

## CHAPTER 41

### CHILDREN'S CODE — DEPENDENCY AND NEGLECT

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## **41:1 INTRODUCTORY REMARKS TO JURY PANEL**

*(The remarks of the Court to the members of the jury panel at the commencement of the trial should be substantially as follows:)*

**Members of the jury, this is** *(insert appropriate description, e.g., “Courtroom A,” “Division II,” etc.)* **of the (Juvenile) (District) Court. My name is** *(insert name)*. **I am the judge assigned to preside in this case.**

**First, I want to tell you about the rules that will govern your conduct during your jury duty, beginning right now, even if you are not finally selected as jurors. If you are chosen as jurors, your job will be to decide this case based solely on the evidence presented during the trial and the instructions that I will give you. You will not be investigators or researchers, so do not attempt to gather any information about this case on your own. Do not read or do research about this case or the issues in the case from any other source, including the Internet. You may not use Google, Bing, Yahoo, or any other type of Internet search engine to learn about any person, place, or thing that is involved in this case. Do not read about this case in newspapers, magazines, or any other publications. Do not listen to podcasts or television or radio broadcasts about the trial. Do not consult dictionaries; medical, scientific, or technical publications; religious books or materials; or law books. I want to emphasize that you must not seek or receive any information about this case from the Internet, which includes all social networking sites, Google, Wikipedia, blogs, and other websites.**

**If you were to violate this rule by receiving outside information about the case, it could force me to declare a mistrial, meaning that the trial would have to start over, and all of the parties’ work, my work, and your work on this case would be wasted.**

**Therefore, it is very important that you not receive outside information about this case, whether it comes from other people, from the media, from books or publications, or from the Internet. You are free to use the Internet, but only for purposes unrelated to this case. Do not search for or receive any information about the parties, the lawyers, the witnesses, the judge, the evidence, or any place or location mentioned. Do not research the law. Do not look up the meaning of any words or scientific or technical terms used. If necessary, I will give you definitions of words or terms.**

**Also, you are not allowed to visit any place(s) involved in this case. If you normally travel through such a place, you should try to take a different route until I tell you that your jury service is completed. If you cannot take a different route, you must not stop or attempt to gather any information from that location.**

**Until I tell you that your jury service is complete, do not communicate about the case with anyone, including family and friends, whether in person, or by telephone, cell phone, smart phone, computer, Internet, or any Internet service. This means you must not email, text, instant message, Tweet, blog, or post information about this case, or about your experience as a juror on this case, on any social networking site, website, listserv, chat room, or blog.**

**When court is not in session, you may communicate about anything other than this case. You may tell others that you are on jury duty and that you cannot talk about this duty until your service is completed, and you may tell them the estimated schedule of your jury duty, but do not tell them anything else about the case. If anyone tries to communicate with you about anything concerning the case, you must stop the communication immediately and report it to the Bailiff, who will notify me.**

**(The Court) (I) will now introduce you to this case.**

**The case we are about to try is not a criminal or civil case, but a dependency and neglect case under the Colorado Children’s Code. The party who started this case is the People of the State of Colorado, the Petitioner, who brought this case in the Interest of *(insert child’s name)*, who may be referred to by name or as the “child;” the (parent[s]) (guardian[s]) (custodian[s]) of the child (is) (are) *(name respondent[s])* and may be referred to by name or as “respondent(s).” *(Name)*, has been appointed by the Court as the child’s guardian ad litem. (His)(her) job is to represent what (he)(she) believes to be the best interests of the child, independent of the other parties’ positions.**

**The case is based upon a petition that claims: *(insert the relevant portions of the petition)*.**

**You should understand that these are only claims and that you should not consider the claims as evidence in the case.**

**The respondent(s) (has) (have) denied the claims made in the petition. The Petitioner has the burden of proving the facts claimed in the petition by a preponderance of the evidence. The purpose of this trial is to determine whether the claims made in the petition are true.**

**(The Court) (I) will now read you some of the instructions that may apply in this case. These are preliminary instructions about the law and may not be exactly the same as the final instructions about the law you will be given at the end of the case to use in your deliberations. If there is any difference between the preliminary and final instructions, you must follow and be governed by the final instructions in deciding the case. You should not be concerned about any difference between the preliminary instructions and the final instructions. *(Insert applicable jury instructions, such as the definition of the burden of proof and any applicable evidentiary standards.)***

**There will be *(insert number)* jurors in this case. The jury will consider the evidence and reach a verdict with the help of legal instructions (the Court) (I) will give you at the end of the case.**

**The jury must determine what the facts are from the evidence that you hear and see during the trial.**

**You have a duty to be fair and impartial.**

**In this case, the parties are entitled to a jury trial. Trial by jury is part of our American system of justice. Each juror plays an equal and important part in this system. It is your duty to give this case your close attention, absolute fairness, and good judgment.**

**We estimate that this trial will last** *(insert number)* **days.** *(The Court may either at this time or later inquire whether there are any members of the jury panel who would be unable to serve during the trial if selected as jurors.)*

**In this case, it will not be necessary to keep the jurors together at noon or at night until the case is finally given to you for your determination.**

### Notes on Use

1. This instruction should be used rather than Instruction 1:1 or Instruction 2:1. *See* Notes on Use to Instruction 1:1 and Instruction 2:1.

