

First-Time Juvenile Offenders: Cases Filed FY 10 to FY 12

County and District court filings from FY 2010 to FY 2012 for first-time juvenile offenders were extracted from Judicial Branch's ICON system. For this study, traffic cases were excluded except for DUI (C.R.S. 42-4-1301), Careless Driving (C.R.S. 42-4-1402), and Accidents Resulting in Death (C.R.S. 42-4-1601). First-time offenders are those having only one case within the study period and none prior to it. Perfect identification of first-time offenders is not possible for the following reasons:

- Name and birthdate were used to search for prior cases. If a letter in a name or birthdate digit is different for an offender in any of his/her cases, prior cases will be missed.
- Denver County cases were not available therefore prior cases in this court are missed.

Table 1 contains the count of offenders by filing jurisdiction. Table 2 shows whether or not the most serious filing charge is listed in the Victim's Rights Act (VRA) (C.R.S. 24-4.1-302). *Note that a case may contain charges other than the most serious that are VRA statutes.*

The most serious filing charge is defined as the charge with the highest law classification. Cases may have more than one charge with the same law classification. In that circumstance the first charge listed is used. *Note that initial filing charges in a case may later be amended or dismissed.*

Table 1. Jurisdiction for first-time juvenile offender cases filed FY 10 to FY 12.

Jurisdiction	%	N
County	48%	7,307
District	52%	7,858
Total	100%	15,165

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

Table 2. Most serious filing charge is Victim's Rights Act (VRA) statute in first-time juvenile offender cases filed FY 10 to FY 12.

Most Serious Filing Charge is VRA	%	N
No	73%	11,011
Yes	27%	4,154
Total	100%	15,165

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

Table 3 shows the law classification for the most serious filing charge in each case and whether the most serious charge is subject to the VRA. Law classifications starting with T are traffic, UC are unclassified, and law classification of M is unclassified misdemeanor.

Table 3. Law classification of most serious filing charge for first-time juvenile offenders in cases filed FY 10 to FY 12.

Class	Non-VRA		VRA		Total	
	N	%	N	%	%	N
F1	0%		<1%	2	<1%	2
F2	<1%	2	1%	32	<1%	34
F3	4%	493	8%	321	5%	814
F4	8%	922	14%	593	10%	1,515
F5	5%	539	8%	335	6%	874
F6	4%	395	1%	30	3%	425
M	5%	523	0%		3%	523
M1	3%	366	26%	1,096	10%	1,462
M2	14%	1,503	1%	22	10%	1,525
M3	9%	996	1%	27	7%	1,023
PO1	1%	164	0%		1%	164
PO2	21%	2,319	0%		15%	2,319
T1	0%		9%	364	2%	364
T2	<1%	1	32%	1,331	9%	1,332
TIA	<1%	5	0%		<1%	5
UC	25%	2,784	0%		18%	2,784
Total	100%	11,011	100%	4,154	100%	15,165

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

National Overview of Appointment of Counsel, Indigence, Waiver of Counsel, and Defense Delivery Systems in Juvenile Delinquency Proceedings

Appointment of Counsel and Indigence Determinations:

Court appointments of counsel can be mandatory or automatic, at the request of parties, or at the discretion of the judge or magistrate. Even where appointment is automatic or mandatory, most states require that the juvenile qualify as indigent prior to most appointments of counsel.

