2013

HOUSE JOINT RESOLUTION 13-1019

BY REPRESENTATIVE(S) Levy and Navarro, Gardner, Dore, Duran, Exum, Labuda, Rosenthal, Szabo, Buckner, Conti, Court, Fischer, Foote, Garcia, Gerou, Ginal, Hamner, Holbert, Hullinghorst, Humphrey, Kagan, Landgraf, Lawrence, Lebsock, Melton, Mitsch Bush, Moreno, Murray, Nordberg, Pettersen, Primavera, Priola, Rankin, Salazar, Schafer, Scott, Singer, Swalm, Tyler, Vigil, Waller, Williams, Wilson, Wright, Young;
also SENATOR(S) Giron and Harvey, Aguilar, Carroll, Heath, Hudak, Jahn, Jones, Kefalas, Kerr, Lambert, Newell, Nicholson, Renfroe, Steadman, Tochtrop, Todd, Ulibarri, Morse.

CONCERNING CREATION OF AN INTERIM COMMITTEE TO STUDY LEGAL DEFENSE IN JUVENILE JUSTICE PROCEEDINGS.

WHEREAS, One hundred and ten years ago, Colorado was the second state in the nation to establish a separate juvenile court for children accused of misconduct and activity that would be criminal if committed by an adult in order to hold children accountable for their behavior through developmentally appropriate responses and treatment that both protects the public and assists the child in becoming a productive member of society; and

WHEREAS, The Bill of Rights of the United States and Colorado constitutions guarantee children due process of law, access to courts, and the right to counsel in juvenile delinquency court under the United States Supreme Court decision of *In re Gault*, 387 U.S. 1 (1967), extending the protections under *Gideon v. Wainright*, 372 U.S. 335 (1963) to children; and

WHEREAS, Children in juvenile delinquency proceedings face direct consequences, such as secure confinement, shackling, placement outside of their family homes, and probation; and

WHEREAS, The collateral consequences of a juvenile adjudication can have lasting detrimental effects on a child's current and future ability to attend school, secure housing, obtain a job, obtain credit, or enroll in college, all of which hinder the ability to recover from a delinquency adjudication; and

WHEREAS, Defense counsel plays a critical role for children in juvenile court by protecting against unfairness, promoting accuracy in decision-making, presenting alternatives to decisionmakers, helping children understand the court proceedings and the consequences of decision-making, and representing children's expressed interests; and

WHEREAS, Children are different from adults, and the representation of a child client requires specialized skills and training, but juvenile defense has not consistently been treated as a specialty practice for dedicated attorneys by indigent defense delivery systems, and statewide disparities exist as to how and when children access counsel and in the quality of representation children receive in delinquency proceedings; and

WHEREAS, Because children and families face barriers in accessing the courts and counsel, and a significant percentage of children and families proceed without counsel in juvenile delinquency court, children enter waivers of counsel without consultation with counsel and enter guilty pleas without a full advisement of the collateral consequences of juvenile adjudications by counsel; and

WHEREAS, Children and families are often unaware of public access to juvenile court records and juvenile court proceedings and the barriers those records impose on future success. Moreover, the process of petitioning for expungement of a juvenile record or removal from the juvenile sex offender registry are important statutory rights in this regard, but the process is cumbersome for children and families to navigate without counsel; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-ninth General Assembly of the State of Colorado, the Senate concurring herein:

(1) That there is hereby created a legislative committee, referred to in this resolution as the "committee", which shall meet in the interim after the first regular session of the Sixty-ninth General Assembly to study the role of legal defense counsel in the juvenile justice system.

(2) (a) That the committee shall consist of ten legislative members appointed as follows:

(I) Five members of the Senate, three appointed by the President of the Senate and two appointed by the Minority Leader of the Senate; and

(II) Five members of the House of Representatives, three appointed by the Speaker of the House of Representatives and two appointed by the Minority Leader of the House of Representatives.

(III) The Speaker of the House of Representatives shall select a legislative committee member to serve as Chair of the committee, and the President of the Senate shall select a legislative member of the committee to serve as Vice-Chair of the committee.

(b) All appointments to the committee must be made by May 31, 2013.

(c) The Chair and Vice-Chair of the committee shall jointly select up to ten persons to serve as nonvoting members of the committee and to assist the legislative committee members in reviewing the issues identified in this section. The nonvoting members must include persons with knowledge and experience in the areas of juvenile defense, juvenile delinquency court administration, and professionalism in the law, and who represent the following constituencies:

(I) Office of the State Public Defender;

(II) Juvenile defense attorneys;

(III) State Court Administrator's Office;

(IV) Juvenile court judges and magistrates;

(V) Youth and parents of youth previously involved in the juvenile court system;

(VI) District attorneys;

(VII) Office of Child's Representative;

(VIII) Community victim rights organizations; and

(IX) Community organizations.

(3) That the committee shall study and address:

(a) Current laws, procedures, and practices for the appointment of counsel, advisement of rights, and waivers of counsel, for children in juvenile delinquency court;

(b) The role of defense counsel as distinct from the role of a guardian ad litem and the scope of the right to counsel;

(c) Current laws, procedures, and guidelines for the determination of whether a child is indigent for the purpose of providing court-appointed counsel;

(d) Methods for improving professionalism in the practice of juvenile defense;

(e) The impact of inadequate access to counsel on minority, immigrant, and disabled children and children with mental health needs;

(f) Funding attorneys to represent indigent children and the most efficient way to provide counsel to juveniles in delinquency proceedings; and

(g) The scope of public access to juvenile delinquency records, the laws and procedures for expunging juvenile adjudications, and the laws and procedures for petitioning for removal from the juvenile sex offender registry.

(4) (a) That the committee shall meet at least four times, but no more than six times, beginning in July 2013, during the 2013 interim. The committee may form subcommittees to accomplish its goals and may invite additional members of the community to participate in the subcommittees. The committee may also solicit and receive written comments from members of the public.

(b) In addition to testimony, the committee shall review any available, non-identifying Colorado data collected by the Department of the Judiciary, Office of the State Public Defender, Office of the Alternate Defense Counsel, and other agencies with data concerning access to the courts and access to defense counsel for children. The committee may also solicit information from the National Conference of State Legislatures, other national non-partisan organizations, and other states or organizations that have studied or introduced legislation regarding access to courts and counsel for children in juvenile court.

(5) That the legislative members of the committee be compensated for attendance at meetings of the committee as provided in section 2-2-307, Colorado Revised Statutes. The nonlegislative members of the committee shall serve without compensation and without reimbursement for expenses.

(6) That the Legislative Council staff and the Office of Legislative Legal Services shall be available to assist the committee in carrying out its duties.

(7) That all reasonable and necessary expenses incurred by the committee are subject to approval by the chair of the Legislative Council and paid by vouchers and warrants drawn as provided by law from moneys allocated to the Legislative Council for legislative studies from appropriations made by the General Assembly.

(8) That the committee shall make a report to the Legislative Council by the date specified in Joint Rule 24 (b) (1) (D). The report may include recommendations for legislation, including but not limited to legislation continuing the committee and an explanation of the additional time and procedures that the committee may implement to achieve the committee's study goals. Legislation recommended by the committee shall be treated as legislation recommended by any other interim committee for the purposes of any introduction deadlines or bill limitations imposed by the Joint Rules of the Senate and House of Representatives.

Mark Ferrandino SPEAKER OF THE HOUSE OF REPRESENTATIVES	John P. Morse PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Cindi Markwell SECRETARY OF THE SENATE