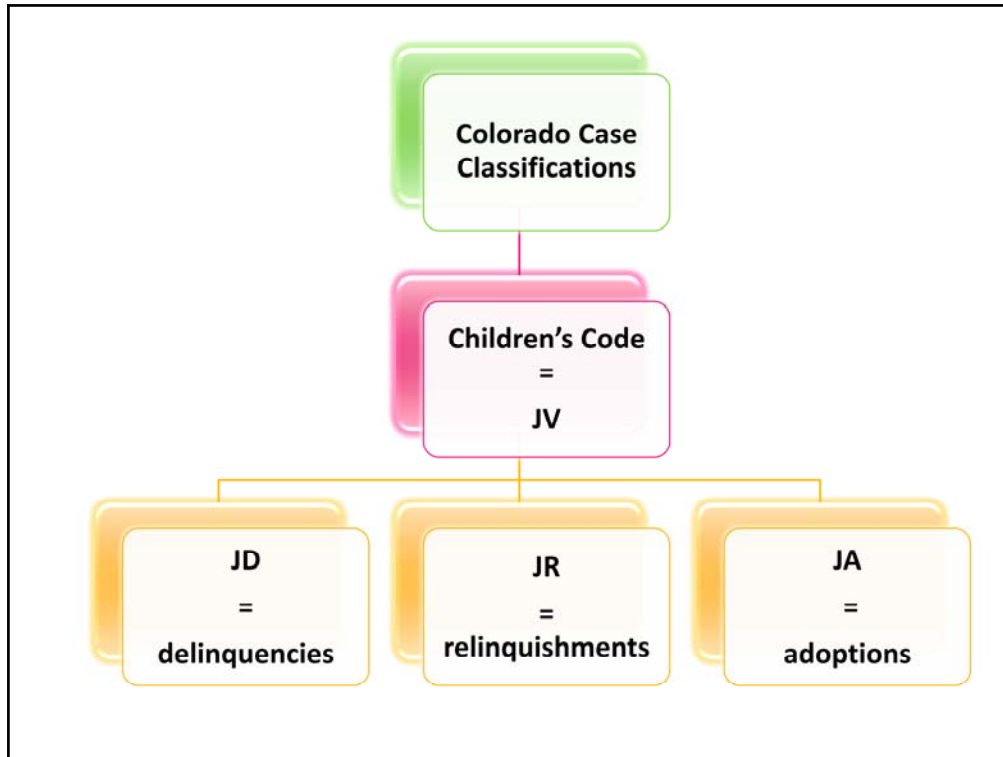


## COLORADO'S COURTS & COLORADO'S CHILDREN

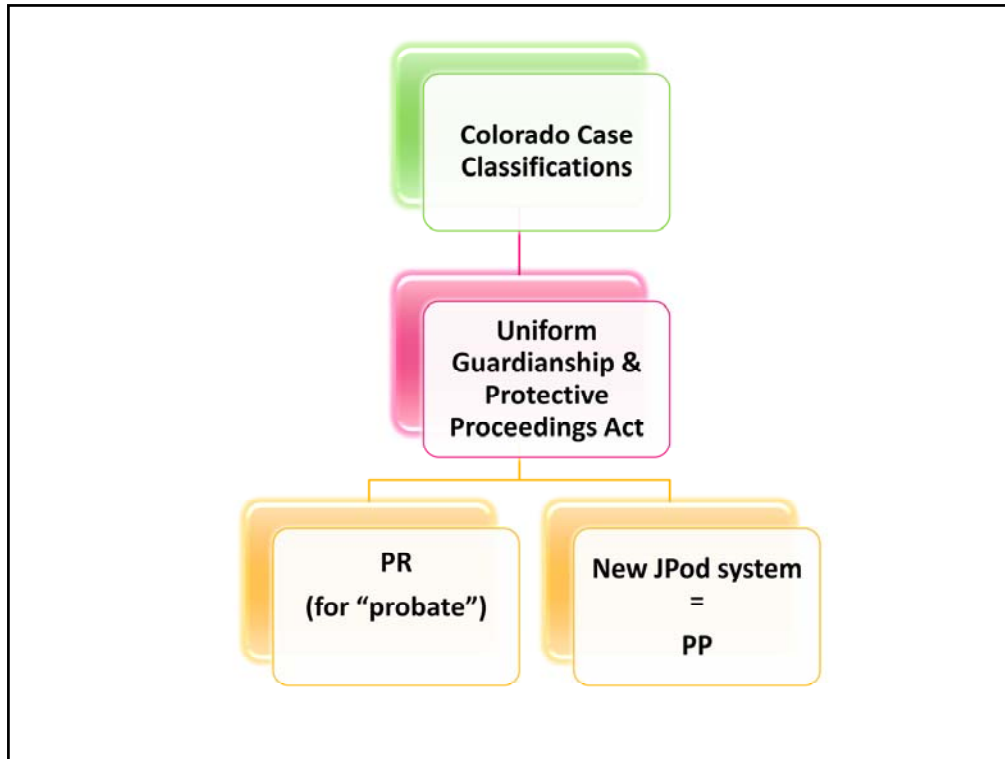
The Hon. C. Jean Stewart presentation to Summit on Children, Keystone Colorado

- In Colorado, the legal relationships among minor children and their parents or guardians and their assets and rights of support are defined, created and regulated by several laws:
- **Colorado Children's Code** §19-1-101, C.R.S. *et seq.*
- **Colorado Guardianship and Protective Proceedings Act** §15-14-101, C.R.S. *et seq.*
- **Uniform Dissolution of Marriage Act** §14-10-101, C.R.S. *et seq.*

