

**First Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 05-0463.01 Beth Kane

HOUSE BILL 05-1171

HOUSE SPONSORSHIP

Jahn,

SENATE SPONSORSHIP

Grossman,

House Committees

Judiciary

Senate Committees

Judiciary

A BILL FOR AN ACT

101 **CONCERNING THE APPOINTMENT OF INDIVIDUALS BY THE COURT IN**
102 **DOMESTIC RELATIONS PROCEEDINGS TO ASSIST IN THE**
103 **RESOLUTION OF ISSUES RELATED TO CHILDREN.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Authorizes the court to appoint a parenting coordinator as a neutral third party to assist in the resolution of disputes between the parties concerning parental responsibilities, including but not limited to the implementation of the court-ordered parenting plan. Requires the court to make certain findings prior to appointing a parenting coordinator if there is not an agreement between the parties to appoint a parenting coordinator. Specifies the duties of a parenting coordinator. Prohibits the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
March 29, 2005

SENATE
Amended 2nd Reading
March 28, 2005

HOUSE
3rd Reading Unamended
March 2, 2005

HOUSE
Amended 2nd Reading
March 1, 2005

parenting coordinator from performing specified activities with respect to the case. Requires a court order appointing a parenting coordinator to be for a specified term, but prohibits it from being longer than 2 years. Authorizes extension, modification, or termination of the appointment. Requires the court order appointing a parenting coordinator to include apportionment of the responsibility for payment of all of the parenting coordinator's fees between the parties. Grants a parenting coordinator immunity from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. Restricts a parenting coordinator from testifying, and makes exceptions.

In addition to the appointment of a parenting coordinator, upon written consent of both parties to a domestic relations proceeding, authorizes the court to appoint a qualified domestic relations decision-maker and to give the decision-maker binding authority to resolve disputes between the parties concerning the parties' minor or dependent children. Grants to a decision-maker the authority to make binding determinations to implement the provisions of a court order in a manner that is consistent with the substantive intent of the court order. States that a decision-maker may be the same person as the parenting coordinator. Requires the decision-maker's procedures for making determinations to be in writing and approved by the parties prior to the time the decision-maker begins to resolve a dispute of the parties. Requires all decisions made by the decision-maker to be in writing, dated, and signed. Requires a decision-maker to file decisions with the court no later than 20 days after the date the decision is issued. Specifies that a decision is effective immediately upon issuance and that it continues in effect until vacated, corrected, or modified by the decision-maker or until an order is entered by a court pursuant to a de novo hearing by the court. Requires a court order appointing a decision-maker to be for a specified term, but prohibits it from being longer than 2 years. Specifies that the court order appointing a decision-maker shall include apportionment of the responsibility for payment of all of the decision-maker's fees between the parties. Grants a decision-maker immunity from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. Specifies that a decision-maker shall not be competent to testify, and makes exceptions.

Modifies procedures concerning court review of a decision of an arbitrator appointed to resolve disputes between the parties concerning the parties' minor or dependent children.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 10 of title 14, Colorado Revised Statutes,

1 is amended BY THE ADDITION OF THE FOLLOWING NEW
2 SECTIONS to read:

3 **14-10-128.1. Appointment of parenting coordinator.**

4 (1) PURSUANT TO THE PROVISIONS OF THIS SECTION, AT ANY TIME AFTER
5 THE ENTRY OF AN ORDER CONCERNING PARENTAL RESPONSIBILITIES AND
6 UPON NOTICE TO THE PARTIES, THE COURT MAY, ON ITS OWN MOTION, A
7 MOTION BY EITHER PARTY, OR AN AGREEMENT OF THE PARTIES, APPOINT
8 A PARENTING COORDINATOR AS A NEUTRAL THIRD PARTY TO ASSIST IN THE
9 RESOLUTION OF DISPUTES BETWEEN THE PARTIES CONCERNING PARENTAL
10 RESPONSIBILITIES, INCLUDING BUT NOT LIMITED TO IMPLEMENTATION OF
11 THE COURT-ORDERED PARENTING PLAN. **THE PARENTING COORDINATOR**
12 **SHALL BE AN INDIVIDUAL WITH APPROPRIATE TRAINING AND**
13 **QUALIFICATIONS AND A PERSPECTIVE ACCEPTABLE TO THE COURT.**

