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OFFICE OF THE STATE PUBLIC DEFENDER
 RECOMMENDED STATUTORY CHANGES
 JUVENILE DEFENSE ATTORNEY INTERIM COMMITTEE

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CHILDREN'S CODE

§ 19-2-507. Duty of officer--screening teams--notification--release or detention

(1) When a juvenile is taken into temporary custody and not released pending charges, the officer shall notify the screening team for the judicial district in which the juvenile is taken into custody. **THE SCREENING TEAM SHALL PROMPTLY NOTIFY THE COURT AND THE LOCAL PUBLIC DEFENDER'S OFFICE OF THE JUVENILE'S DETENTION.**

ADDITIONALLY, [t]he screening team shall notify the juvenile's parent, guardian, or legal custodian without unnecessary delay and inform him or her that, if the juvenile is placed in detention or a temporary holding facility, all parties have a right to a prompt hearing to determine whether the juvenile is to be detained further. Such notification may be made to a person with whom the juvenile is residing if a parent, guardian, or legal custodian cannot be located. If the screening team is unable to make such notification, it may be made by any law enforcement officer, juvenile probation officer, detention center counselor, or common jailor in whose physical custody the juvenile is placed.

(2) The juvenile shall be detained **ONLY** if the law enforcement officer or the court determines that the **JUVENILE IS A DANGER TO HIMSELF OR TO THE COMMUNITY**. ~~juvenile's immediate welfare or the protection of the community require that the juvenile be detained.~~ In determining whether a juvenile requires detention, the law enforcement officer or the court shall follow criteria for the detention of juvenile offenders which criteria are established in accordance with section 19-2-212.

(3) The juvenile shall be released to the care of such juvenile's parents or other responsible adult, unless a determination has been made in accordance with subsection (2) of this section that **THE JUVENILE IS A DANGER TO HIMSELF OR TO THE COMMUNITY** ~~such juvenile's immediate welfare or the protection of the community requires that such juvenile be detained.~~ The court may make reasonable orders as conditions of said release,

which conditions may include participation in a preadjudication service program established pursuant to section 19-2-302. ~~In addition, the court may provide that any violation of such orders shall subject the juvenile to contempt sanctions of the court.~~ The parent or other person to whom the juvenile is released shall be required to sign a written promise, on forms supplied by the court, to bring the juvenile to the court at a time set or to be set by the court. ~~Failure, without good cause, to comply with the promise shall subject the juvenile's parent or any other person to whom the juvenile is released to contempt sanctions of the court.~~

(4)(a) Except as provided in paragraph (b) of this subsection (4), a juvenile shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain basic identification information and to contact his or her parents, guardian, or legal custodian.

(b) If he or she is not released as provided in subsection (3) of this section, he or she shall be taken directly to the court or to the place of detention, a temporary holding facility, or a shelter designated by the court without unnecessary delay.

(5) As an alternative to taking a juvenile into temporary custody pursuant to subsections (1), (3), and (4) of this section, a law enforcement officer may, if authorized by the establishment of a policy that permits such service by order of the chief judge of the judicial district or the presiding judge of the Denver juvenile court, which policy is established after consultation between such judge and the district attorney and law enforcement officials in the judicial district, serve a written promise to appear for juvenile proceedings based on any act that would constitute a felony, misdemeanor, or petty offense upon the juvenile and the juvenile's parent, guardian, or legal custodian. Such promise to appear pursuant to this subsection (5) shall state any charges against the juvenile and the date, time, and place where such juvenile shall be required to answer such charges. **THE PROMISE TO APPEAR SHALL ALSO INCLUDE, IN CLEAR AND UNDERSTANDABLE TERMS, THAT THE JUVENILE HAS THE RIGHT TO HAVE THE ASSISTANCE OF COUNSEL AT THE FIRST APPEARANCE, THAT COUNSEL MAY BE APPOINTED FOR THE JUVENILE IF THE JUVENILE AND/OR HIS/HER PARENT, GUARDIAN, OR LEGAL CUSTODIAN CANNOT AFFORD COUNSEL, AND THAT IF THE JUVENILE CHOOSES TO RETAIN HIS/HER OWN COUNSEL THAT THE JUVENILE AND/OR HIS/HER PARENT, GUARDIAN, OR LEGAL CUSTODIAN SHOULD CHOOSE COUNSEL THAT IS EXPERIENCED IN REPRESENTING JUVENILES IN THE JUVENILE JUSTICE SYSTEM. THE PROMISE TO**

APPEAR SHALL ALSO INCLUDE THE CONTACT INFORMATION FOR THE LOCAL PUBLIC DEFENDER OFFICE. The promise to appear shall be signed by the juvenile. The promise to appear shall be served upon the juvenile's parent, guardian, or legal custodian by personal service or by certified mail, return receipt requested. The date established for the juvenile and the juvenile's parent, guardian, or legal custodian to appear shall not be earlier than seven days nor later than thirty days after the promise to appear is served upon both the juvenile and the juvenile's parent, guardian, or legal custodian.