2. Use whichever parenthesized words are appropriate.

3. To facilitate the jury selection process in a dependency and neglect proceeding, at the outset of a case, the court must orient prospective jurors to the proceedings and inform them about their duties and service. C.R.C.P. 47. As part of this orientation, the court must explain the nature of the case, in plain and clear language, using either the parties' pattern jury instruction or a joint statement of factual information intended to provide a relevant context for the prospective jurors to respond to questions asked of them. **People in Interest of M.H-K.**, 2018 COA 178, ¶ 22, 433 P.3d 627 (quoting C.R.C.P. 47(a)(2)(IV) and C.R.C.P. 16(g)). On request, the court may allow counsel to present such information through brief non-argumentative statements. *Id.*; C.R.C.P. 47(a)(2)(IV). The imparted information and instructions should be clear and as neutral as possible. C.R.C.P. 47 cmt.

4. This instruction should not serve as one party's court-sponsored theory-of-the-case instruction. Thus, the court should not include long recitations of allegations from the petition in dependency and neglect as part of an introductory instruction. *See* **M.H-K.**, 2018 COA 178, ¶ 37.

5. Under section 19-3-505(1), C.R.S., "jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing."

6. While the statute refers to "neglected or dependent" children, *see, e.g.*, § 19-3-102, C.R.S., the more common language "dependency and neglect" has been used in these instructions.

7. Concerning the appointment and duties of a guardian ad litem, see sections 19-1-111(1) and 19-3-203(1), C.R.S. A dependency and neglect case cannot remain open under the supervision of a guardian ad litem once the county department of human services is dismissed as a party. **People in Interest of E.D.**, 221 P.3d 65 (Colo. App. 2009).

8. A trial court has no authority to enter a dispositional order before adjudicating the child dependent and neglected. *See* § 19-3-507(1)(a), C.R.S.; **People in Interest of O.E.P.**, 654 P.2d 312 (Colo. 1982); **People in Interest of J.L.**, 121 P.3d 315 (Colo. App. 2005). The lack of an adjudicatory order, however, does not divest the court of jurisdiction, as long as there is an admission that the child is dependent and neglected. **People in Interest of N.D.V.**, 224 P.3d 410 (Colo. App. 2009).

9. A child may be adjudicated dependent and neglected only based on circumstances existing at the time of the adjudication. **People in Interest of S.X.M.**, 271 P.3d 1124, 1130 (Colo. App. 2011) (“The plain language of section 19-3-102(1)(b) and (c) suggests that the child’s status as a neglected or dependent child is to be determined at the time of the adjudication hearing.”); **People in Interest of A.E.L.**, 181 P.3d 1186 (Colo. App. 2008).

10. Notwithstanding mother’s no-fault admission, once the child was found not dependent and neglected as to the father, section 19-3-505(6), required the court to dismiss the petition, ending the court’s jurisdiction over the case. **People in Interest of A.H.**, 271 P.3d 1116 (Colo. App. 2011).

11. A juvenile court does not have subject-matter jurisdiction to adjudicate a child as dependent and neglected once the child reaches age eighteen. **People in Interest of M.C.S.**, 2014 COA 46, ¶ 17, 327 P.3d 360.

12. This instruction should be modified to reflect current communication methods and information-gathering technology.

### Source and Authority

1. The instruction is supported by C.R.J.P. 1 and C.R.C.P. 47(a). Under C.R.J.P. 1, proceedings under the Children’s Code are civil and generally are conducted according to Colorado Rules of Civil Procedure. C.R.C.P. 47(a) provides, “An orientation and examination shall be conducted to inform prospective jurors about their duties and service.” C.R.C.P. 47(a)(2)(IV) requires that the judge explain the “nature of the case” in “plain and clear language.” *See* **People in Interest of M.H-K.**, 2018 COA 178, ¶ 22, 433 P.3d 627.

2. Under section 19-3-202(2), C.R.S., the “petitioner, any respondent, or the guardian ad litem may demand a trial by jury of six persons . . . or the court, on its own motion, may order” one. *See also* **People in Interest of N.G.**, 2012 COA 131, ¶ 19, 303 P.3d 1207 (a parent “may demand a jury trial” requiring the state to prove allegations of dependency or neglect); **People in Interest of A.M.**, 786 P.2d 476 (Colo. App. 1989) (discusses right to jury trial of one respondent parent in face of “no-fault” admissions of neglect made by other respondent parent).