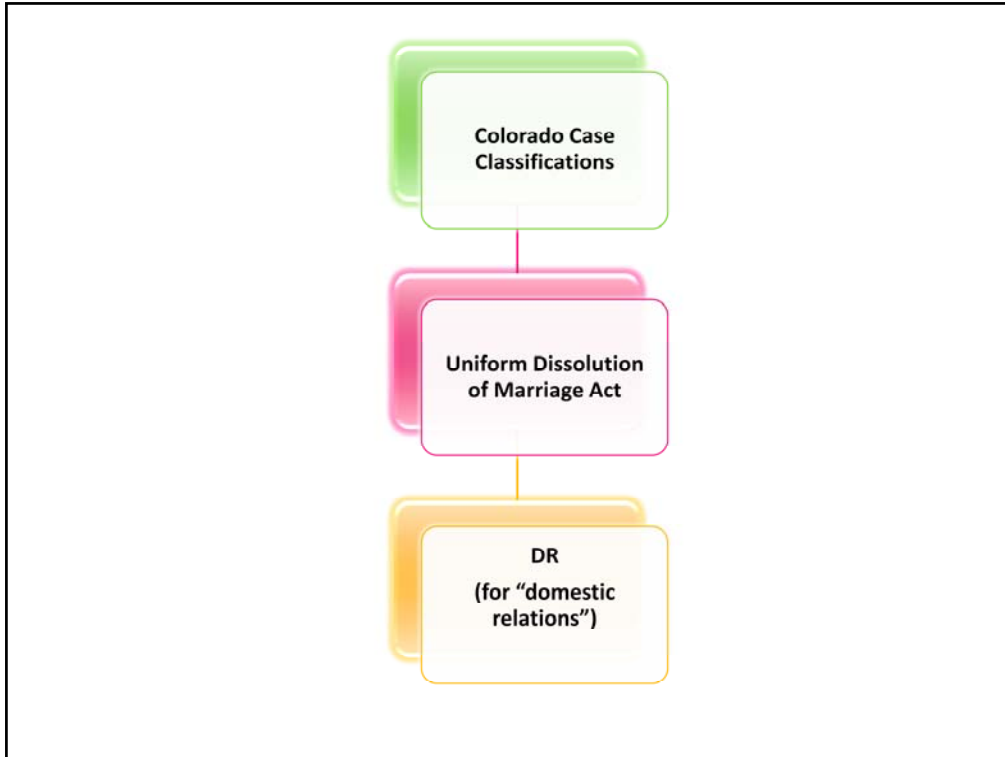


The current Colorado court management system assigns separate case “classifications” to actions brought under the separate laws, as follows:

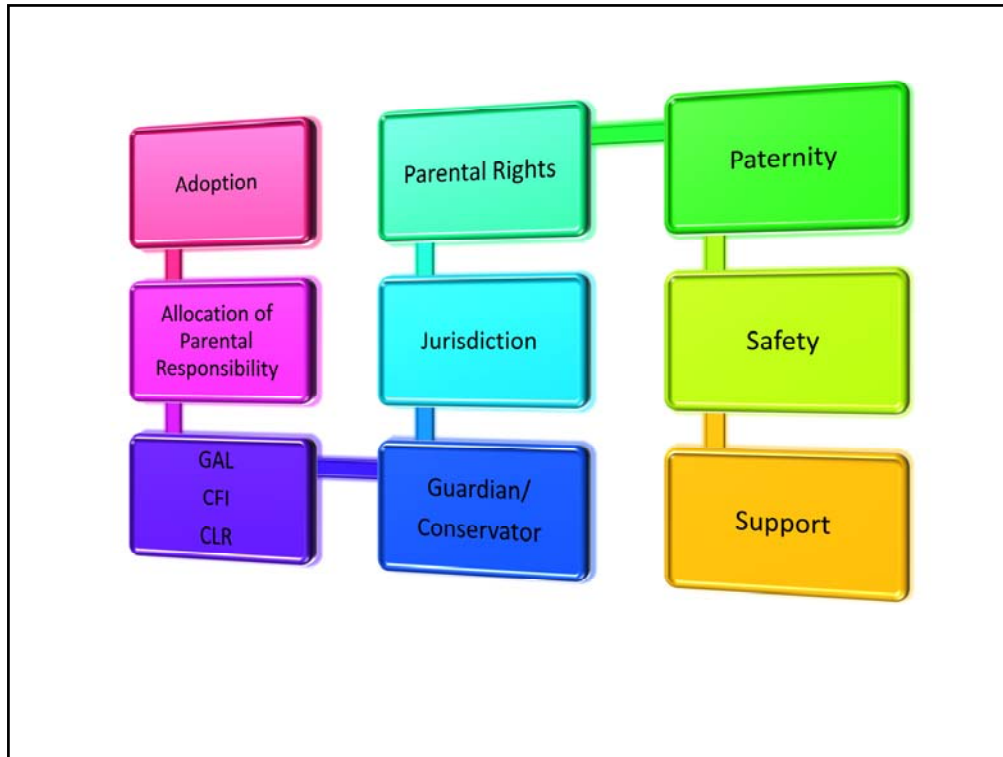
- JV = Colorado Children’s Code
  - JD = delinquencies
  - JR = relinquishments
  - JA = adoptions



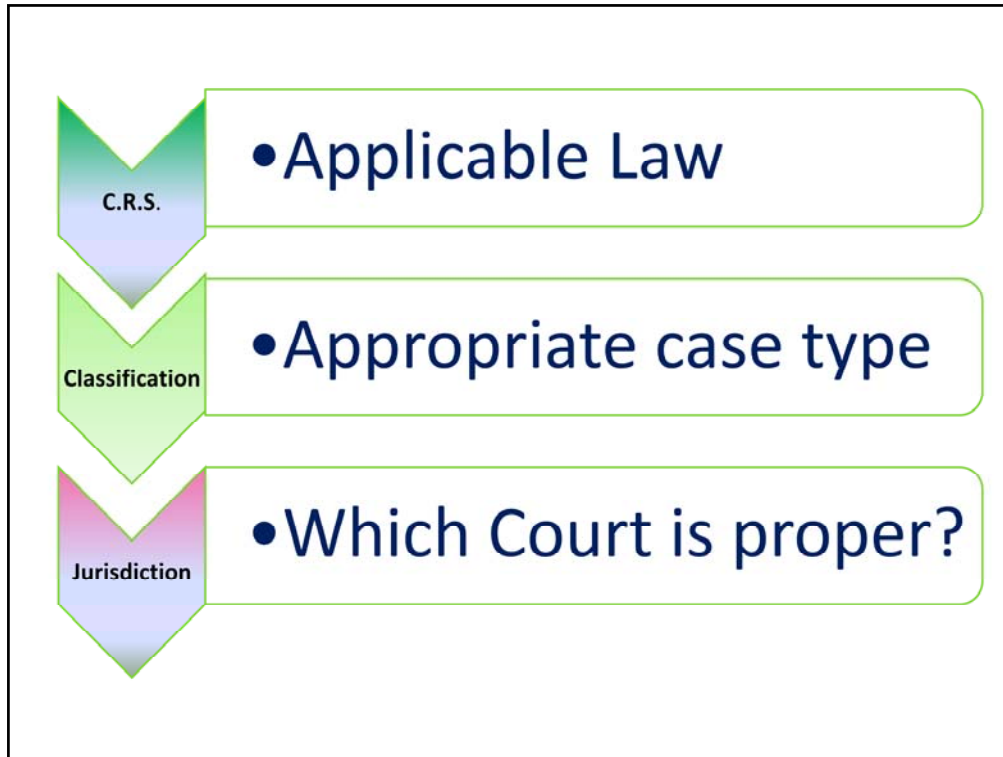
- PR = Colorado Uniform Guardianship & Protective Proceedings Act (under JPOD, these will be classified as “PP” cases)



- DR = Colorado Uniform Dissolution of Marriage Act



- Today's presentation will address a variety of legal issues, the differences in the applicable law, and the commonalities...
- We'll start with
- Adoption
- APR
- Guardians ad litem
- Child & Family Investigator
- Child Legal Representative
- Guardianship & conservatorship issues
- Jurisdiction
- Parental rights
- Paternity
- Safety
- Support.