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CRS §19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions

(1) A juvenile who must be taken from his or her home but who does not require physical restriction shall be given temporary care in a shelter facility designated by the court or the county department of social services and shall not be placed in detention.

(2) When a juvenile is placed in a detention facility, in a temporary holding facility, or in a shelter facility designated by the court, the screening team shall promptly so notify the court **AND THE LOCAL PUBLIC DEFENDER'S OFFICE**. The screening team shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the county, the person with whom the juvenile has been residing and inform him or her of the right to a prompt hearing to determine whether the juvenile is to be detained further. The court shall hold such detention hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays.

(3) ALL JUVENILES DETAINED PURSUANT TO SUBSECTION (2) SHALL BE REPRESENTED AT THE DETENTION HEARING BY EITHER RETAINED OR APPOINTED COUNSEL. ANY JUVENILE WHO HAS NOT RETAINED COUNSEL WILL BE REPRESENTED AT THE DETENTION HEARING BY EITHER THE OFFICE OF THE STATE PUBLIC DEFENDER OR, IN THE CASE OF CONFLICT, BY THE OFFICE OF THE ALTERNATE DEFENSE COUNSEL. THIS LIMITED REPRESENTATION WILL CONTINUE THROUGH THE FIRST ADVISEMENT, HELD PURSUANT TO SECTION 19-2-706, FOR ALL JUVENILES WHO ARE ORDERED FURTHER DETAINED BY THE COURT AFTER THE DETENTION HEARING UNLESS THE JUVENILE HAS RETAINED COUNSEL OR THE JUVENILE IS CHARGED WITH A WAIVABLE OFFENCE AND THERE IS A VALID WAIVER OF THE RIGHT TO COUNSEL PURSUANT TO SECTION 19-2-706(1)(B) AND (2)(C). IF, PURSUANT TO SUBSECTION (3)(A)(IV), THE JUVENILE IS RELEASED AFTER THE DETENTION HEARING, THE JUVENILE AND/OR HIS/HER PARENT, GUARDIAN, OR LEGAL CUSTODIAN SHALL BE INFORMED OF THE PROCEDURES FOR APPLYING FOR PUBLIC DEFENDER REPRESENTATION.

(3)(4)(a)(I) A juvenile taken into custody pursuant to this article and placed in a detention or shelter facility or a temporary holding facility shall be entitled to a hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of such

placement to determine if he or she should be detained. **THE DETENTION HEARING SHALL BE SCHEDULED FOR A TIME THAT ALLOWS SUFFICIENT TIME FOR COUNSEL TO CONSULT WITH THE JUVENILE BEFORE THE DETENTION HEARING.** The time in which the hearing shall be held may be extended for a reasonable time by order of the court upon good cause shown.

(II) ANY SCREENING MATERIAL AND OTHER RELEVANT DOCUMENTS, INCLUDING ALL DISCOVERY, SHALL BE PROVIDED TO COUNSEL BEFORE THE DETENTION HEARING.

(H)(III) The **ONLY** primary purpose of a detention hearing shall be to determine if a juvenile should be detained further and to define conditions under which he or she may be released, if his or her release is appropriate. A detention hearing shall not be **COMBINED WITH** considered a preliminary hearing **OR A FIRST ADVISEMENT. DUE TO THE LIMITED SCOPE OF A DETENTION HEARING, REPRESENTATION OF A JUVENILE BY APPOINTED COUNSEL WOULD NOT CREATE A CONFLICT WITH SUBSEQUENT REPRESENTATION OF OTHER INDIVIDUALS RELATED TO THE CASE.**

(III) With respect to this section, the court may further detain the juvenile **ONLY** if the court ~~is satisfied~~ **FINDS** from the information provided at the hearing that the juvenile is a danger to himself or herself or to the community. Any information having probative value shall be received regardless of its admissibility under the rules of evidence. In determining whether a juvenile requires detention, the court shall consider any record of any prior adjudications of the juvenile. There shall be a rebuttable presumption that a juvenile is a danger to himself or herself or to the community if:

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CRS §19-2-706 Advisement

(1)(a) At the first appearance before the court after the filing of a petition, the juvenile and his or her parents, guardian, or other legal custodian shall be advised by the court of their constitutional and legal rights as set forth in rule 3 of the Colorado rules of juvenile procedure. Such advisement shall also include the possibility of restorative justice practices, including victim-offender conferences if restorative justice practices are available in the jurisdiction. The advisement regarding restorative justice practices does not establish any right to restorative justice practices on behalf of the juvenile.