14 (2) (a) ABSENT AGREEMENT OF THE PARTIES, A COURT SHALL NOT
15 APPOINT A PARENTING COORDINATOR UNLESS THE COURT MAKES THE
16 FOLLOWING FINDINGS:

17 (I) THAT THE PARTIES HAVE FAILED TO ADEQUATELY IMPLEMENT
18 THE PARENTING PLAN;

19 (II) THAT MEDIATION HAS BEEN DETERMINED BY THE COURT TO BE
20 INAPPROPRIATE, OR, IF NOT INAPPROPRIATE, THAT MEDIATION HAS BEEN
21 ATTEMPTED AND WAS UNSUCCESSFUL; AND

22 (III) THAT THE APPOINTMENT OF A PARENTING COORDINATOR IS IN
23 THE BEST INTERESTS OF THE CHILD OR CHILDREN INVOLVED IN THE
24 PARENTING PLAN.

25 (b) IN ADDITION TO MAKING THE FINDINGS REQUIRED PURSUANT TO
26 PARAGRAPH (a) OF THIS SUBSECTION (2), PRIOR TO APPOINTING A
27 PARENTING COORDINATOR, THE COURT SHALL CONSIDER THE EFFECT OF

1 ANY DOCUMENTED EVIDENCE OF DOMESTIC VIOLENCE ON THE PARTIES'
2 ABILITY TO ENGAGE IN PARENT COORDINATION.

3 (3) A PARENTING COORDINATOR SHALL ASSIST THE PARTIES IN
4 IMPLEMENTING THE TERMS OF THE PARENTING PLAN. DUTIES OF A
5 PARENTING COORDINATOR INCLUDE, BUT ARE NOT LIMITED TO, THE
6 FOLLOWING:

7 (a) ASSISTING THE PARTIES IN CREATING AN AGREED-UPON,
8 STRUCTURED GUIDELINE FOR IMPLEMENTATION OF THE PARENTING PLAN;

9 (b) DEVELOPING GUIDELINES FOR COMMUNICATION BETWEEN THE
10 PARTIES AND SUGGESTING APPROPRIATE RESOURCES TO ASSIST THE
11 PARTIES IN LEARNING APPROPRIATE COMMUNICATION SKILLS;

12 (c) INFORMING THE PARTIES ABOUT APPROPRIATE RESOURCES TO
13 ASSIST THEM IN DEVELOPING IMPROVED PARENTING SKILLS;

14 (d) ASSISTING THE PARTIES IN REALISTICALLY IDENTIFYING THE
15 SOURCES AND CAUSES OF CONFLICT BETWEEN THEM, INCLUDING BUT NOT
16 LIMITED TO IDENTIFYING EACH PARTY'S CONTRIBUTION TO THE CONFLICT,
17 WHEN APPROPRIATE; AND

18 (e) ASSISTING THE PARTIES IN DEVELOPING PARENTING STRATEGIES
19 TO MINIMIZE CONFLICT.

20 (4) (a) THE COURT MAY NOT APPOINT A PERSON PURSUANT TO THIS
21 SECTION TO SERVE IN A CASE AS A PARENTING COORDINATOR IF THE
22 PERSON HAS SERVED OR IS SERVING IN THE SAME CASE AS AN EVALUATOR
23 PURSUANT TO SECTION 14-10-127 OR A REPRESENTATIVE OF THE CHILD
24 PURSUANT TO SECTION 14-10-116. AFTER APPOINTING A PERSON
25 PURSUANT TO THIS SECTION TO SERVE AS A PARENTING COORDINATOR IN
26 A CASE, THE COURT MAY NOT SUBSEQUENTLY APPOINT THE PERSON TO
27 SERVE IN THE SAME CASE AS AN EVALUATOR PURSUANT TO SECTION

1 14-10-127 OR A REPRESENTATIVE OF THE CHILD PURSUANT TO
2 SECTION 14-10-116.