- **38 states** and the District of Columbia will automatically appoint counsel or are required to provide counsel at various stages or in certain cases.
- Of the 38 states with statutory provisions for the automatic appointment of counsel, 17 do not take into account indigence when counsel is appointed; instead conditioning appointment only on whether the juvenile has retained private counsel or where waiver is allowed, has waived his or her right to counsel.
- **New Hampshire, South Carolina, Tennessee, and Virginia** automatically appoint counsel for juveniles at detention hearings.
- **Alabama, Arizona, Arkansas, Georgia, and Minnesota** automatically appoint counsel for juveniles facing out-of-home placement or commitment.
- **Only 12 states**, including Colorado, require the juvenile and/or the parent affirmatively request the court appoint counsel, in addition to determining indigence, requiring the juvenile to “opt-in” instead of automatically receiving representation *unless and until* there is a valid waiver of counsel.
- **Indiana, Michigan, North Carolina, New York, Pennsylvania, Wisconsin, and the District of Columbia** have no requirement that the juvenile be determined indigent for the court to appoint state-funded counsel and every child, regardless of the parent/guardian’s income and assets, will be assigned counsel.
- **California, Kentucky, Louisiana, Montana, South Carolina** (for detention hearings only), and **Virginia**-have an initial presumption of indigence in statute or rule so that state-funded counsel will be appointed before any indigence determination has been done.

Waiver of Counsel:

States vary from no statutory provisions or court rules regarding waiver of counsel, to establish case law and specific rules on who can waive and when. The trend has been to establish statutes and court rules that protect children’s access to representation and only 20 states, including Colorado, have no safeguards in statute or court rule on waiver of counsel in juvenile delinquency proceedings. A court rule pending in **Indiana** will bring this number to 19.

- **20 states**, including the District of Columbia, have statutory protections that limit a juvenile's ability to waive their right to counsel.
- **Idaho, Kentucky, and Louisiana** do not allow juveniles charged with a felony or a sex offense to waive counsel.
- **Arkansas, Georgia, Idaho, Kentucky, Louisiana, Montana, and Ohio** do not allow juveniles facing commitment to waive their right to counsel.
- In the **District of Columbia, Illinois, Iowa, Mississippi, North Carolina, New Mexico, and New York** juveniles are represented by counsel at every stage of proceedings and cannot waive their right to counsel under any circumstances. **Idaho and Pennsylvania** do not allow juveniles under 14 to waive counsel and **Wisconsin** does not allow those under 15.
- 11 states-Alaska, Florida, Maryland, Minnesota, New Jersey, South Carolina, Tennessee, Vermont, Virginia, Washington, and Wisconsin-although they don't restrict who can waive counsel, require that any child who indicates they want to waive counsel, consult with an attorney first.

Defense Delivery System:

Juvenile representation falls to either a statewide system, with authority vested in a state agency or a county or city-based system where the state has left indigent defense to the individual counties. Juvenile defender offices, both at the state or county level, exist in at least half of the states and are specialized units responsible for juvenile representation.

- 6 states, **Maryland, Massachusetts, New Jersey, North Carolina, Rhode Island, and Vermont** have established State Juvenile Defense Offices responsible for: post-conviction representation; support and training of juvenile attorneys; and/or trial level representation.
- **Alaska, Connecticut, and New Mexico** have established juvenile offices in more populated districts. In **Iowa**, three regional juvenile offices in Des Moines, Waterloo, and Sioux City represent juveniles in all counties across the state.
- In counties in 15 states, local public defender offices have established juvenile offices or dedicated divisions.
- In Maricopa County, **Arizona**, the Office of the Public Advocate, established in 2008, is an independent juvenile defense office and is responsible for juvenile representation in that county. In **New Orleans**, the Louisiana Center for Children's Rights is a non-profit center that defends youth.
- In **Georgia**, counties with a circuit defender (counties that operate under the statewide program) are required by statute to establish a juvenile division to specialize in representing children.