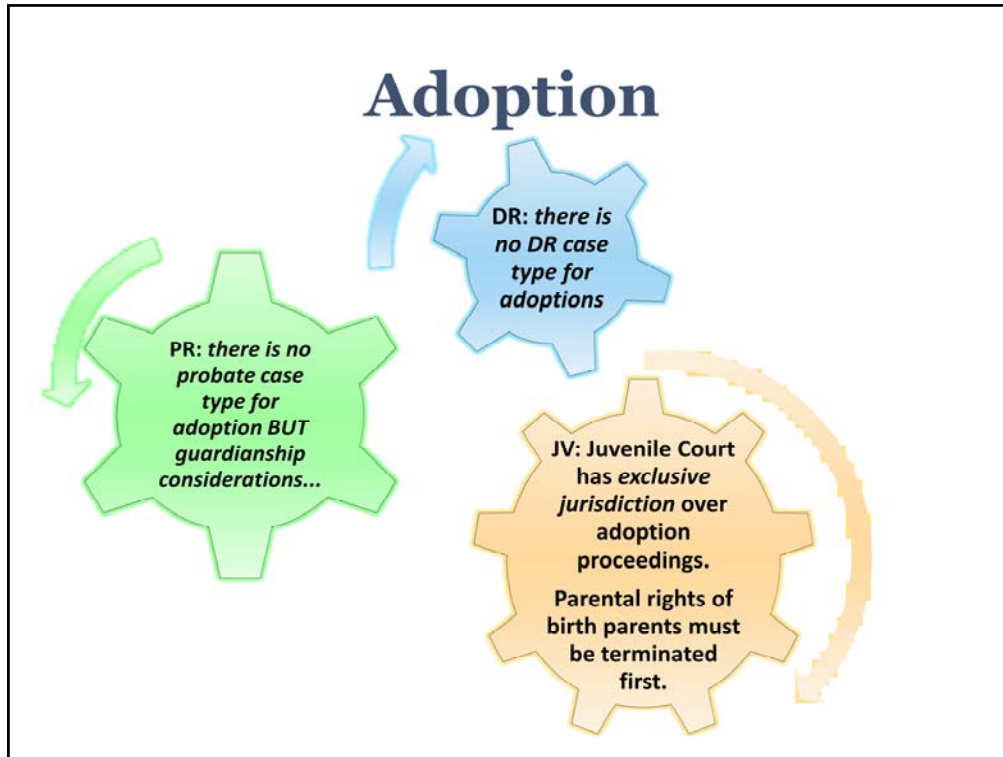
The following pages identify:

the applicable law,

the appropriate case type, and

the proper court for a variety of legal proceedings

(Judge: may want to add note that this is particularly tricky in Denver – one needs to make the physical decision about which courtroom to go to! In Routt County, you just go to the courthouse to file...but the lawyers, clerks, and judges need to know what label to assign to each case, and which law to apply...)



Adoption:

**JV** –

C.R.S. §19-5-100.2 to 19-5-403 (adoptions not rooted in a D&N process)

C.R.S. §19-3-601 to 19-3-610 (D&N process adoptions)

- Parental rights of birth parents must first be terminated
- Adoption proceedings must be conducted by a juvenile court, which has exclusive jurisdiction.

**PR** – There is no PR case type for adoption; however:

- A guardian appointed for a minor child under a PR case may petition for adoption of the minor ward after having served as guardian for one (1) year. C.R.S. § 19-5-203(1)(k);
- Under C.R.S. §15-14-208(3), with specific authorization from the probate court, a guardian appointed by a probate court may consent to the adoption of the minor ward; and
- Because adoption may be in the best interest of a minor child, a probate judge asked to appoint a guardian for a minor child may take into account long term adoption prospects, In Re J.C.T., 176 P.3d 726 (Colo. 2007).

**DR** – There is no DR case type for adoption.

## Allocation of Parental Responsibility ("APR")



Parental  
Responsibility:  
an umbrella that  
covers  
**decision making**  
and  
**parenting time**

The term "custody" has been changed to "parental responsibility", except in the Uniform Acts relating to jurisdiction. APR is an umbrella that includes decision making (education, medical, etc.) and also includes "parenting time."

Guidelines are in DR statutes, but the cases also can come in under PR or JV cases...look to go to the court with the most information about the particular family and the best interest of the child

**JV** – C.R.S. §19-1-104(6). A party to a dependency and neglect case can petition the juvenile court to allocate parental responsibility only when there is no child custody or APR action pending in district court. Decree is then filed in the district court where the child resides. If an APR case is pending in District Court and a D&N case is pending in Juvenile Court, the general practice is to certify the issues of APR and parenting time to the Juvenile Court, that way the Court with the most information regarding the strengths and weaknesses of the family members can enter the APR order.

**PR** – Where a probate court has a case challenging a testamentary guardianship appointment for a minor child or seeking modification of an existing guardianship, and there is no child custody or APR case pending in district court, probate court applies §14-10-123 *et. seq.*, C.R.S. to determine APR. See *In Re A.R.D.*, 43 P.3d 632 (Colo. App. 2001); *In Re R.M.S.*, 128 P.3d. 783 (Colo. 2006) "best interest" standard).