3 (b) THE COURT MAY APPOINT A PERSON WHO HAS SERVED OR IS
4 SERVING IN A CASE AS A SPECIAL ADVOCATE PURSUANT TO SECTION
5 14-10-116 TO SERVE IN THE SAME CASE AS THE PARENTING COORDINATOR,
6 UPON THE AGREEMENT OF THE PARTIES. AFTER APPOINTING A PERSON
7 PURSUANT TO THIS SECTION TO SERVE AS A PARENTING COORDINATOR IN
8 A CASE, THE COURT MAY NOT SUBSEQUENTLY APPOINT THE PERSON TO
9 SERVE AS A SPECIAL ADVOCATE IN THE SAME CASE PURSUANT TO SECTION
10 14-10-116.

11 (5) A COURT ORDER APPOINTING A PARENTING COORDINATOR
12 SHALL BE FOR A SPECIFIED TERM; EXCEPT THAT THE COURT ORDER SHALL
13 NOT APPOINT A PARENTING COORDINATOR FOR A PERIOD OF LONGER THAN
14 TWO YEARS. IF AN ORDER FAILS TO SPECIFY THE LENGTH OF THE
15 COURT-ORDERED APPOINTMENT, IT SHALL BE CONSTRUED TO BE TWO
16 YEARS FROM THE DATE OF APPOINTMENT. UPON AGREEMENT OF THE
17 PARTIES, THE COURT MAY EXTEND, MODIFY, OR TERMINATE THE
18 APPOINTMENT, INCLUDING EXTENDING THE APPOINTMENT BEYOND TWO
19 YEARS FROM THE DATE OF THE ORIGINAL APPOINTMENT. THE COURT MAY
20 TERMINATE THE APPOINTMENT OF THE PARENTING COORDINATOR AT ANY
21 TIME FOR GOOD CAUSE. THE COURT SHALL ALLOW THE PARENTING
22 COORDINATOR TO WITHDRAW AT ANY TIME.

23 (6) A COURT ORDER APPOINTING A PARENTING COORDINATOR
24 SHALL INCLUDE APPORTIONMENT OF THE RESPONSIBILITY FOR PAYMENT OF
25 ALL OF THE PARENTING COORDINATOR'S FEES BETWEEN THE PARTIES. THE
26 STATE SHALL NOT BE RESPONSIBLE FOR PAYMENT OF FEES TO A PARENTING
27 COORDINATOR APPOINTED PURSUANT TO THIS SECTION.

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(7) (a) IN A JUDICIAL PROCEEDING, ADMINISTRATIVE PROCEEDING, OR OTHER SIMILAR PROCEEDING, A PARENTING COORDINATOR SHALL NOT BE COMPETENT TO TESTIFY AND MAY NOT BE REQUIRED TO PRODUCE RECORDS AS TO ANY STATEMENT, CONDUCT, OR DECISION, THAT OCCURRED DURING THE PARENTING COORDINATOR'S APPOINTMENT, TO THE SAME EXTENT AS A JUDGE OF A COURT OF THIS STATE ACTING IN A JUDICIAL CAPACITY.

(b) THIS SUBSECTION (7) SHALL NOT APPLY:

(I) TO THE EXTENT TESTIMONY OR PRODUCTION OF RECORDS BY THE PARENTING COORDINATOR IS NECESSARY TO DETERMINE A CLAIM OF THE PARENTING COORDINATOR AGAINST A PARTY; OR

(II) TO THE EXTENT TESTIMONY OR PRODUCTION OF RECORDS BY THE PARENTING COORDINATOR IS NECESSARY TO DETERMINE A CLAIM OF A PARTY AGAINST THE PARENTING COORDINATOR; OR

(III) WHEN BOTH PARTIES HAVE AGREED, IN WRITING, TO AUTHORIZE THE PARENTING COORDINATOR TO TESTIFY AND TO PRODUCE RECORDS RELATED TO STATEMENTS, CONDUCT, AND DECISIONS THAT OCCURRED DURING THE PARENTING COORDINATOR'S APPOINTMENT.