3. Concerning the form and content of petitions, see section 19-3-502, C.R.S., and C.R.J.P. 4(a).

4. The “state is the exclusive party to bring neglect and dependency proceedings.” **McCall v. Dist. Court**, 651 P.2d 392, 394 (Colo. 1982). However, the district attorney is not authorized to represent the state in such proceedings. **H.B. v. Lake County Dist. Court**, 819

P.2d 499 (Colo. 1991); *see also* **L.G. v. People**, 890 P.2d 647 (Colo. 1995). A private person may request public authorities to take action, but may not bring a neglect and dependency proceeding on his or her own. **McCall**, 651 P.2d at 394. Though the state is the exclusive party to file a petition, once filed, the trial court is not required to dismiss the petition simply because the state for some reason has chosen not to pursue the proceedings. “[T]he child, through the guardian ad litem, is entitled to a determination of the merits, and the petition may not be dismissed over the objection of the guardian ad litem.” **People in Interest of R.E.**, 729 P.2d 1032, 1034 (Colo. App. 1986); *see also* **People in Interest of M.N.**, 950 P.2d 674 (Colo. App. 1997) (the State does not have exclusive authority to file a motion to terminate parent-child relationship, and the guardian ad litem was authorized to file such a motion).

5. “Adjudications of neglect or dependency are not made ‘as to’ the parents, but rather, relate only to the status of the child.” **People in Interest of P.D.S.**, 669 P.2d 627, 627-28 (Colo. App. 1983) (child properly adjudicated neglected and dependent though one parent blameless as to child’s condition); *accord* **People in Interest of U.S.**, 121 P.3d 326 (Colo. App. 2005).

6. The burden of proof for an adjudication in a dependency and neglect proceeding is by a preponderance of the evidence, § 19-3-505(1), (7), although the factual requirements necessary for the termination of parental rights under sections 19-3-602 and 19-3-604, C.R.S., must be proved by clear and convincing evidence. **People in Interest of A.M.D.**, 648 P.2d 625 (Colo. 1982) (citing and applying **Santosky v. Kramer**, 455 U.S. 745, 747-48 (1982) (“Before a State may sever completely and irrevocably the rights of parents in their natural child, [federal] due process requires that the State support its allegations by at least clear and convincing evidence.”)).

7. Applying the standard of preponderance of the evidence, rather than that of clear and convincing evidence, does not violate due process. **L.L. v. People**, 10 P.3d 1271 (Colo. 2000); **People in Interest of O.E.P.**, 654 P.2d at 317.

## **41:2 GENERAL OUTLINE OF TRIAL PROCEDURES TO JURY**

**I will now explain the procedure that is usually followed during a trial. Before the trial begins, I will orally give you some preliminary instructions to provide you with a framework for the evidence that will be presented. (You will also receive copies of these preliminary instructions.)**

**The attorneys will then have the opportunity to present opening statements. The purpose of opening statements is to give you an outline of each party's claims and defenses. You must remember, however, that what is said in opening statements and all other statements made by the attorneys are not evidence. Your verdict must be based upon the evidence in this case and the instructions regarding the law that govern this case. The evidence usually consists of the sworn testimony of witnesses, the exhibits that are received and any facts that are admitted or agreed to or are judicially noticed.**

**(Also, during the course of this trial, [the court] [the attorneys] will [make] [read] brief statements summarizing the evidence already presented [and outlining how this evidence relates to evidence that will be presented later in the trial]. These statements are not evidence and are only made for the purpose of assisting you in understanding this case.)**

**Once the trial begins, the petitioner's attorney will present evidence. The respondent's attorney and the guardian ad litem are permitted to cross-examine all witnesses presented by the petitioner. Upon the conclusion of petitioner's case, the guardian ad litem or respondent's attorney may offer evidence but are not required to do so. If the respondent or guardian ad litem presents witnesses, the other parties may cross-examine them. The petitioner's attorney may choose to present further evidence in response to any evidence presented by any of the other participants.**

**After all the evidence has been received, (I) (the Court) will give you final instructions on the law that apply to this particular case. These final instructions will replace the preliminary instructions that you will be given before the trial begins. Based upon the evidence presented, the final instructions may differ from the preliminary instructions. If there is any difference between the preliminary and final instructions, you must follow the final instructions in deciding the case.**

**After you have received all the instructions on the law governing this case, each attorney may present a final argument to you. Petitioner's attorney will first present (his) (her) closing argument. Thereafter, the respondent's attorney and the guardian ad litem will make their closing arguments. Petitioner's attorney may respond to any statements made by the other attorneys. After arguments are concluded, the case is given to you for decision.**

**It is the right of an attorney to object when testimony or other evidence is offered that the attorney believes is not admissible.**

**When (I) (the Court) sustain(s) an objection to a question, the jurors must disregard the question and must draw no conclusion from the question nor guess what the witness would have said. If any answer has been given, the jurors must disregard it.**

**When (I) (the Court) sustain(s) an objection to any evidence or strike(s) any evidence, the jurors must disregard that evidence.**

