

CHIEF JUDGE ORDER 2012-4

FOURTH JUDICIAL DISTRICT COURT
COUNTY OF EL PASO, STATE OF COLORADO

ORDER RE: ASSIGNMENT OF FELONY CRIMINAL CASES AND RELATED
DEPENDENCY AND NEGLECT CASES

This Order concerns the assignment of felony criminal cases whenever there are both a dependency and neglect case and a felony criminal case arising from the same allegations. Unless the district judge presiding over the dependency and neglect case finds good cause to have the felony criminal case heard in another division, the district judge presiding over the dependency and neglect case shall also preside over the related felony criminal case. This Order makes permanent the interim policy announced in Chief Judge Order #2011-2.

Pursuant to C.R.S. 19-1-104 the juvenile court has exclusive jurisdiction over matters relating to children who are alleged to be dependent and neglected, including visitation between the child and any defendant. The juvenile court is directed to obtain permanency for the child within timeframes established by statute. (C.R.S. 19-3-703) Visitation between the defendant and the child is within the discretion of the juvenile court. Pursuant to the statutory timeframes to develop a treatment plan, the juvenile court may order the respondent/defendant to participate in evaluations concerning the alleged crime and appropriate rehabilitation which may affect the progress of the criminal case. Additionally, the legislature has directed that all cases involving child abuse shall take precedence and shall be heard as soon as possible. (C.R.S. 18-6-401.1)

Having different judges preside over the felony criminal case and the dependency and neglect case creates the possibility of inconsistent decisions and orders, waste of judicial resources, undue delay in the cases caused by a lack of coordination, and undue court appearances for the defendant and family. Having the felony criminal case and the related dependency and neglect case heard by the same judge will be in the best interests of the child, will promote public safety, will improve judicial efficiency, will not harm any right of the defendant, and will facilitate the statutory mandates to hear both types of cases promptly. Early identification of cases subject to this policy is essential for success of the program.

Since the pilot program was initiated in February, 2011, forty-eight felony criminal cases were assigned under this program. The results of the pilot project were successful in that inconsistent orders concerning the children were reduced, processing of cases was improved, judicial economy was improved, and all parties, including defendants, believed the policy was beneficial.


THEREFORE, THE FOLLOWING ORDER IS ENTERED:

1. If there is a dependency and neglect case concerning a child victim and felony criminal case concerning the same child victim and arising from the same allegations, the felony criminal case shall be transferred to the district judge presiding over the dependency and neglect case unless that judge finds good

cause to have the felony criminal case heard in another division. In making this decision, the district judge presiding over the dependency and neglect case shall consider the best interests of the child, public safety, the rights of the defendant, confidentiality issues pursuant to C.R.S. 19-3-207 and C.R.S. 18-3-407, and judicial efficiency.

2. If this policy results in transferring a First Degree Murder case from another division, the district judge presiding over the dependency and neglect case may request that the transfer be in lieu of the next First Degree Murder case to be assigned to the juvenile court judge. In any event, the next First Degree Murder case will be assigned to the judge from whom the First Degree Murder case was transferred.
3. The district judge presiding over the dependency and neglect case and the related felony criminal case shall ensure that staff, parties, and counsel are cognizant of the confidentiality provisions of C.R.S. 19-3-207 and C.R.S. 18-3-407.
4. The Juvenile Court Facilitator and district judge presiding over the dependency and neglect case and the related felony case shall maintain records of cases transferred pursuant to this policy to evaluate the program.
5. The Juvenile Court Facilitator shall identify the cases subject to this order and facilitate the early assignment of the cases to the appropriate district judge. All parties and counsel are directed to notify the Juvenile Court Facilitator as soon as they are aware of a case that is subject to this policy. The District Attorney shall request transfer of applicable cases to the division presiding over the dependency and neglect case with a "Yellow Sheet." The Juvenile Court Facilitator shall assign the cases to the district court divisions that have both a criminal docket and a dependency and neglect docket in a manner that ensures parity in the assignment of these cases.

BY ORDER OF THE CHIEF JUDGE this 27th day of September, 2012.



GILBERT A. MARTINEZ
Chief Judge