

Recommendations for the Interim Committee to Study Juvenile Defense

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Summary of Recommendations:

1. Provides counsel at detention hearings and first appearances
2. Provides presumption of indigence
3. Sets limits on waiver of counsel by age, offense, and consultation with counsel
4. Provides contact information for public defender on summons
5. Clarifies role of Guardian ad Litem
6. Provides specialization in juvenile defense
7. Provides data collection and systems monitoring

Regarding Appointment of Counsel, Presumption of Indigence, and Waiver of Counsel

§ 19-2-706. ADVISEMENT OF RIGHTS AND THE RIGHT TO COUNSEL [NEW TITLE]

(1) 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, INCLUDING THE RIGHT TO COUNSEL AT THE FIRST APPEARANCE AND/OR DETENTION HEARING. Such advisement shall 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.

~~(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.~~
 THE COURT SHALL APPOINT DEFENSE COUNSEL FOR THE JUVENILE UNLESS THE JUVENILE HAS RETAINED COUNSEL OR THE JUVENILE HAS ENTERED A VALID WAIVER OF COUNSEL PURSUANT TO 19-2-706(2)(c).

~~(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 for the cost of the counsel unless the court finds there was good cause for such refusal.~~ ALL JUVENILES SHALL BE PRESUMED INDIGENT FOR THE PURPOSE OF OBTAINING COURT APPOINTED COUNSEL UNDER TITLE 21.

~~(c) The court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the juvenile or of other parties.~~

(C) THE COURT MAY ACCEPT A WAIVER OF COUNSEL BY A JUVENILE 15 YEARS OF AGE OR OLDER AFTER THE JUVENILE HAS HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THE DIRECT AND COLLATERAL CONSEQUENCES IN THE CASE, AND THE COURT FINDS THE WAIVER OF COUNSEL

IS KNOWING, INTELLIGENT, VOLUNTARY, AND NOT THE RESULT OF PARENTAL PRESSURE, OR THE ADVICE OF A PARENT OR GUARDIAN WITH A CONFLICT OF INTEREST WITH THE CHILD. THE COURT SHALL NOT ACCEPT A WAIVER OF COUNSEL BY ANY JUVENILE ACCUSED OF A SEX OFFENSE, A JUVENILE PLEADING GUILTY TO A FELONY OFFENSE, OR A JUVENILE FACING DETENTION OR OUT OF HOME PLACEMENT.

(d) The appointment of counsel pursuant to this subsection (2) 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.~~

§ 19-2-508. Detention and shelter [ONLY SECTIONS (1)-(3)(A)(I) SHOWN HERE]

(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 OFFICE OF THE PUBLIC DEFENDER. 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)(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 time in which the hearing shall be held may be extended for a reasonable time by order of the court upon good cause shown. THE JUVENILE SHALL BE REPRESENTED BY DEFENSE COUNSEL.

Regarding Notification and Summons Procedures

See above regarding notification of public defender in 19-2-508.

§ 19-2-514. Summons--issuance--contents—service [SECTION (1) SHOWN HERE]

(1) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall set forth the constitutional and legal rights of the juvenile, including the right to have an attorney present at the hearing on the petition. THE SUMMONS SHALL EXPLAIN THAT COUNSEL WILL BE APPOINTED FOR JUVENILES WHO DO NOT RETAIN PRIVATE COUNSEL AND INCLUDE THE ADDRESS AND PHONE NUMBER FOR THE PUBLIC DEFENDER'S OFFICE SERVING THE JURISDICTION OF THAT COURT.

Regarding the Role of the Guardian ad Litem:

§ 19-1-111. Appointment of guardian ad litem [ONLY SUBSECTION (2)(A) SHOWN]

(2) The court may appoint a guardian ad litem in the following cases:

(a) For a child in a delinquency proceeding where:

(I) No parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent appears at the first or any subsequent hearing in the case;

(II) The court finds that a conflict of interest exists between the child and parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent; or

(III) The court makes specific findings that the appointment of a guardian ad litem is necessary to serve the best interests of the child and such specific findings are included in the court's order of appointment; AND

(IV) THE GUARDIAN AD LITEM IS NOT BEING APPOINTED AS A SUBSTITUTE FOR DEFENSE COUNSEL FOR THE JUVENILE.

Regarding Specialization in Juvenile Defense and Systems Accountability

Once access to counsel is established, it is vital to ensure that access is meaningful and that children across the State of Colorado are represented by dedicated, well-trained attorneys that advocate for their clients legal interests while seeking the best outcomes possible for children. There are different ways Colorado can achieve this:

Option 1:

Resource the Office of the State Public Defender and the Office of the Alternate Defense Counsel for the purpose of establishing statewide coordinators of juvenile defense, and for resourcing attorneys and teams that specialize in representing children defense. Statewide coordinators would be responsible for:

- Developing criteria for the selection of juvenile defenders for juvenile court positions
- Developing training and standards of practice for juvenile defense
- Providing ongoing litigation support to juvenile defenders
- Facilitating communication between state agencies to ensure access to counsel for children, and improve practices in the juvenile justice system
- Ensuring juvenile defenders and juvenile supervisors have pay parity with district court
- Monitoring juvenile delinquency matters and analyzing juvenile justice policies

Option 2:

Establish a Juvenile Defense Division within the Office of the State Public Defender. The Juvenile Defense Division would hire, train, supervise, and support juvenile defenders, investigators, social workers, etc. in delinquency cases to ensure specialization in juvenile defense. Resources would be allocated to the Office of the Alternate Defense Counsel to provide for juvenile defense coordination. The Chief of the Juvenile Defense Division would be responsible for the duties described above and provide leadership on a state and local level. The Juvenile Defense Division should have supervisory autonomy and budgetary assurances to protect resources necessary to the effective representation and advocacy of children.

Option 3:

Establish an Office of the Juvenile Defender, an independent state agency responsible for representing children in juvenile delinquency cases in the same manner as described above for the Juvenile Defense Division. This approach would eliminate resource conflict between adult and juvenile client interests within indigent defense delivery systems. Again, resources would be allocated to the Alternate Defense Counsel to support juvenile defense. Dedicated juvenile defense offices are uniquely placed to provide holistic representation of the child through multi-disciplinary teams, and can be more responsive to the specific needs of developing children.

Option 4:

Establish an independent State Juvenile Defender or Ombudsman of Juvenile Defense responsible for oversight, monitoring and support of juvenile defense delivery systems; specifically monitoring access to counsel, waivers of counsel, and improving standards of practice in juvenile defense. This could even be a temporary position to monitor reform over the next few years and report back to the legislature.

Data Collection & Monitoring

Collect data on:

- Waivers of counsel
- Indigence determinations (if no presumption)
- Parent refusal cases (if no presumption)
- Ensure appearance of counsel attaches to each event in the case

Establish annual reporting requirements of indigent defense delivery systems on the concerns of this interim committee and on the training, resources, and support provided to the representation of children.