**When (I) (the Court) overrule(s) an objection to any evidence, the jurors must not give that evidence any more weight than if the objection had not been made. You should not be prejudiced against any party because that party's attorney makes an objection.**

**Legal arguments are occasionally required to be considered outside the presence of the jury. This may cause delay. All rulings (I) (the Court) (am) (is) required to make will be based solely on the law. You must not infer from any ruling or from anything (I) (the Court) say(s) during trial that (I) (the Court) hold(s) any views either for or against any party to this case.**

**During recesses and adjournments of court, you will be free to separate, to eat lunch, and to go home at the end of the day. During these times, you are not to discuss this case with one another or anyone else. Furthermore, you must not talk with any of the parties to this case, their attorneys, witnesses, or representatives of the media until after you have reached your verdict and have been discharged by the Court as jurors in this case.**

**You may discuss the evidence during the trial, but only among yourselves and only in the jury room when all of you are present.**

**You must not, individually or as a group, form final opinions about any fact or about the outcome of this case until after you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Keep an open mind during the trial. Form your final opinions only after you have discussed this case as a group in the jury room at the end of the trial.**

**We have a Bailiff, (*name*), and (he) (she) is here to take care of your needs during the course of this trial. Do not discuss this case with the Bailiff. If you have any personal problems or needs, take it up with (*name of Bailiff*) and (he) (she) will notify me.**

### **Notes on Use**

1. This instruction should be used rather than Instruction 1:7. *See* Notes on Use to Instruction 1:7.

2. Use whichever parenthesized words are appropriate.

3. Concerning the appointment of a guardian ad litem, see sections 19-1-111(1) and 19-3-203(1), C.R.S.



## **Source and Authority**

This instruction is supported by the authorities cited in the first two paragraphs of the Source and Authority to Instruction 40:1, and the Source and Authority to Instruction 1:7.

### **41:3 EXPLANATION OF DEPENDENCY AND NEGLECT PROCEEDINGS**

**An action in dependency and neglect is a proceeding initiated by the State, through the department of social services. It is a proceeding to protect children and ensure that they have a safe and healthy environment, not to punish (parents) (guardians) (or) (legal custodians) or to find fault.**

#### **Source and Authority**

This instruction is supported by **People in Interest of J.G.**, 2016 CO 39, ¶ 37, 370 P.3d 1151; and **L.G. v. People**, 890 P.2d 647 (Colo. 1995).

**41:4 STATEMENT OF THE CASE AND REQUIREMENTS FOR ESTABLISHING CHILD DEPENDENT AND NEGLECTED**

**(The Court) (I) will now instruct you as to the claims of the parties and the law governing the case. Please pay close attention to these instructions. You must all agree on your verdict, applying the law as you are now instructed to the facts as you find them to be.**

**The petitioner claims that** *(name of child)* **is dependent and neglected because:** *(insert those allegations from the petition on which sufficient evidence has been introduced and which if established would constitute a legal basis for determining that the child is dependent and neglected).*

**The respondent(s),** *(name[s])*, **(has) (have) denied these claims.**

**The guardian ad litem,** *(name)*, **claims** *(insert appropriate description of the guardian's position).*

**These are the issues you are to determine, but are not to be considered by you as evidence in the case (except for those facts which have been admitted or agreed to).**

**The claims made in the petition must be proved by a preponderance of the evidence and no inference that the claims have been proved should be drawn from the (filing of a petition) (appointment of a guardian ad litem to represent the best interest of the child) (or) (entry of a court order placing the temporary custody of the child with someone other than the parent[s] of the child).**

**Neither sympathy nor prejudice should influence you. It is the Court's responsibility to decide what action to take with respect to the child and the respondent[s] as a result of your verdict. You should not consider what the court might do in reaching your verdict.**

**Notes on Use**

1. Use whichever parenthesized words and phrases are appropriate.
2. Use this instruction after the close of evidence rather than as a pre-adjudication introductory instruction. *See People in Interest of M.H-K.*, 2018 COA 178, ¶ 39, 433 P.3d 627. In instructing the jury on the statement of the case, the court should not merely read the petition in dependency and neglect, but must instead refer to the factual allegations that are supported by the evidence and that support the adjudication of the child as dependent and neglected. *Id.* at ¶¶ 41-42.
3. Use this instruction rather than any instruction in Chapter 2, and, because the matter of sympathy and prejudice is covered in the last paragraph of this instruction, Instruction 3:14 should not be given.
4. Note 1 of the Notes on Use to Instruction 2:1 is also applicable to this instruction.

5. For what constitutes dependency or neglect, see section 19-3-102, C.R.S.

6. A child may be found to be neglected and dependent only on one or more of the bases specified in section 19-3-102(1). **People in Interest of S.X.M.**, 271 P.3d 1124 (Colo. App. 2011); *see* **C.M. v. People**, 198 Colo. 436, 601 P.2d 1364 (1979).