(8) THE PARENTING COORDINATOR SHALL COMPLY WITH ANY APPLICABLE PROVISIONS SET FORTH IN CHIEF JUSTICE DIRECTIVES AND ANY OTHER PRACTICE OR ETHICAL STANDARDS ESTABLISHED BY RULE, STATUTE, OR LICENSING BOARD THAT REGULATES THE PARENTING COORDINATOR.

14-10-128.3. Appointment of decision-maker. (1) IN ADDITION TO THE APPOINTMENT OF A PARENTING COORDINATOR PURSUANT TO

1 SECTION 14-10-128.1 OR AN ARBITRATOR PURSUANT TO SECTION
2 14-10-128.5, AT ANY TIME AFTER THE ENTRY OF AN ORDER CONCERNING
3 PARENTAL RESPONSIBILITIES AND UPON WRITTEN CONSENT OF BOTH
4 PARTIES, THE COURT MAY APPOINT A QUALIFIED DOMESTIC RELATIONS
5 DECISION-MAKER AND GRANT TO THE DECISION-MAKER BINDING
6 AUTHORITY TO RESOLVE DISPUTES BETWEEN THE PARTIES AS TO
7 IMPLEMENTATION OR CLARIFICATION OF EXISTING ORDERS CONCERNING
8 THE PARTIES' MINOR OR DEPENDENT CHILDREN, INCLUDING BUT NOT
9 LIMITED TO DISPUTES CONCERNING PARENTING TIME, SPECIFIC DISPUTED
10 PARENTAL DECISIONS, AND CHILD SUPPORT. A DECISION-MAKER SHALL
11 HAVE THE AUTHORITY TO MAKE BINDING DETERMINATIONS TO IMPLEMENT
12 OR CLARIFY THE PROVISIONS OF A PRE-EXISTING COURT ORDER IN A
13 MANNER THAT IS CONSISTENT WITH THE SUBSTANTIVE INTENT OF THE
14 COURT ORDER. THE DECISION-MAKER APPOINTED PURSUANT TO THE
15 PROVISIONS OF THIS SECTION MAY BE THE SAME PERSON AS THE PARENTING
16 COORDINATOR APPOINTED PURSUANT TO SECTION 14-10-128.1.

17 (2) THE DECISION-MAKER'S PROCEDURES FOR MAKING
18 DETERMINATIONS SHALL BE IN WRITING AND SHALL BE APPROVED BY THE
19 PARTIES PRIOR TO THE TIME THE DECISION-MAKER BEGINS TO RESOLVE A
20 DISPUTE OF THE PARTIES. IF A PARTY IS UNABLE OR UNWILLING TO AGREE
21 TO THE DECISION-MAKER'S PROCEDURES, THE DECISION-MAKER SHALL BE
22 ALLOWED TO WITHDRAW FROM THE MATTER.

23 (3) ALL DECISIONS MADE BY THE DECISION-MAKER PURSUANT TO
24 THIS SECTION SHALL BE IN WRITING, DATED, AND SIGNED BY THE
25 DECISION-MAKER. DECISIONS OF THE DECISION-MAKER SHALL BE FILED
26 WITH THE COURT AND MAILED TO THE PARTIES OR TO COUNSEL FOR THE
27 PARTIES, IF ANY, NO LATER THAN TWENTY DAYS AFTER THE DATE THE

1 DECISION IS ISSUED. ALL DECISIONS SHALL BE EFFECTIVE IMMEDIATELY
2 UPON ISSUANCE AND SHALL CONTINUE IN EFFECT UNTIL VACATED,
3 CORRECTED, OR MODIFIED BY THE DECISION-MAKER OR UNTIL AN ORDER
4 IS ENTERED BY A COURT PURSUANT TO A DE NOVO HEARING UNDER
5 SUBSECTION (4) OF THIS SECTION.