(1)(b) THE COURT MAY ACCEPT A WAIVER OF COUNSEL ONLY AFTER DETERMINING, IN LANGUAGE APPROPRIATE TO THE JUVENILE'S DEVELOPMENTAL STAGE, THAT THE WAIVER IS KNOWING, INTELLIGENT AND VOLUNTARY WHICH INCLUDES DETERMINING:

- i. THAT THE JUVENILE UNDERSTANDS ALL THE POSSIBLE CONSEQUENCES OF THE CONVICTION,**
- ii. THAT THE JUVENILE UNDERSTANDS ALL THE POSSIBLE SENTENCING OPTIONS,**
- iii. THAT THE WAIVER IS NOT THE RESULT OF PARENTAL PRESSURE, AND**
- iv. THE YOUTH UNDERSTANDS THAT QUALIFIED COUNSEL WILL BE PROVIDED IF THE JUVENILE'S PARENTS, GUARDIAN OR OTHER LEGAL CUSTODIAN IS UNABLE OR UNWILLING TO OBTAIN COUNSEL FOR THE JUVENILE.**

(2)(a) If the juvenile or his or her parents, guardian, or other legal custodian requests counsel and the juvenile or his or her parents, guardian, or other legal custodian is found to be without sufficient financial means, or the juvenile's parents, guardian, or other legal custodian refuses to retain counsel for said juvenile, the court shall appoint counsel for the juvenile.

(b) If the court appoints counsel for the juvenile because of the refusal of the parents, guardian, or other legal custodian to retain counsel for the juvenile, the parents, guardian, or legal custodian, other than a county department of social services or the department of human services, shall be ordered to reimburse the ~~court~~ **AGENCY PROVIDING COUNSEL** for the cost of the counsel unless the court finds there was good cause for such refusal.

(c) The court may appoint counsel without such request if it deems representation by counsel is necessary to protect the interests of the juvenile or other parties. **THE GENERAL ASSEMBLY HEREBY DETERMINES THAT COUNSEL IS NECESSARY TO PROTECT THE INTEREST OF THE JUVENILE, AND THEREFORE SHALL BE APPOINTED IF NOT RETAINED OR APPOINTED PURSUANT TO SECTION (A) AND (B) ABOVE, IN ALL CASES WHERE THE JUVENILE IS CHARGED WITH AN OFFENCE THAT REQUIRES MANDATORY SENTENCING, WITH A SEX OFFENCE, WITH A CRIME OF VIOLENCE, AS A MANDATORY SENTENCE OFFENDER, AS A REPEAT JUVENILE OFFENDER OR AS AN AGGRAVATED JUVENILE OFFENDER OR WHERE THE JUVENILE IS IN THE CUSTODY OF THE DEPARTMENT OF SOCIAL SERVICE OR THE DEPARTMENT OF HUMAN SERVICES.**

d) **IF THE JUVENILE IS ENTITLED TO PUBLIC DEFENDER OR ALTERNATE DEFENSE COUNSEL REPRESENTATION PURSUANT TO SECTION 19-2-508, THAT REPRESENTATION SHALL CONTINUE THROUGH THE FIRST ADVISEMENT IF THE JUVENILE IS STILL DETAINED OR IF THE JUVENILE OR HIS/HER PARENT, GUARDIAN, OR LEGAL CUSTODIAN HAVE APPLIED AND HAVE BEEN DETERMINED TO BE ELIGIBLE FOR REPRESENTATION PURSUANT TO SECTION 21-1-103(2) UNLESS THE JUVENILE HAS RETAINED COUNSEL OR THE JUVENILE IS CHARGED WITH A SAVABLE OFFENCE AND THERE IS A VALID WAIVER OF THE RIGHT TO COUNSEL PURSUANT TO SECTION 19-2-706(1)(B) AND (2)(C).** If the juvenile has been appointed counsel ~~The appointment of counsel pursuant to this~~ subsection (2) **OF THIS STATUTE, THAT APPOINTMENT** shall continue until such time as the court's jurisdiction is terminated or until such time as the court finds that the juvenile or his or her parents, guardian, or other legal custodian has sufficient financial means to retain counsel or that the juvenile's parents, guardian, or other legal custodian no longer refuses to retain counsel for the juvenile.