**DR** – C.R.S. §14-10-123. A petition concerning the allocation of parental responsibilities may be filed by:

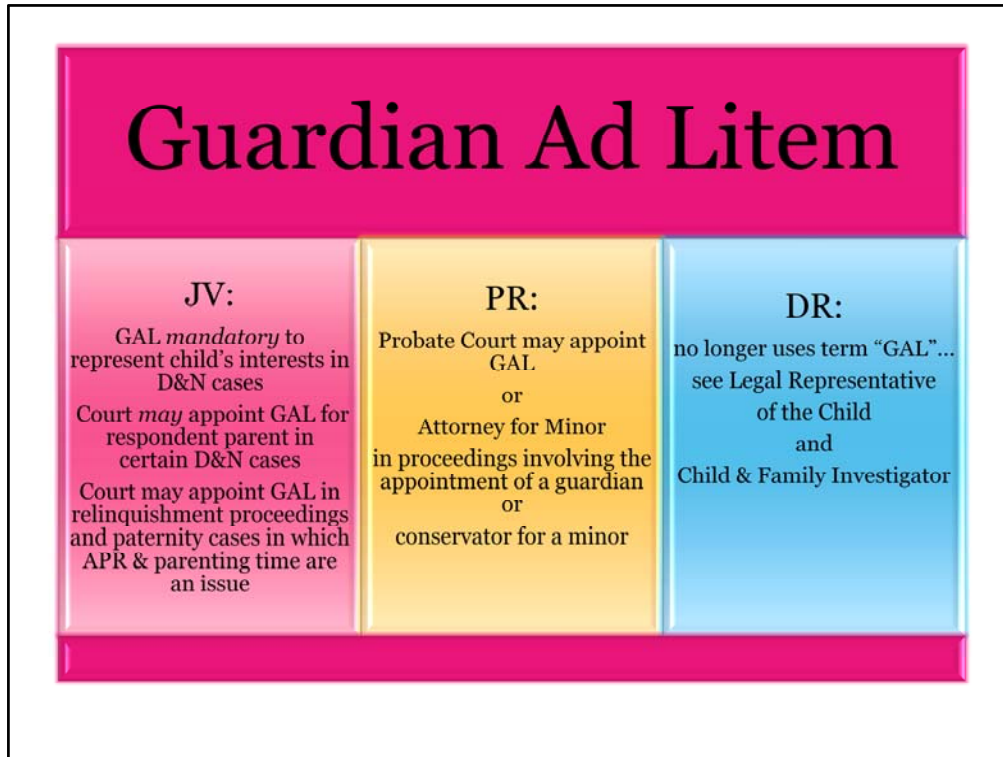
- A parent
- By a person other than a parent who has lived with the child separately or with a parent for 6 months
- By any interested party if the child is not living with a parent;
- By a parent or other person who has filed an order issued by the juvenile court pursuant to §19-1-104(6) above in the district court in the county where the child resides.



*Protect, Investigate, Advocate*

**DEFINITIONS:**

- Guardian ad Litem: a person appointed by the court who is generally regarded as a representative of the best interests of the child.
- Child and Family Investigator (“CFI”): [formerly called a “special advocate”] an investigative arm of the court, directed to investigate, report, and make recommendations on issues as set forth in the appointment order based on consideration of the relevant factors for determining the best interests of the child. May be an attorney, a mental health professional or any other person with appropriate training and qualifications. May not be called as a witness in the proceedings.
- Legal Representative of the Child (“CLR”): an attorney appointed by the court with all of the authority and responsibility of an attorney, governed by the Colorado Rules of Professional Conduct, may file motions, and can be called as a witness in the proceedings.
- Counsel: an attorney appointed by the court pursuant to represent the interests of the child.



**JV** –A juvenile court judge “shall appoint a guardian ad litem” in any dependency and neglect case pursuant to §19-3-203, C.R.S., who shall investigate and make recommendations to the court. The GAL is “charged in general with the representation of the child’s interests.”

GAL is mandatory for a child in D&N cases

- Court may also appoint GAL for respondent parent in D&N case if parent is underage or deemed incompetent.
- Court may also appoint GAL to protect the interests of a child in a relinquishment proceeding. §19-5-103(9)
- Court frequently appoints in paternity cases in which APR & parenting time are an issue

**PR** –A probate judge may appoint either or both of the following in a probate proceeding involving appointment of a guardian or conservator for a minor:

Guardian ad Litem: pursuant to §15-14-115, C.R.S., the court may appoint a guardian ad litem if the court determines representation of the interest otherwise would be inadequate. The PR court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.

Attorney for Minor: pursuant to §15-14-205(3), C.R.S., the court may (discretionary) appoint an attorney to represent the minor any time the court determines that the “interests of the minor may be inadequately represented.” Court should “give consideration to the choice of the minor” if age 12 or older.

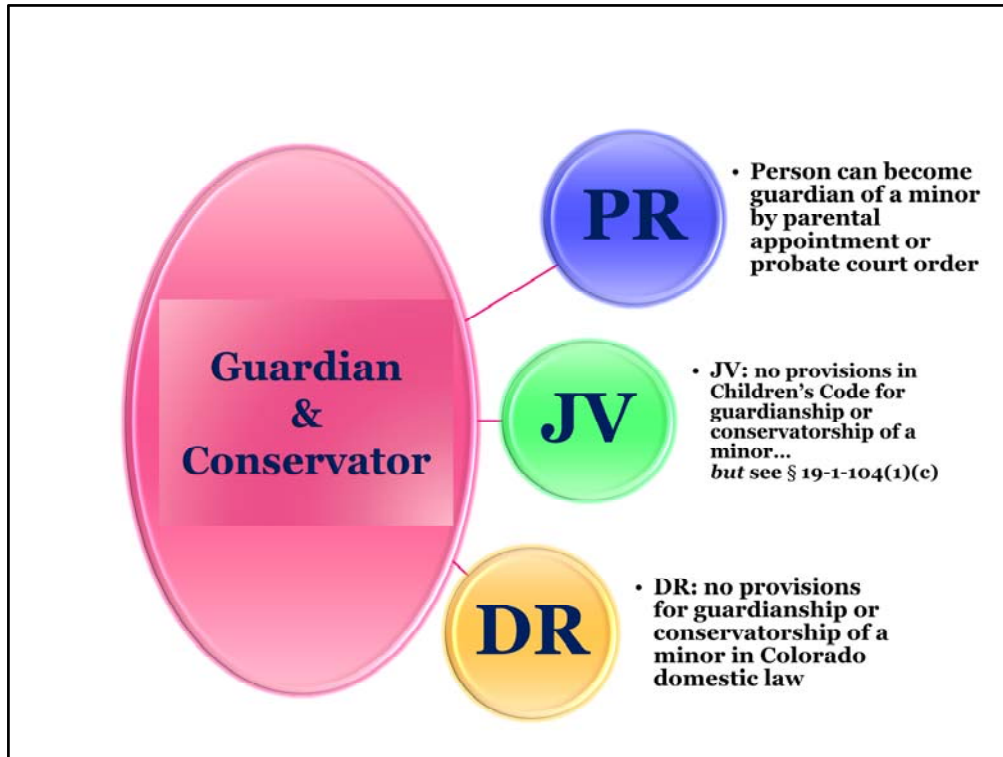
**DR** -- DR no longer uses “GAL.”



**DR** -- DR no longer uses "GAL." A domestic court judge (DR) may appoint either or both of the following in any domestic relations proceeding involving allocation of parental responsibility:

**Legal representative of the child** - §14-10-116, C.R.S. provides for the appointment of an attorney to serve as the legal representative of the child. The legal representative of the child serves the child's "best interests."

**Child & family investigator (CFI)** - C.R.S. §14-10-116.5 provides for appointment of a child and family investigator in a case involving allocation of parental rights to "investigate, report, and make recommendations as specifically directed by the court in the appointment order." This person may be an attorney, but can also be a mental health professional or other person who meets the standards in CJD 04-08.



**Guardian:** an individual, at least 21 years of age, appointed by a court to exercise the powers of a parent as to the minor's support, care, education, health, and welfare.