6 (4) (a) A PARTY MAY FILE A MOTION WITH THE COURT REQUESTING
7 THAT A DECISION OF THE DECISION-MAKER BE MODIFIED BY THE COURT
8 PURSUANT TO A DE NOVO HEARING. A MOTION FOR A DE NOVO HEARING
9 SHALL BE FILED NO LATER THAN THIRTY DAYS AFTER THE DATE THE
10 DECISION IS ISSUED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

11 (b) IF A COURT, IN ITS DISCRETION BASED ON THE PLEADINGS FILED,
12 GRANTS A PARTY'S REQUEST FOR A DE NOVO HEARING TO MODIFY THE
13 DECISION OF THE DECISION-MAKER AND THE COURT SUBSTANTIALLY
14 UPHOLDS THE DECISION OF THE DECISION-MAKER, THE PARTY THAT
15 REQUESTED THE DE NOVO HEARING SHALL PAY THE FEES AND COSTS OF
16 THE OTHER PARTY AND SHALL PAY THE FEES AND COSTS INCURRED BY THE
17 DECISION-MAKER IN CONNECTION WITH THE REQUEST FOR DE NOVO
18 HEARING, UNLESS THE COURT FINDS THAT IT WOULD BE MANIFESTLY
19 UNJUST.

20 (5) A COURT ORDER APPOINTING A DECISION-MAKER SHALL BE FOR
21 A SPECIFIED TERM; EXCEPT THAT THE COURT ORDER SHALL NOT APPOINT
22 A DECISION-MAKER FOR A PERIOD OF LONGER THAN TWO YEARS. IF AN
23 ORDER FAILS TO SPECIFY THE LENGTH OF THE COURT-ORDERED
24 APPOINTMENT, IT SHALL BE CONSTRUED TO BE TWO YEARS FROM THE DATE
25 OF APPOINTMENT. UPON AGREEMENT OF THE PARTIES, THE COURT MAY
26 EXTEND, MODIFY, OR TERMINATE THE APPOINTMENT, INCLUDING
27 EXTENDING THE APPOINTMENT BEYOND TWO YEARS FROM THE DATE OF

1 THE ORIGINAL APPOINTMENT. THE COURT MAY TERMINATE THE
2 APPOINTMENT OF THE DECISION-MAKER AT ANY TIME FOR GOOD CAUSE.
3 THE COURT SHALL ALLOW THE DECISION-MAKER TO WITHDRAW AT ANY
4 TIME.

5 (6) A COURT ORDER APPOINTING A DECISION-MAKER SHALL
6 INCLUDE APPORTIONMENT OF THE RESPONSIBILITY FOR PAYMENT OF ALL
7 OF THE DECISION-MAKER'S FEES BETWEEN THE PARTIES. THE STATE SHALL
8 NOT BE RESPONSIBLE FOR PAYMENT OF FEES TO A DECISION-MAKER
9 APPOINTED PURSUANT TO THIS SECTION.

10 (7) (a) A DECISION-MAKER SHALL BE IMMUNE FROM LIABILITY IN
11 ANY CLAIM FOR INJURY THAT ARISES OUT OF AN ACT OR OMISSION OF THE
12 DECISION-MAKER OCCURRING DURING THE PERFORMANCE OF HIS OR HER
13 DUTIES OR DURING THE PERFORMANCE OF AN ACT THAT THE
14 DECISION-MAKER REASONABLY BELIEVED WAS WITHIN THE SCOPE OF HIS
15 OR HER DUTIES UNLESS THE ACT OR OMISSION CAUSING SUCH INJURY WAS
16 WILLFUL AND WANTON.

17 (b) NOTHING IN THIS SUBSECTION (7) SHALL BE CONSTRUED TO BAR
18 A PARTY FROM ASSERTING A CLAIM RELATED TO THE REASONABLENESS OR
19 ACCURACY OF ANY FEE CHARGED OR TIME BILLED BY A DECISION-MAKER.

20 (c) (I) IN A JUDICIAL PROCEEDING, ADMINISTRATIVE PROCEEDING,
21 OR OTHER SIMILAR PROCEEDING, A DECISION-MAKER SHALL NOT BE
22 COMPETENT TO TESTIFY AND MAY NOT BE REQUIRED TO PRODUCE RECORDS
23 AS TO ANY STATEMENT, CONDUCT, OR DECISION, THAT OCCURRED DURING
24 THE DECISION-MAKER'S APPOINTMENT, TO THE SAME EXTENT AS A JUDGE
25 OF A COURT OF THIS STATE ACTING IN A JUDICIAL CAPACITY.