**Summary of Statutes and Rules Regarding Appointment of Counsel, Indigence Determinations, and Waiver of Counsel
in Juvenile Delinquency Proceedings**

State	Appointment of Counsel	Indigence Determinations	Waiver of Counsel
Alabama	Counsel automatically appointed if there is a possibility of child being institutionalized or incarcerated. Otherwise juvenile must request counsel and indigence determined before appointment. Ala. Code 1975 § 12-15-202 (f)	No presumption of indigence. Juvenile and parent/guardian must complete affidavit and court determines if indigent. Ala. Code § 15-12-5 and § 12-15-63; Ala. Rules of Crim. Procedure 6.3	No restrictions. Waiver must be knowing, voluntary, intelligent. Ala. Code 1975 § 12-15-202 (f) <u>If felony charge, must consult with attorney before waiving.</u> Otherwise waiver must be knowing, voluntary, and intelligent and parent must concur. Alaska Stat. § 47.12.090
Alaska	Counsel appointed if indigent, unless valid waiver or retained counsel. Alaska Stat. § 47.12.090. <u>Dedicated Juvenile offices in urban counties.</u>	No presumption of indigence. Court determines if indigent. Alaska Stat. § 47.12.090	No restrictions. Waiver must be knowingly, intelligently and voluntarily given in view of the juvenile's age, education and apparent maturity, in writing or minute order, and parent/guardian must be present. Ariz. Rev. Stat. § 8-221; 17B A.R.S. Juv. Ct. Rules of Proc., Rule 10
Arizona	Counsel appointed if indigent or "before any court appearance which may result in institutionalization or mental health hospitalization" unless valid waiver. Ariz. Rev. Stat. § 8-221(A) and (B). <u>In Maricopa County, the independent Office of the Public Advocate and the Juvenile Division in the Pima County Public Defender Office provide juvenile representation.</u>	No presumption of indigence. Juvenile and parent/guardian must fill out financial questionnaire and court determines if indigent. Juv. Ct. Rules of Proc., Rule 10; Ariz. Rev. Stat. § 8-221(G)	No restrictions. Waiver must be knowingly, intelligently and voluntarily given in view of the juvenile's age, education and apparent maturity, in writing or minute order, and parent/guardian must be present. Ariz. Rev. Stat. § 8-221; 17B A.R.S. Juv. Ct. Rules of Proc., Rule 10

Arkansas	Counsel automatically appointed if likelihood that juvenile will be committed. Otherwise counsel appointed if juvenile appears without counsel and it does not appear that he/she will retain counsel, unless valid waiver. Ark. Code Ann. § 9-27-316	No presumption of indigence, however court will appoint regardless if it does not appear that counsel will be provided for juvenile. Juvenile and parent/guardian must complete affidavit and court determines if indigent and may require parent/guardian to pay for court-appointed counsel. Juv. Ct. Rules of Proc., Rule 10; Ariz. Rev. Stat. § 8-221(G)	Cannot waive if: 1) parent/guardian filed petition or requested removal of juvenile from home; 2) likelihood juvenile will be committed; 3) an extended juvenile jurisdiction offender; and 4) in custody of DHS/DYS. Otherwise, court through questioning the juvenile extensively must determine that the waiver is "freely, voluntarily, and intelligently" given. Ark. Code Ann. § 9-27-317
California	Counsel appointed if juvenile appears without counsel unless valid waiver. Cal. Welf. & Inst. Code § 634, 679, 700. Some counties, such as San Francisco, have dedicated juvenile divisions responsible for juvenile representation.	Initial presumption of Indigence; court appoints, whether juvenile is indigent or not. If parent/guardian able to pay and does not retain private counsel, will be ordered to reimburse for cost of counsel.	No restrictions. Waiver must be intelligently made. Age taken into account when determining if intelligent. Cal. Welf. & Inst. Code §634
Colorado	Juvenile must request counsel and indigence determined before appointment. Colo. Rev. Stat. § 19-2-706; Colo. R. Juv. P. 3	No presumption of indigence. Juvenile and parent/guardian must complete application and public defender determines if indigent, reviewable by judge. Chief Justice Directive 04-04	No restrictions. Case law states that waiver must be knowing, intelligent, and voluntary and parent/guardian must be present. Colo. Rev. Stat. § 19-2-706; Colo. R. Juv. P. 3
Connecticut	Unclear if juvenile must request counsel before appointment. Conn. Gen. Stat. § 46b-135. Many districts have a dedicated juvenile unit.	No presumption of indigence. Juvenile and parent/guardian must complete application and public defender determines if indigent, appealable to judge. Conn. Gen. Stat. § 51-297, 299	No restrictions. Case law states that waiver must be knowing, intelligent, and voluntary with greater scrutiny applied than in adult cases. Conn. Gen. Stat. § 46b-135