7. When otherwise supported by sufficient evidence, a child may be found to be dependent and neglected even though the child has never been in the custody of his or her parents. **People in Interest of D.L.R.**, 638 P.2d 39 (Colo. 1981) (minor child placed at birth in the temporary custody of local department of social services); **People in Interest of T.T.**, 128 P.3d 328 (Colo. App. 2005) (child whose mother used drugs during pregnancy and never had custody).

### **Source and Authority**

This instruction is supported by C.R.C.P. 47(a)(2)(IV) and (V), and the fifth and sixth paragraphs of the Source and Authority to Instruction 41:1. This instruction was approved for use after the conclusion of the evidence in a dependency and neglect trial in **People in Interest of M.H-K.**, 2018 COA 178, ¶ 39, 433 P.3d 627.

#### **41:5 ADJUDICATION OF NO FAULT**

**You may find that the child is dependent and neglected even if you find that *[description of respondent]* is not at fault.**

#### **Notes on Use**

This instruction should be given when the case is based on a no-fault theory, including cases involving claims of injurious environment under section 19-3-102(1)(c), C.R.S., and cases involving claims that a child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian under section 19-3-102(1)(e), C.R.S.

#### **Source and Authority**

This instruction is supported by section 19-3-102, C.R.S.; **People in Interest of J.G.**, 2016 CO 39, ¶ 40, 370 P.3d 1151; and **People in Interest of P.D.S.**, 669 P.2d 627 (Colo. App. 1983).

## 41:6 ABANDONMENT — DEFINED

**Abandonment means the intentional and permanent giving up by a (parent) (guardian) (legal custodian) of all parental rights. Intent to abandon a child may be shown by words or conduct, or both.**

### Notes on Use

1. Use whichever parenthesized words are appropriate.
2. This instruction should be given whenever Question 1 in Instructions 41:17 and 41:18 is submitted to the jury.
3. “When a child has been abandoned by its parents, a court may find that the child is dependent and neglected, notwithstanding the fact that the child may be currently receiving adequate care from other persons.” **People in Interest of F.M.**, 44 Colo. App. 142, 144, 609 P.2d 1123, 1124 (1980).

### Source and Authority

This instruction is supported by section 19-3-102(1)(a), C.R.S.; and 2 H. CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* § 21.7, at 634-37 (2d ed. 1987). *See also* **D.P.H. v. J.L.B.**, 260 P.3d 320, 324 (Colo. 2011) (in the stepparent adoption context “abandonment is the intention to permanently relinquish rights and responsibilities with regard to a child”); **Moreau v. Buchholz**, 124 Colo. 302, 236 P.2d 540 (1951); **In re J.A.V.**, 206 P.3d 467 (Colo. App. 2009) (defining abandonment in stepparent adoption context).

## 41:7 PROPER PARENTAL CARE — DEFINED

**Proper parental care means the minimum level of care or services and necessities that are required to prevent any serious threat to the child’s health or welfare.**

### Notes on Use

1. This instruction should be given whenever Question 3 in Instructions 41:17 and 41:18 is submitted to the jury.

2. Under section 19-3-103(1), C.R.S., with certain exceptions, “No child who in lieu of medical treatment is under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing shall, for that reason alone, be considered to have been neglected or dependent within the purview of this article.” When appropriate to the evidence in the case, this instruction must be modified to include any of the relevant provisions of subsections (1) and (2) of section 19-3-103, which do permit an adjudication in some circumstances as to a child under treatment by spiritual means. *See People in Interest of D.L.E.*, 645 P.2d 271, 276 (Colo. 1982) (analyzing under former statute and concluding, “where a minor suffers from a life-threatening medical condition due to a failure to comply with a program of medical treatment on religious grounds, section 114 permits a finding of dependency and neglect and does not violate the constitutional provisions protecting the free exercise of religion”).

3. The companion basis for finding a child is neglected or dependent under section 19-3-102(1)(d), C.R.S., because of the failure to provide “proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being,” needs no further definition. Consequently, no definitional instruction for this basis has been provided when Question 5 in Instruction 41:17 and 41:18 is submitted to the jury.

### Source and Authority

This instruction is supported by section 19-3-102(1)(b), and, in part, 2 H. CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* § 21.7 (2d ed. 1987). *See also People in Interest of S.G.L.*, 214 P.3d 580 (Colo. App. 2009) (father’s failure to retrieve daughter for one and one-half to two hours after being informed child’s mother arrested for DUI and arrival without a child restraint seat insufficient to support finding of failure to provide proper parental care); *People in Interest of T.T.*, 128 P.3d 328 (Colo. App. 2005) (child whose mother used drugs during pregnancy and who was never in his mother’s custody could still be found to lack proper parental care); *People in Interest of C.R.*, 38 Colo. App. 252, 557 P.2d 1225 (1976) (lack of proper care of a non-abused child could reasonably be inferred from evidence of mistreatment of other children).