**Conservator:** an individual, at least 21 years of age, appointed by a court to manage the estate of the minor.

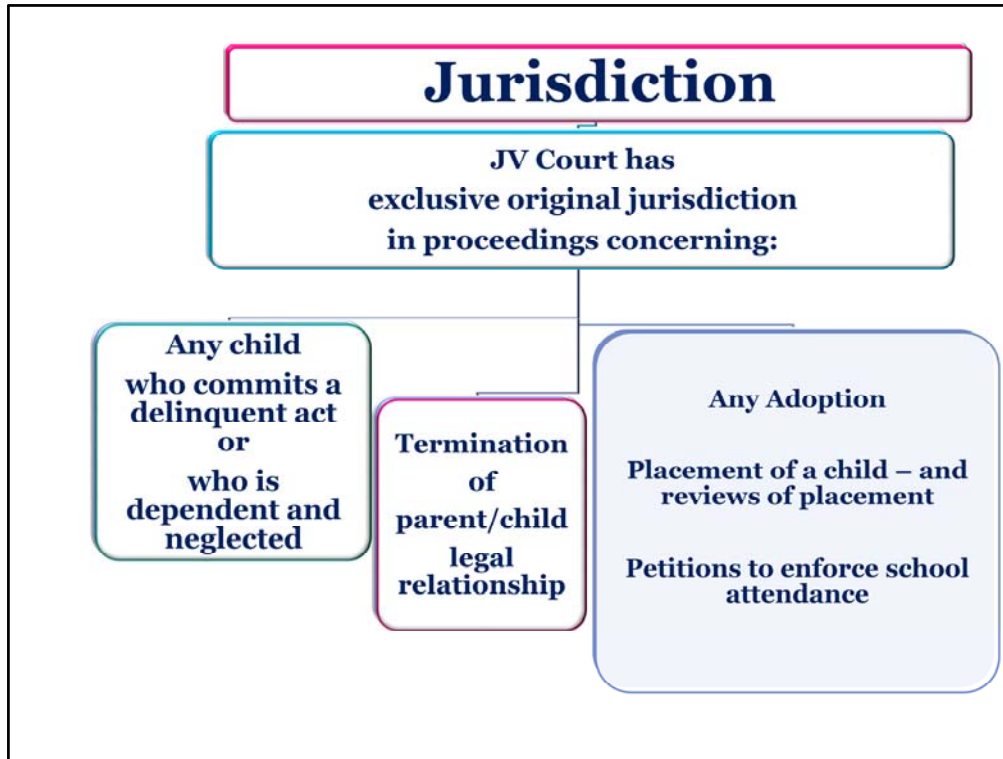
**JV:** There are no provisions in the Colorado Children's Code for Guardianship or conservatorship of a minor....but see §19-1-104(1)(c)

**PR:** Under §15-14-201, C.R.S, a person can become the guardian of a minor by:

Parental Appointment

Order of the probate court

**DR:** There are no provisions in Colorado domestic law for guardianship or conservatorship of a minor.



Jurisdiction:

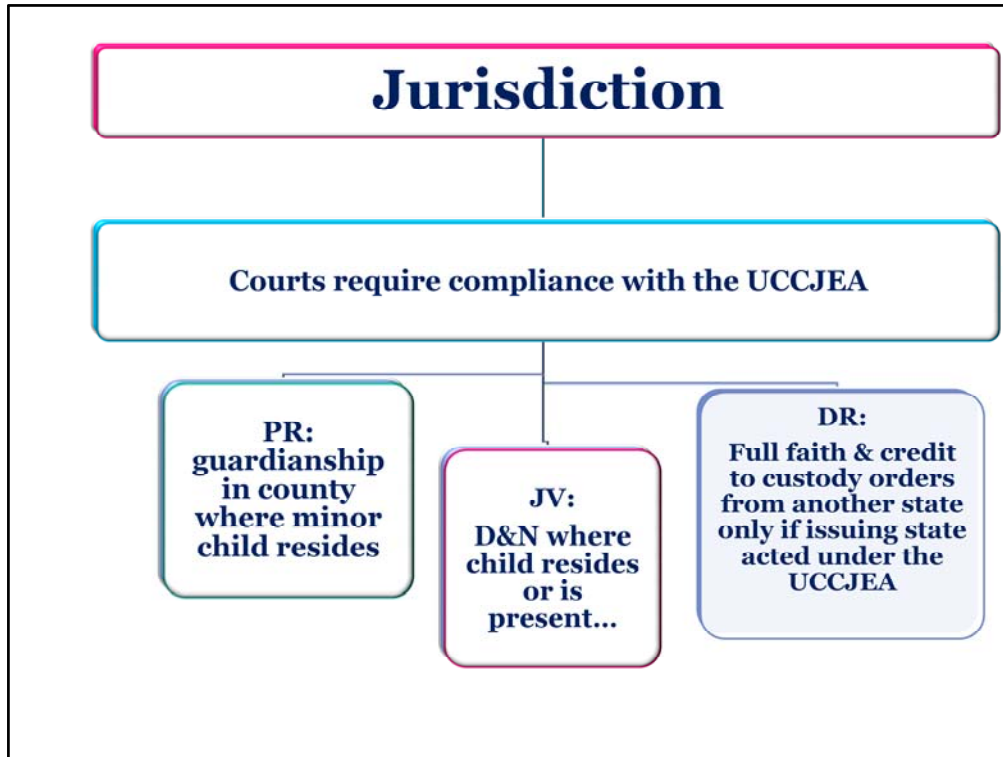
**JV:** C.R.S. §19-1-104(1)

The Juvenile Court has exclusive original jurisdiction in proceedings

- concerning any child committing a delinquent act;
- concerning any child who is dependent or neglected;
- to terminate the legal parent-child relationship;
- to determine the legal custody or guardianship of any child who comes within the juvenile court’s jurisdiction under other provisions of the Children’s Code;
- for determination of paternity and issuance of support orders under Article 6 of the Children’s Code;
- for the adoption of a person of any age;
- for judicial consent to marriage, employment, or enlistment of a child when such consent is required by law;
- for treatment or commitment of a child who has a mental illness or a developmental disability who comes within the court’s jurisdiction under other provisions of the Children’s Code;
- for placement of a child pursuant to the Interstate Compact for the Placement of Children;
- concerning filing of petitions for the enforcement of school attendance;
- to determine petitions for the need for review of placement of children;
- to decide appeals from a child held in contempt by a municipal court.

A Dependency or Neglect case is commenced where the child resides or is present. C.R.S. §19-3-201(1).

The Juvenile Court’s jurisdiction continues until the child becomes 21 years of age, unless terminated earlier by the Court.