<p>Delaware</p>	<p>Counsel appointed if indigent unless valid waiver or retained counsel. Unclear if automatic or if juvenile must request counsel. Del. Fam. Ct. Crim. R. 10; Del. Fam. Ct. Crim. R. 44</p>	<p>No presumption of indigence. Public defender determines indigent before arraignment and court at arraignment. If not indigent, court may still appoint at cost to the parent/guardian. Del. Fam. Ct. Crim. R. 10 and 44; 29 Del. Code Ann. § 4602(b)</p>	<p>No restrictions. Waiver must be knowing, voluntary, intelligent, in writing or on the record, and parent/guardian must be present. Del. Fam. Ct. Crim. R. 44</p>
<p>District of Columbia</p>	<p>Counsel appointed if juvenile appears without counsel and it does not appear that he/she will retain counsel. Rule states that juveniles "shall be represented at all judicial hearings . . ." D.C. Code § 16-2304; D.C. Super. Ct. R. Juv. Proc. R. 44; <i>In re A.L.M.</i>, 631 A.2d 894, 898 (D.C. App. 1993)</p>	<p>No presumption of indigence. Unsure of process.</p>	<p>Statutory language interpreted to mean that juveniles cannot under any circumstances. D.C. Code § 16-2304; D.C. Super. Ct. R. Juv. Proc. R. 44; <i>In re A.L.M.</i>, 631 A.2d 894, 898 (D.C. App. 1993)</p> <p>Juvenile must consult with an attorney before waiving. Waiver must be knowing and voluntary, in writing, and parent/guardian or attorney must be present. Court must advise juvenile of the right to an attorney at every subsequent hearing. Fla. R. Juv. P. 8.165</p>
<p>Florida</p>	<p>Counsel appointed unless valid waiver. Fla. R. Juv. P. 8.165; 8.070</p>	<p>No presumption of indigence. Juvenile and parent/guardian must complete application and court determines if indigent.</p>	<p>Cannot waive if liberty is in jeopardy. Otherwise, case law states that waiver must be voluntary and knowing. Heavier burden than in adult proceedings to establish valid waiver. O.C.G.A. § 15-11-511 and § 15-11-475 (effective Jan. 1, 2014)</p>
<p>Georgia*</p>	<p>Counsel appointed if indigent and "liberty is in jeopardy." O.C.G.A. § 15-11-511 and § 15-11-475 (effective January 1, 2014). <u>Circuit defenders, operating under state policies, must establish a specialized juvenile division.</u> O.C.G.A. §12-23(c)</p>	<p>No presumption of indigence. Public defender determines if indigent. O.C.G.A. §17-12-23, 24 (2012) and §17-12-80.</p>	<p>Cannot waive if liberty is in jeopardy. Otherwise, case law states that waiver must be voluntary and knowing. Heavier burden than in adult proceedings to establish valid waiver. O.C.G.A. § 15-11-511 and § 15-11-475 (effective Jan. 1, 2014)</p>