## 41:8 MISTREATMENT OR ABUSE — DEFINED

No standard instruction is recommended.

### Note

1. A child may be adjudicated dependent or neglected under section 19-3-102(1), C.R.S., if he or she has been subjected to abuse or mistreatment. The phrase “mistreatment or abuse,” as used in Question 2 of Instructions 41:17 and 41:18, is likely to be sufficiently self-defining and, therefore, no specific definition will be required. However, when either word is not sufficiently self-defining, particularly in light of section 18-6-401(1), C.R.S. (defining criminal child abuse), and section 19-1-103(1), C.R.S. (defining “abuse” and “child abuse or neglect” in specific factual situations), an appropriate instruction based on those provisions and any relevant case law should be given, if supported by sufficient evidence.

2. For cases discussing “abuse,” see **People v. D.A.K.**, 198 Colo. 11, 596 P.2d 747 (1979) (“mistreatment or abuse” includes emotional as well as physical abuse, and the phrase is not so vague or uncertain as to be unconstitutional); **People in Interest of C.R.**, 38 Colo. App. 252, 557 P.2d 1225 (mistreatment by another); **People in Interest of M.A.L.**, 37 Colo. App. 307, 592 P.2d 415 (1976) (when child sustained a non-accidental injury resulting from parent administering corporal punishment, the reasonableness of that punishment is a question for the trier of fact).



**41:9 MISTREATMENT OR ABUSE — INCLUDES EMOTIONAL ABUSE**

**The term “mistreatment or abuse” includes emotional as well as physical abuse.**

**Notes on Use**

This instruction should be given whenever Question 2 in Instructions 41:17 and 41:18 is submitted to the jury.

**Source and Authority**

This instruction is supported by **People v. D.A.K.**, 198 Colo. 11, 596 P.2d 747 (1979).

## **41:10 ENVIRONMENT INJURIOUS TO CHILD’S WELFARE — DEFINED**

**Instruction deleted.**

### **Notes**

1. In **People in Interest of J.G.**, 2016 CO 39, ¶ 40, 370 P.3d 1151, the Colorado Supreme Court held that section 19-3-102(1)(c), C.R.S., did not require proof of any parental fault to establish that a child is dependent and neglected when he or she is in an injurious environment. **J.G.**, ¶ 40 & n.10. The former Instruction 41:10 incorporated elements of parental fault by requiring findings that “[t]he environment is under the control of, or subject to change by, the child’s (parents) (guardian) (or) (legal custodian).” The former Instruction 41:10 also implied the need for a finding of parental fault in requiring proof that “[t]he environment is sufficiently injurious to the child’s welfare that any reasonable (parents) (guardian) (or) (legal custodian) would act to change it.” The court in **J.G.** noted that the propriety of Instruction 41:10 was “not before us in this case.” **J.G.**, ¶ 6, n.2. However, the Committee does not believe that the former Instruction 41:10 can be reconciled with **J.G.**’s holding and therefore deletes it.

2. Courts have explained that an injurious environment exists when a child is in a situation that is likely harmful to the child, and does not require proof of parental fault. **J.G.**, ¶ 26; **People in Interest of M.V.**, 2018 COA 163, ¶ 70, 432 P.3d 628.

#### **41:11 TREATMENT OF OTHER CHILD OR CHILDREN**

**You may consider *[description of respondent]*'s treatment of (another child) (other children) in determining whether the child in this case lacks proper parental care.**

#### **Notes on Use**

1. Use whichever parenthesized phrase is appropriate.
2. When using this instruction, instruction 41:7, defining "proper parental care," should also be given.

#### **Source and Authority**

This instruction is supported by **People in Interest of D.L.R.**, 638 P.2d 39 (Colo. 1981).

#### **41:12 CUSTODY NOT REQUIRED**

**You may find that the child is dependent and neglected even if *[description of respondent]* does not have custody of the child if you find that the child will lack proper parental care if returned to *[description of respondent]*.**

#### **Notes on Use**

Use whichever parenthesized phrase is appropriate.

#### **Source and Authority**

This instruction is supported by **People v. D.A.K.**, 198 Colo. 11, 596 P.2d 747 (1979).

### **41:13 RUN AWAY FROM HOME — DEFINED**

**A child has run away from home when, without the permission of a (parent) (guardian) (or) (legal custodian), the child remains away from the place where he or she usually eats and sleeps for a sufficient period of time to demonstrate an unwillingness to return to that place.**

#### **Notes on Use**

1. Use whichever parenthesized words are appropriate.
2. This instruction should be given whenever the phrase “run away from home” is used in Question 8 in Instructions 41:17 and 41:18 and that question is submitted to the jury.

#### **Source and Authority**

This instruction is supported by section 19-3-102(1)(f), C.R.S. (a “neglected or dependent” child includes a child who “has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian”). *See also People in Interest of C.C.G.*, 873 P.2d 41 (Colo. App. 1994).