The Children’s Code also requires compliance with the UCCJEA. If a Dependency or Neglect case is filed in Colorado, and there is a prior custody order from another state, the courts in the two states must communicate and decide which state is the child’s home state and has jurisdiction.

**PR: Guardianship may be commenced in the county where the minor child resides;**

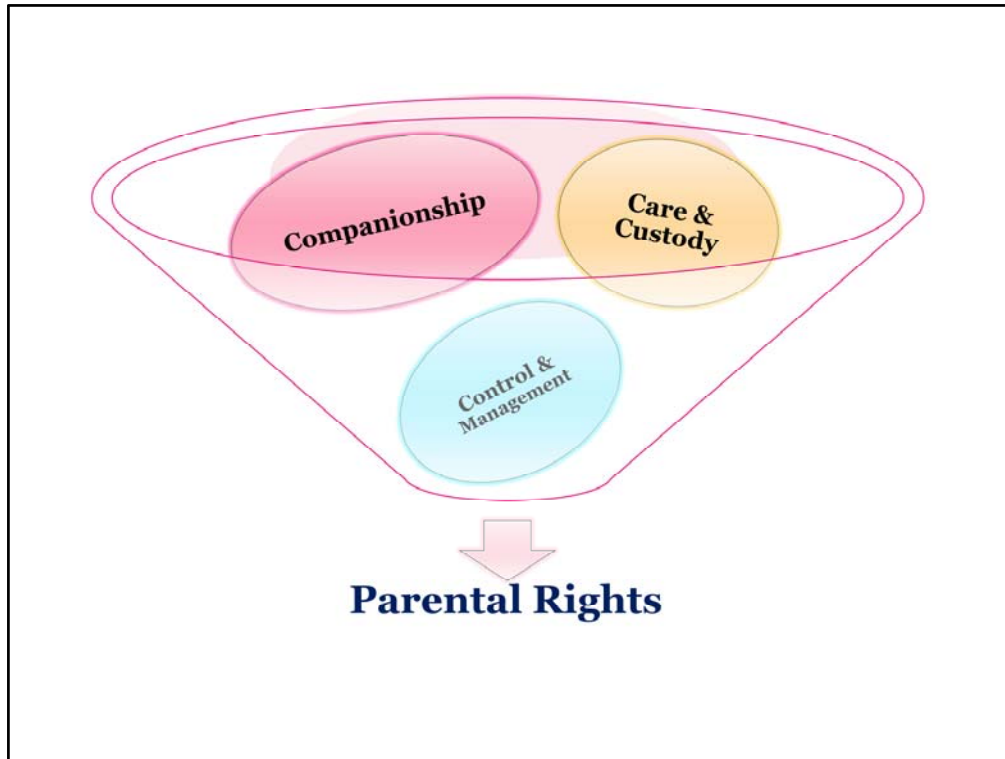
**DR: The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (§14-13-101 et.seq.)**

Applies in all child custody cases involving divorce, legal separation, declaration of invalidity, allocation of parental responsibility, paternity, grandparent visitation, guardianship (probate), child abuse, child neglect, termination of parental rights, and domestic violence, but not adoptions.

Requires home state jurisdiction (child must have lived here for the past 6 months, or left less than 6 months ago) in new cases; continuing jurisdiction in modification cases (SUBJECT MATTER JURISDICTION).

Requires Colorado to give full faith and credit to custody orders of other states ONLY IF the issuing state’s initial exercise of jurisdiction was consistent with the Act. Jurisdiction continues in the issuing state until all parties and child have left, unless the issuing state relinquishes jurisdiction.

JV court has jurisdiction until child turns 21/PR court has jurisdiction until child turns 18 (guardianship) or 21 (conservatorship)



### **Parental Rights**

Definition – include the whole body of rights and responsibilities, including, for example, the right to access to the child, the right to determine the child's education and religious upbringing, the right to make medical decisions, the responsibility to support the child (US Supreme Court case *Troxel v. Granville*)

# Parental Rights



## Delegation of power by parent or guardian §15-14-105

A parent or guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding twelve months, any power regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.

## Termination prosecution & Relinquishment -voluntary

**JV** –Termination of Parental Rights is addressed solely by the Juvenile Court, pursuant to a Dependency or Neglect action in Article 3, or a relinquishment and adoption pursuant to Article 5.

**PR** –There is no case type in probate for termination of parental rights

**DR** –There is no case type in domestic for termination of parental rights

## Paternity

**JV:** Uniform Parentage Act

**PR:** Parentage considerations for determination of right to inherit from a decedent's estate

**DR:** If paternity is an issue, follow Children's Code procedures to make determination

Paternity:

**JV** –Uniform Parentage Act, C.R.S. §19-4-101 to 19-4-130. Under certain conditions a man is “presumed” to be the natural father of a child, C.R.S. §19-4-105, C.R.S.; however, a proceeding to determine and settle parentage may be filed in any juvenile court, C.R.S. §19-1-104(f), subject to time limitations set out in C.R.S. §19-4-107.

**PR** –For purposes of heirship, an individual is the child of his or her birth parents regardless of marital status, C.R.S. § 15-11-114. The parent and child relationship is established under the Uniform Parentage Act.

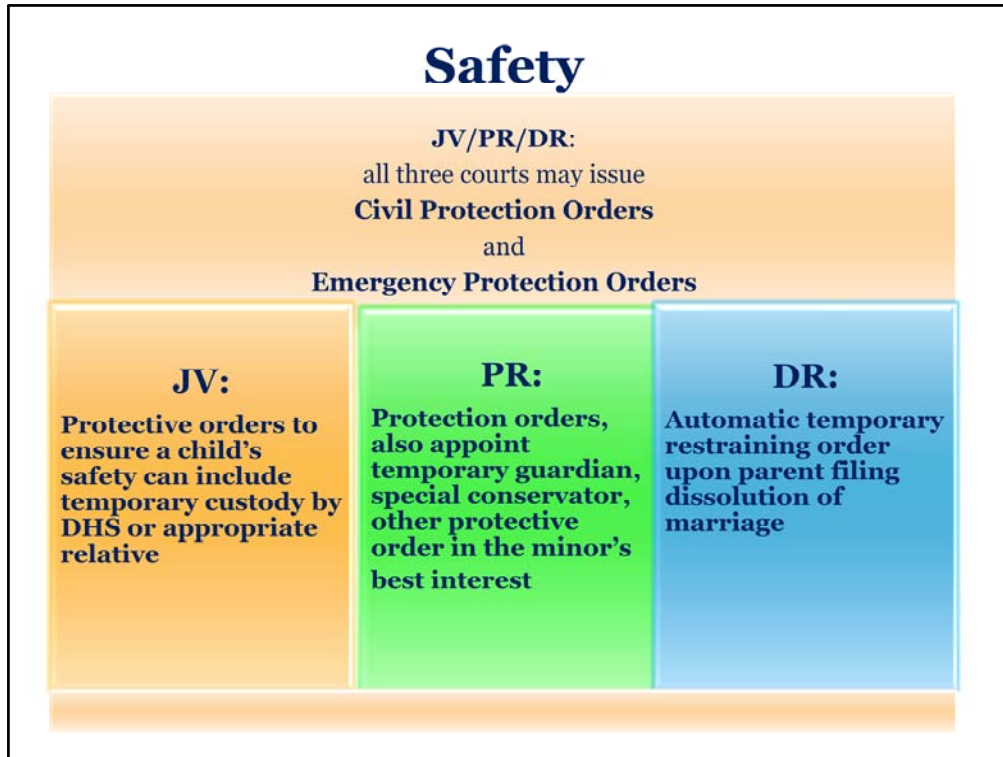
for purposes of intestate succession by, through, or from a person, an adopted individual is the child of his or her adopting parent and not his birth parents, except that:

- Birth child takes where there are no descendants of the decedent’s grandparents, and if no birth child of the decedent, decedent’s birth parent(s) take] C.R.S. §§15-11-103(6) and (7);
- Under C.R.S. §19-4-108, an action to establish paternity cannot extend beyond the time provided in the probate code for determination of inheritance rights

**DR** –If paternity is raised in a domestic case, the procedures to determine paternity set forth in the Children’s Code must be followed.

*In Re the Matter of De La Mar cite ?*

C.R.S. §13-25-126 and C.R.S. §19-4-105(2)



**Safety:**

Civil Protection Orders, C.R.S. §13-14-102, and Emergency Protection Orders, C.R.S. §13-14-103 are available to all three courts: JV, PR and DR

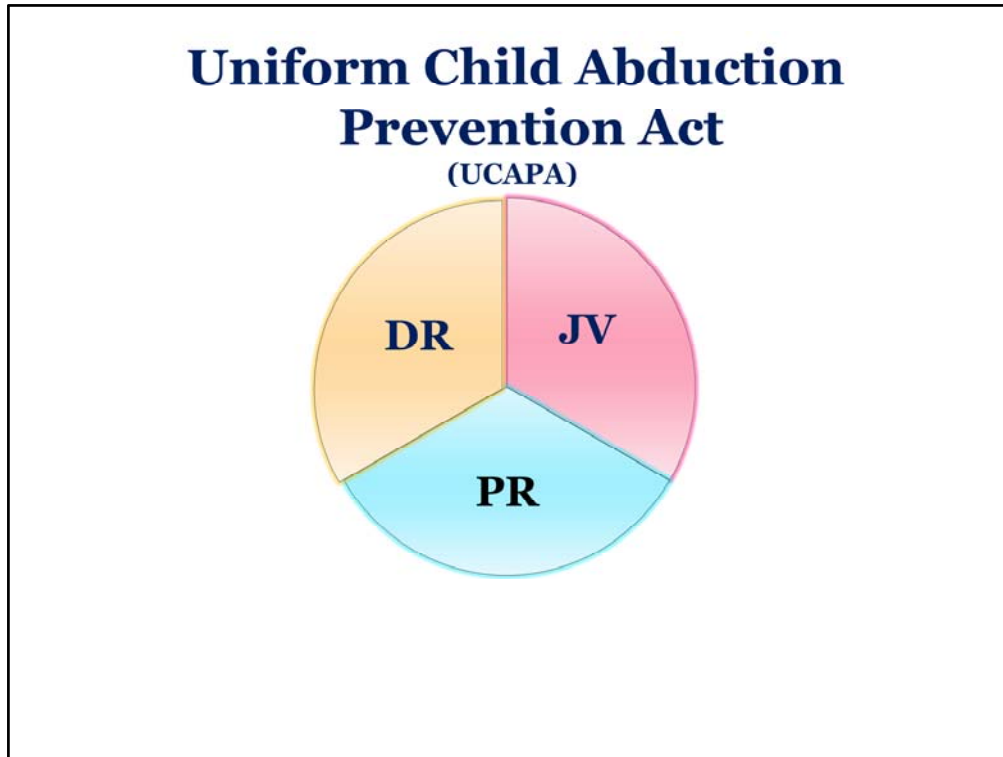
JV: The Children's Code authorizes the Juvenile Court to enter protective orders to ensure the safety of the children, including placing the children in the temporary custody of the Department of Human Services or with an appropriate relative or kin.

- PR: In addition to protection orders, the probate courts can appoint temporary guardians, special conservators and other protective orders if in the best interest of the minor.

DR: Automatic temporary injunction

TRO procedure – (see Colorado self-help webpage)

In DR, also cite C.R.S. §14-10-107 Automatic Temporary Restraining Order provides that upon filing petition for dissolution of marriage, parties are restrained from removing child from the state without the other party's consent or without order of the court



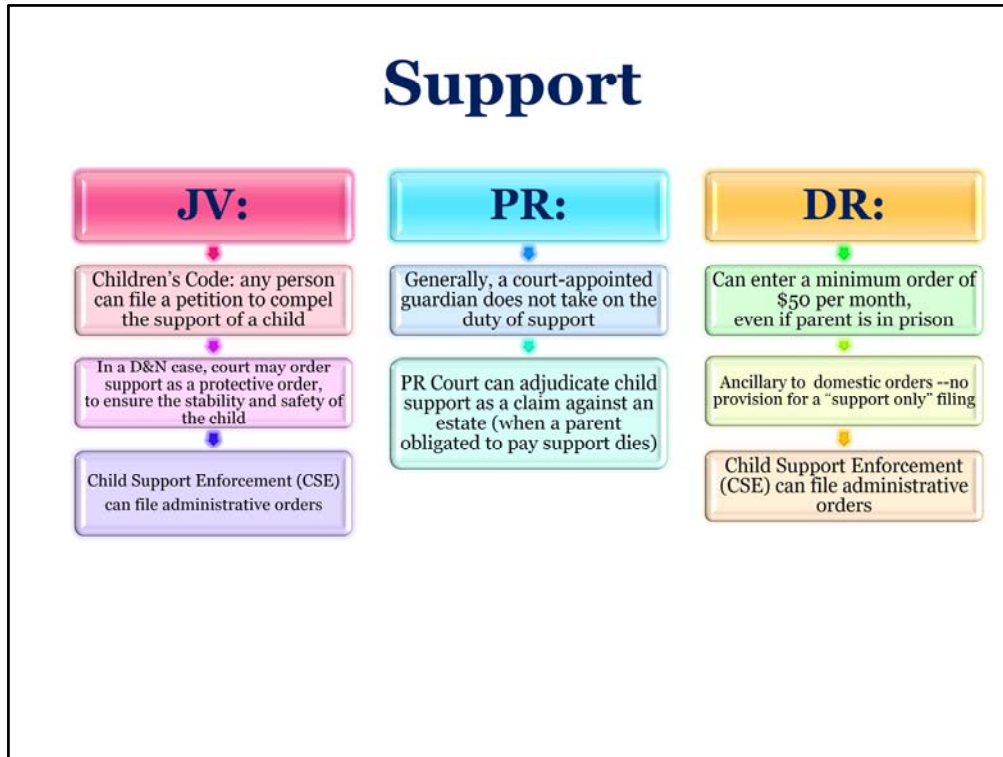
**The Uniform Child Abduction Prevention Act (UCAPA) (§14-13.5-101 et.seq.) applies to all three case types: DR/JV/PR**

Applies in all child custody cases involving divorce, legal separation, declaration of invalidity, APR, paternity, grandparent visitation, guardianship, child abuse or neglect, termination of parental rights, and domestic violence.