	Counsel may be appointed "in any situation in which it deems advisable." Haw. Fam. Ct. R. 155	Unsure if presumption or of process. In adult cases, person must complete affidavit and public defender determines if indigent. Haw. Rev. Stat. § 802-4 (no mention of juveniles)	No restrictions. No statute, rule, or case law found regarding waiver for juveniles. Case law states that it must be knowing, voluntary, and intelligent. Adult statute states that a failure to provide financial information to public defender is a waiver of counsel. <i>In the Interest of Doe</i> , 77 Haw. 46, 49-50 (Haw. 1994)
Hawaii	Counsel automatically appointed unless valid waiver. Id. Code § 20-514 (4); Id. Juv. R. 9. <u>Metro areas, such as Cassia County have specialized juvenile offices.</u>	Initial presumption of indigence; court shall appoint "whether or not the parent(s) or guardian are able to afford counsel." Expenses may be assessed later. Id. Code § 20-514(7); §19-854	Cannot waive if: (1) under 14; (2) charged with a felony or sex crime; (3) facing commitment; or for (4) transfer hearings, competency hearings, and commitment proceedings. Id. Code § 20-514(5)-(6); Id. Juv. R. 9
Idaho*	Counsel automatically appointed (statute reads in part: "No hearing on any petition or motion filed under this Act may be commenced unless the minor who is the subject of the proceeding is represented by counsel.") 705 Ill. Comp. Stat. § 405/1-5	Unsure if presumption or of process.	Cannot waive counsel under any circumstances. 705 Ill. Comp. Stat. § 405/5-170
Illinois			
	<u>Counsel appointed prior to first hearing, including detention hearing if juvenile appears without counsel unless valid waiver or declined.</u> Ind. Code § 31-32-4-2.	Conclusive presumption of indigence. Statute is silent about indigence, presumption established by case law.	No restrictions. Right to counsel can be waived or declined by the juvenile's attorney if the juvenile voluntarily joins with the waiver, by the juvenile's parent/guardian if not adverse, had a meaningful consultation with the juvenile (can also be waived) and the juvenile voluntarily joins with the waiver, by the juvenile alone if emancipated. Ind. Code §31-32-5-1
Indiana*			

Iowa	<p>Counsel automatically appointed at the detention hearing or earlier if serious crime if juvenile has not retained counsel. Iowa Code §232.11. <u>3 regional juvenile offices located in Des Moines, Waterloo, and Sioux City handle all juvenile cases in the state.</u></p>	<p>No presumption of indigence. Court determines if indigent and will (1) appoint counsel if indigent; (2) require parent/guardian to retain counsel for juvenile; or (3) require parent/guardian to pay for court-appointed counsel. Iowa Code §§ 232.141(2), 815.9, and 815.11</p>	<p>Cannot waive counsel under any <u>circumstances.</u> Iowa Code §232.11(1)(2)</p>
Kansas	<p>Counsel automatically appointed if juvenile or parent/guardian fails to retain private counsel. Kan. Stat. Ann. § 38-2306(a)</p>	<p>Initial presumption of indigence: <u>indigence not a bar to appointment</u>, but court may order juvenile and/or parent/guardian to reimburse for cost. Kan. Stat. Ann. § 38-2306(a)</p>	<p>No restrictions. Waiver must be knowing and intelligent. Kan. Stat. Ann. § 38-2306</p>
Kentucky	<p>Counsel appointed if indigent (if presumption of indigence-effect of automatic appointment of counsel). Ky. Rev. Stat. § 610.060. <u>Specialized Juvenile Unit on Frankfort represent juveniles in post-disposition issues.</u></p>	<p>Presumption of indigence established through case law and statutory restrictions on waiver. Court may require parent/guardian to pay for court-appointed counsel. Ky. Rev. Stat. § 610.060</p>	<p>Cannot waive counsel if: (1) charged with a felony or sex offense or (2) "the court intends to impose detention or <u>commitment."</u> Otherwise, a juvenile must <u>consult with counsel before waiving</u>, and the court at a hearing must find that the waiver was knowing, intelligent, and voluntary. Ky. Rev. Stat. § 610.060; D.R. v. Commonwealth, 64 S. W.3d 292 (Ky. App. 2001)</p>