STATE PUBLIC DEFENDER

CRS §21-1-103. Representation of indigent persons

(1) The state public defender shall represent as counsel, without charge except as provided in subsection (3) of this section, each indigent person who is under arrest for or charged with committing a felony if:

(a) The defendant requests it and he complies with subsection (3) of this section; or

(b) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding. When appointed by the court, the office of the state public defender shall be limited to defending the indigent person and shall not be appointed to act as advisory counsel. The court shall not appoint a public defender to represent a defendant if such defendant does not fall within the fiscal standards or guidelines established by the supreme court for appointment of public defenders.

(2) Except as provided in section 16-5-501, C.R.S., the state public defender shall represent indigent persons charged in any court with crimes which constitute misdemeanors; juveniles upon whom a delinquency petition is filed or who are in any way restrained by court order, process, or otherwise; persons held in any institution against their will by process or otherwise for the treatment of any disease or disorder or confined for the protection of the public; and such persons charged with municipal code violations as the state public defender in his or her discretion may determine, subject to review by the court if:

Editor's note: This version of the introductory portion to subsection (2) is effective until January 1, 2014.

(2) The state public defender shall represent indigent persons charged in any court with crimes which constitute misdemeanors and in which the charged offense includes a possible sentence of incarceration; juveniles upon whom a delinquency petition is filed or who are in any way restrained by court order, process, or otherwise; persons held in any institution against their will by process or otherwise for the treatment of any disease or disorder or confined for the protection of the public; and such persons charged with municipal code violations as the state public defender in his or her discretion may

determine, subject to review by the court if:

Editor's note: This version of the introductory portion to subsection (2) is effective January 1, 2014.

(a) The indigent person or his parent or legal guardian in delinquency or other actions under article 2 of title 19, C.R.S., requests it and complies with subsection (3) of this section; or

(b) The court, on its own motion or otherwise, so orders or requests and the defendant or his or her parent or legal guardian in delinquency or other actions under article 2 of title 19, C.R.S., does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding. The court shall not appoint a public defender to represent the defendant, or his or her parent or legal guardian, if such person does not fall within the fiscal standards or guidelines established by the supreme court.

(3) The determination of indigency shall be made by the state public defender, subject to review by the court. When a defendant or, if applicable, the defendant's parent or legal guardian requests representation by a public defender, such person shall submit an appropriate application, the form of which shall state that such application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. A nonrefundable processing fee of twenty-five dollars shall be paid by the applicant if the court-appointed counsel enters an appearance based upon the application. The fee shall be assessed at the time of sentencing, or adjudication, if sentencing or adjudication occurs, or upon other final disposition of the case; except that the court may, at sentencing, adjudication, or other final disposition, waive the fee if the court determines, based upon the financial information submitted by the party being represented by the court-appointed counsel, that the person does not have the financial resources to pay the fee. Before the court appoints a public defender based on said application, the court shall advise the defendant or, if applicable, the defendant's parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application shall be sent to the prosecuting attorney for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the public defender's office. Processing fees collected pursuant to this subsection (3) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

4(a) NOTWITHSTANDING THE REQUIREMENTS OF SECTION (3), THE STATE PUBLIC DEFENDER MAY, BEFORE DETERMINING INDIGENCY, AUTOMATICALLY ELECT TO REPRESENT A DEFENDANT IN CUSTODY WHO CANNOT POST OR IS NOT ALLOWED TO POST BOND.

(b) NOTWITHSTANDING THE REQUIREMENTS OF SECTION (3), THE STATE PUBLIC DEFENDER SHALL, BEFORE DETERMINING INDIGENCY, REPRESENT ALL UNREPRESENTED JUVENILES IN DETENTION HEARINGS, EXCEPT IN THE CASE OF CONFLICTS WHEREIN THE OFFICE OF ALTERNATE DEFENSE COUNSEL WILL PROVIDE REPRESENTATION. THE STATE PUBLIC DEFENDER SHALL CONTINUE TO REPRESENT THE JUVENILE THROUGH THE FIRST ADVISEMENT IF THE JUVENILE IS STILL DETAINED OR IF THE JUVENILE OR HIS/HER PARENT, GUARDIAN, OR LEGAL CUSTODIAN HAVE APPLIED AND HAVE BEEN DETERMINED TO BE ELIGIBLE FOR REPRESENTATION PURSUANT TO SUBSECTION (2) UNLESS THE JUVENILE HAS RETAINED COUNSEL OR THE JUVENILE IS CHARGED WITH A WAIVABLE OFFENCE AND THERE IS A VALID WAIVER OF THE RIGHT TO COUNSEL PURSUANT TO SECTION 19-2-706(1)(B) AND (2)(C).

(4)(5) Nothing in this section shall be construed to authorize the public defender to represent or advise any person who is physically outside the state of Colorado and who has not made a court appearance in the pending matter in the state of Colorado.