Any party having a right to custody of or visitation with a child may file an action. The JV, PR, or DR Court may also grant abduction prevention measures on its own motion, if it finds evidence that establishes a credible risk of child abduction.

If, after a hearing, the Court finds a credible risk of abduction, the Court SHALL enter an abduction prevention order reasonably calculated to prevent abduction of the child.

If there is a credible risk of imminent wrongful removal of a child, the Court can enter an ex parte warrant to take custody of the child . The hearing on the warrant should be on the next judicial day. ADD BULLET: in addition, DR cases automatic TRO



**JV** – C.R.S. §19-6-101 authorizes proceedings to compel *parents or other legally responsible person to support a child as the parent's/person's means permit*

- In *Re A.R.D.*, 43 P.3d 632 (Colo. App. 2001) facts recite “The guardian also filed a juvenile action seeking child support, . . .”

- The Children's Code allows any person to file a petition to compel the support of a child, in Article 6. These filings are generally done in cases involving paternity actions, or where a parent is receiving TANF payments and the Department of Human Services proceeds against the non-supporting parent for reimbursement. In a Dependency or Neglect case, if there is no other support order, the Juvenile Court can enter support orders as a protective order, to ensure the stability and safety of the child. If there is a support order, then generally the Juvenile Court will direct the parties to request any support modification through the Court that issued the order. The Children's Code also provides that parents of children placed in foster care can be compelled to make payments toward some or all of the foster care fees.

**PR** – Generally, a court-appointed guardian does not take on the duty of support?

- C.R.S. § 15-14-314: duties of guardian:

a guardian shall expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare

- C.R.S. § 15-14-316: rights and immunities of guardian – limitations: a guardian need not use the guardian's personal funds for the ward's expenses

- However, see *In re Marriage of Rodrick*, 176 P.3d 806 (Colo. App. 2007), where court allocated support obligation in dissolution action to potential adoptive parent who had taken on the duty of support when parental rights were delegated pursuant to power of attorney

- See § 14-7-101 – refers to “duty of support” and includes “or legal guardian.”

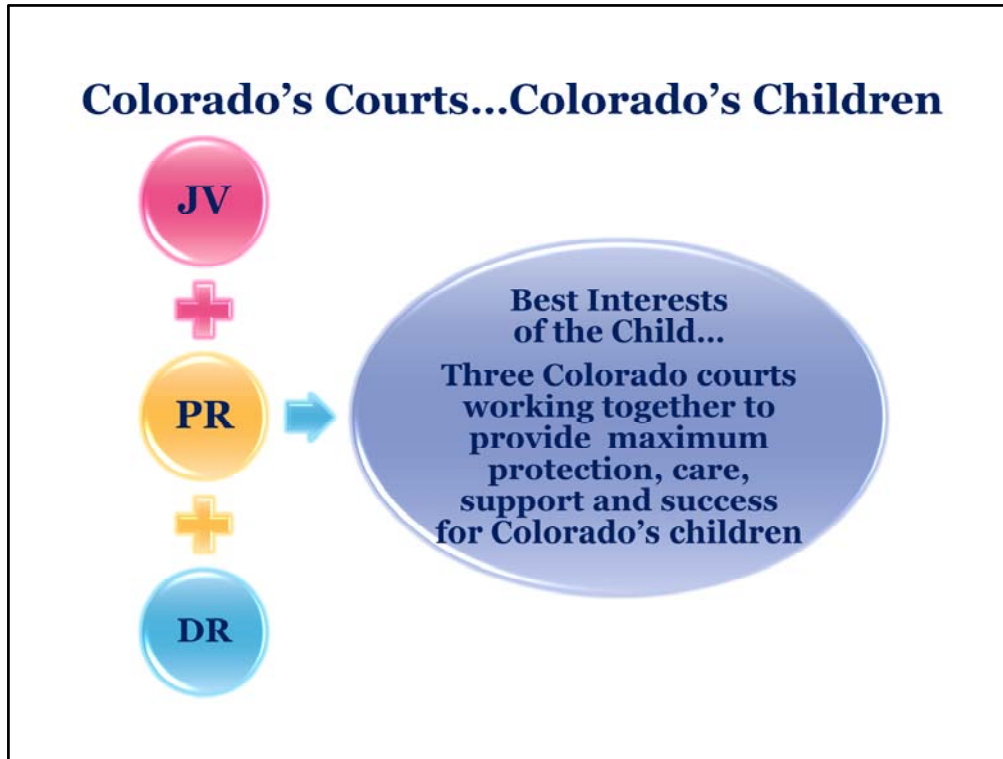
**DR** – can put in a minimum order of \$50 per month, even if parent is in prison

- Child Support Enforcement can file administrative orders in either JV or DR (§26-13.5—101, et seq.)

- Jurisdiction is under juvenile court and also a delegate CSE unit has jurisdiction to establish paternity in noncontested paternitys in accordance with C.R.S. § 25-13.5-101 et. seq...the action may be joined with an action in another court for dissolution of marriage, or support...C.R.S. §19-4-109

- Generally, there is no provision for a “support only” filing in domestic relations cases – child support is ordered ancillary to domestic, APR

- Probate Court C.R.S. §14-10-122(3) has authority to adjudicate child support as a claim against an estate (when a parent obligated to pay support dies)



Three Colorado courts operate together to provide maximum protection, care, support and success for Colorado's children

Three courts operate together to provide multiple venues for minors

- The Best Interest of the Child governs

- Involves private and public sector interests

- Resolves in the forum with maximum information and access to information

- Seeks to provide maximum protection, care, support and success for children.

To download this outline  
and presentation,  
please visit

[www.DenverProbateCourt.org](http://www.DenverProbateCourt.org)

This is a work in progress – we welcome your  
input, comments, corrections. Please e-mail  
your feedback to [denverprobatecourt.org](http://denverprobatecourt.org) and  
note “Colorado’s Children” in the subject line