**41:14 DEPENDENT AND NEGLECTED BECAUSE OF PATTERN OF HABITUAL ABUSE — ELEMENTS**

**A child is dependent or neglected based upon a pattern of habitual abuse when all of the following exist:**

**(1) The respondent (*insert name*) has subjected another child or other children to a pattern of habitual abuse; and**

**(2) [The other child(ren) (has) (have) been adjudicated as (a) dependent or neglected child(ren) based upon sexual or physical abuse by the respondent], or [a court has determined that the respondent's abuse or neglect has caused the death of another child]; and**

**(3) The pattern of habitual abuse in paragraph (1) and the type of abuse in paragraph (2) pose a current threat to the child, (*insert name of child*).**

**Notes on Use**

1. Use whichever parenthesized or bracketed words are appropriate.
2. This instruction should be given whenever Question 10 in Instructions 41:17 and 41:18 is submitted to the jury.
3. When this instruction is given, Instruction 41:15 must also be given.

**Source and Authority**

This instruction is supported by section 19-3-102(2), C.R.S.

## **41:15 PATTERN OF HABITUAL ABUSE — DEFINED**

**“Pattern of habitual abuse” means two or more incidents of abuse to another child.**

### **Notes on Use**

1. Section 19-3-102(2), C.R.S., does not provide a definition of what constitutes “an identifiable pattern of habitual abuse.” Without guidance from the legislature regarding what constitutes a “pattern,” the Committee has chosen to define it as “two or more incidents of abuse to another child.” The Committee believes that it is clear that a pattern cannot be established by the proof of a single incident. In the absence of any other direction that would indicate that a pattern requires the proof of more than two incidents, the Committee believes that the instruction is correct. However, the user is cautioned to make an independent determination of what constitutes a pattern before giving this instruction.

2. See the Notes on Use to Instruction 41:8 for a discussion of “abuse.”

3. This instruction should be given whenever Question 10 in Instructions 41:17 and 41:18 is submitted to the jury.

### **Source and Authority**

This instruction is supported by section 19-3-102(2).

## **41:16 PROSPECTIVE HARM**

**Even in the absence of any past harm to the child, you may find that the child lacks proper parental care or that the child's environment is injurious to the child's welfare if you find that, based on *[description of respondent]'s (past conduct) (or) (current circumstances)*, the child is likely to be harmed in *[description of respondent]'s care*.**

### **Notes on Use**

1. Use whichever parenthesized phrase is appropriate.
2. In cases in which prospective harm is at issue, this instruction should be given whenever Question 3 or 4 in Instructions 41:17 and 41:18 is submitted to the jury.

### **Source and Authority**

This instruction is supported by **People in Interest of D.L.R.**, 638 P.2d 39 (Colo. 1981).



## 41:17 SPECIAL VERDICT — MECHANICS FOR SUBMITTING

**You are instructed to answer the following question(s) that will be on a form for Special Verdict:**

**(QUESTION 1: Did the respondent, *[name]*, abandon *[name of child]*?)**

**(QUESTION 2: Did the respondent, *[name]*, *[mistreat or abuse (name of child)]* [or] *[tolerate or allow another person to mistreat or abuse (name of child) without taking lawful means to stop such mistreatment or abuse and prevent it from being repeated]*?)**

**(QUESTION 3: Is *[name of child]* lacking proper parental care as a result of respondent, *[name]*'s, acts or failures to act?)**

**(QUESTION 4: Is *[name of child]*'s environment injurious to the child's welfare?)**

**(QUESTION 5: Is the respondent, *[name]*, failing or refusing to provide *[name of child]* with proper or necessary subsistence, education, medical care, or any other care necessary for *[his]* *[her]* health, guidance, or well-being?)**

**(QUESTION 6: Is *[name of child]* *[homeless]* [or] *[without proper care]*, through no fault of the respondent, *[name]*?)**

**(QUESTION 7: Is *[name of child]* not living at home with the respondent, *[name]*, through no fault of the respondent?)**

**(QUESTION 8: Did *[name of child]* run away from home or is *[he]* *[she]* otherwise beyond the control of the respondent, *[name]*?)**

**(QUESTION 9: Did *[name of child]* test positive at birth for *[a schedule I]* *[a schedule II]* controlled substance?)**

**(QUESTION 10: Is *[name of child]* dependent or neglected based upon a pattern of habitual abuse?)**

**Before you return the Special Verdict answering (this) (these) question(s), you must all agree upon the answer(s) to (each of) the question(s). Upon arriving at such agreement, your foreperson will insert (the) (each) answer in the verdict form and then he or she and all the jurors will sign it (upon completion of all answers).**

### Notes on Use

1. The court should use only those numbered questions on which there is sufficient evidence, renumbering the questions as is necessary and using those bracketed or parenthesized words or phrases which are appropriate.