26 (II) THIS PARAGRAPH (c) SHALL NOT APPLY:

27 (A) TO THE EXTENT TESTIMONY OR PRODUCTION OF RECORDS BY

1 THE DECISION-MAKER IS NECESSARY TO DETERMINE THE CLAIM OF THE
2 DECISION-MAKER AGAINST A PARTY; OR

3 (B) TO THE EXTENT TESTIMONY OR PRODUCTION OF RECORDS BY
4 THE DECISION-MAKER IS NECESSARY TO DETERMINE A CLAIM OF A PARTY
5 AGAINST A DECISION-MAKER; OR

6 (C) WHEN BOTH PARTIES HAVE AGREED, IN WRITING, TO
7 AUTHORIZE THE DECISION-MAKER TO TESTIFY.

8 (d) IF A PERSON COMMENCES A CIVIL ACTION AGAINST A
9 DECISION-MAKER ARISING FROM THE SERVICES OF THE DECISION-MAKER,
10 OR IF A PERSON SEEKS TO COMPEL A DECISION-MAKER TO TESTIFY OR
11 PRODUCE RECORDS IN VIOLATION OF PARAGRAPH (c) OF THIS SUBSECTION
12 (7), AND THE COURT DECIDES THAT THE DECISION-MAKER IS IMMUNE FROM
13 CIVIL LIABILITY OR THAT THE DECISION-MAKER IS NOT COMPETENT TO
14 TESTIFY, THE COURT SHALL AWARD TO THE DECISION-MAKER REASONABLE
15 ATTORNEY FEES AND REASONABLE EXPENSES OF LITIGATION.

16 (8) THE DECISION-MAKER SHALL COMPLY WITH ANY APPLICABLE
17 PROVISIONS SET FORTH IN CHIEF JUSTICE DIRECTIVES AND ANY OTHER
18 PRACTICE OR ETHICAL STANDARDS ESTABLISHED BY RULE, STATUTE, OR
19 LICENSING BOARD THAT REGULATES THE DECISION-MAKER.

20 **SECTION 2.** 14-10-128.5, Colorado Revised Statutes, is
21 amended to read:

22 **14-10-128.5. Appointment of arbitrator - de novo review of**
23 **award.** (1) With the consent of all parties, the court may appoint an
24 arbitrator to resolve disputes between the parties concerning the parties'
25 minor or dependent children, including but not limited to parenting time,
26 nonrecurring adjustments to child support, and disputed parental
27 decisions. Notwithstanding any other provision of law to the contrary, all

1 awards entered by an arbitrator appointed pursuant to this section shall
2 be in writing. The arbitrator's award shall be effective immediately upon
3 entry and shall continue in effect until vacated by the arbitrator pursuant
4 to part 2 of article 22 of title 13, C.R.S., modified or corrected by the
5 arbitrator pursuant to part 2 of article 22 of title 13, C.R.S., or modified
6 by the court pursuant to a de novo ~~review~~ HEARING under subsection (2)
7 of this section.

8 (2) Any party may apply to have the arbitrator's award vacated,
9 modified, or corrected pursuant to part 2 of article 22 of title 13, C.R.S.,
10 or may move the court to modify the arbitrator's award pursuant to a de
11 novo ~~review of~~ HEARING CONCERNING such award BY FILING A MOTION
12 FOR HEARING NO LATER THAN THIRTY DAYS AFTER THE DATE OF THE
13 AWARD. In circumstances in which a party moves for a de novo ~~review~~
14 HEARING by the court, ~~the court shall order the nonprevailing party~~ IF THE
15 COURT, IN ITS DISCRETION BASED ON THE PLEADINGS FILED, GRANTS THE
16 MOTION AND THE COURT SUBSTANTIALLY UPHOLDS THE DECISION OF THE
17 ARBITRATOR, THE PARTY THAT REQUESTED THE DE NOVO HEARING SHALL
18 BE ORDERED to pay the fees and costs of the ~~prevailing~~ OTHER party and
19 the fees of the arbitrator incurred in responding to the application or
20 motion unless the court finds that it would be manifestly unjust.

21 **SECTION 3. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.