2. For instructions defining the operative terms in questions 1, 3, 4, 8 and 9 of this instruction, see Instructions 41:6, 41:7, 41:10, 41:13, 41:14, and 41:15, respectively.

3. If Question 9 is applicable, an additional instruction should be used defining a schedule I or schedule II controlled substance as is appropriate to the case. *See* § 19-3-102(1)(g), C.R.S.

4. Under Question 7, a non-custodial parent may not use his or her own admission that the child is not living with him or her through no fault of his or her own to have the child adjudicated neglected or dependent with respect to the custodial parent, although the literal language of the statute would seem to permit it. **People in Interest of T.R.W.**, 759 P.2d 768 (Colo. App. 1988) (construing previous version of section 19-3-102(1)(e)).

5. Note 4 of the Notes on Use to Instruction 4:4 is also applicable to this instruction, as is Note 4 of the Notes on Use to Instruction 4:15.

#### **Source and Authority**

This instruction is supported by section 19-3-102; and **People in Interest of J.G.**, 2016 CO 39, ¶¶ 41-42, 370 P.3d 1151. For a general discussion of the statute, see **People in Interest of S.S.T.**, 38 Colo. App. 110, 553 P.2d 82 (1976).

**41:18 SPECIAL VERDICT FORM**

**IN THE (JUVENILE) (DISTRICT) COURT IN  
AND FOR THE (CITY AND) COUNTY  
OF \_\_\_\_\_, STATE OF COLORADO**

**Action No. \_\_\_\_\_**

**THE PEOPLE OF THE** )  
**STATE OF COLORADO** )  
**In the Interest of** ) **SPECIAL**  
**\_\_\_\_\_, a child,** ) **VERDICT**  
**and Concerning** )  
**\_\_\_\_\_, Respondent(s).** )

**We, the jury, present our Answer(s) to the Question(s) submitted by the Court to which we have all agreed:**

**(QUESTION 1: Did the respondent, [name], abandon [name of child]? [yes or no]**

**ANSWER 1: \_\_\_\_\_)**

**(QUESTION 2: Did the respondent, [name], [mistreat or abuse (name of child)] [or] [tolerate or allow another person to mistreat or abuse (name of child) without taking lawful means to stop such mistreatment or abuse and prevent it from being repeated]? [yes or no]**

**ANSWER 2: \_\_\_\_\_)**

**(QUESTION 3: Is [name of child] lacking proper parental care as a result of the respondent, [name's], acts or failures to act? [yes or no]**

**ANSWER 3: \_\_\_\_\_)**

**(QUESTION 4: Is [name of child]'s environment injurious to the child's welfare? [yes or no]**

**ANSWER 4: \_\_\_\_\_)**

**(QUESTION 5: Is the respondent, [name], failing or refusing to provide [name of child] proper or necessary subsistence, education, medical care, or any other care necessary to [his] [her] health, guidance, or well-being? [yes or no]**

**ANSWER 5: \_\_\_\_\_)**

**(QUESTION 6: Is [name of child] [homeless] [or] [without proper care], through no fault of the respondent, [name]? [yes or no]**

**ANSWER 6: \_\_\_\_\_)**

**(QUESTION 7: Is [name of child] not living at home with the respondent, [name], through no fault of the respondent? [yes or no]**

**ANSWER 7: \_\_\_\_\_)**

**(QUESTION 8: Did [name of child] run away from home or is [he] [she] otherwise beyond the control of the respondent, [name]? [yes or no]**

**ANSWER 8: \_\_\_\_\_)**

**(QUESTION 9: Did [name of child] test positive at birth for a [schedule I] [schedule II] controlled substance? [yes or no]**

**ANSWER 9: \_\_\_\_\_)**

**(QUESTION 10: Is [name of child] dependent or neglected based upon a pattern of habitual abuse? [yes or no]**

**ANSWER 10: \_\_\_\_\_)**

_____	_____
_____	<b>Foreperson</b>
_____	_____
_____	_____

**Notes on Use**

See the Notes on Use to Instruction 41:17.

**Source and Authority**

This instruction is supported by the authority cited in the Source and Authority to Instruction 41:17.

#### **41:19 USE OF PRESENT TENSE — DEPENDENCY AND NEGLECT**

**A finding of dependency and neglect may be based on evidence that the child was subjected to neglect or abuse in the past (and will likely be neglected or abused in the future, if returned to the parent’s care). The present tense as used in these instructions and verdict forms includes the future tense.**

#### **Notes on Use**

1. This instruction should be given in dependency and neglect cases if the court concludes that the jury may be confused by the instructions and verdict forms use of present tense because there is evidence that, at the time of the hearing, “the child has been removed from harm and is doing well.” **People in Interest of S.X.M.**, 271 P.3d 1124, 1130 (Colo. App. 2011).
2. Use parenthesized words as appropriate.

#### **Source and Authority**

This instruction is supported by **People in Interest of S.X.M.**, 271 P.3d at 1130-31.