	Counsel appointed unless and until juvenile retains private counsel or waives counsel. La. Ch.C. Art. 809. <u>In Orleans Parish, the Louisiana Center for Children's Rights, represents all juveniles in that Parish.</u>	Initial presumption of indigence; counsel may be appointed without determination. Court determines if indigent and may require parent/guardian to reimburse court. La. Ch.C. Art. 320; 321	Cannot waive counsel if: (1) charged with a felony or a revocation of probation or parole or (2) where it is recommended that the juvenile be placed in a mental institution. Otherwise, juvenile must consult with an attorney first, waiver must be in writing, and court must find that it is knowing and voluntary. La. Ch.C. Art. 810
Louisiana	Juvenile must request counsel and indigence determined before appointment. Me. Rev. Stat. Ann. Tit. 15 § 3306	No presumption of indigence. Juvenile and parent/guardian must complete application, unsure who determines if indigent.	No restrictions. No statute, rules, or case law found regarding waiver. Me. Rev. Stat. Ann. Tit. 15 § 3306
Maine	Unsure when/how counsel is appointed. Md. Courts and Judicial Proceedings Code Ann. § 3-8A-20	No presumption of indigence. Unless parent/guardian is the victim, court determines if indigent. If not indigent, court will assess \$300 fee to pay the cost of counsel. Mass. Gen. Laws 119, §29A; SJC Rule 3:10	Must consult with an attorney before waiving. The court at a hearing must determine waiver must be knowing and voluntary as determined in a hearing and an attorney must be present. Md. Courts and Judicial Proceedings Code Ann. § 3-8A-20; 3-8A-06
Maryland	Counsel appointed if juvenile has not retained counsel. Mass. Gen. Laws 119, §29. <u>The Youth Advocacy Division of the State Public Counsel provides representation statewide.</u>	No restrictions. No statute, rule, or case law found regarding waiver.	
Massachusetts			

Michigan	Counsel is automatically appointed if parent/guardian fails to appear or parent/guardian is the victim. Otherwise, counsel is appointed if indigent or parent/guardian refuses to retain counsel.	Conclusive presumption of indigence. All children are appointed counsel.	Cannot waive if GAL or parent objects or if court determines appointment is in the best interest of the juvenile. Otherwise waiver must be voluntarily and understandably made and done on the record. Mich. Comp. Laws § 712A.17c
Minnesota	Counsel (or standby counsel if the child waives the right to counsel) is automatically appointed if: charged with a gross misdemeanor or felony offense or out-of-home placement has been proposed. Otherwise, counsel appointed if indigent or parent/guardian does not retain private counsel. Minn. Stat. Ann. § 260B.163, Subd. 4; Minn. R. Juv. Del. P. 3.01; 3.02	No presumption of indigence. Court determines if indigent. Minn. R. Juv. Del. P. 3.06	<u>Must have in-person consultation with attorney before waiving.</u> Waiver must be knowingly, intelligently, and voluntarily, in writing, and on the record. Minn. Stat. Ann. § 260B.163 Subd. 10; Minn. R. Juv. Del. P. 3.04
Mississippi	Counsel appointed if indigent. However, statute reads juvenile "shall be represented by counsel at all critical stages."	No presumption of indigence. Unsure of process.	No statute or rule regarding waiver. However, statute on right to counsel suggests that juvenile cannot waive his right to an attorney under any circumstances ("the child shall be represented by counsel at all critical stages"). Miss. Code Ann. § 43-21-201(1)
Missouri	Juvenile must request counsel and indigence determined before appointment. Mo. Rev. Stat. § 211.211	No presumption of indigence. Juvenile and parent/guardian must complete affidavit and public defender determines if indigent. Mo. Rev. Stat. § 600.086	No restrictions. Waiver must be knowing and intelligent and with the approval of the court. Waiver may be withdrawn at any time. Mo. Rev. Stat. § 211.211

	Counsel appointed if juvenile or parent/guardian fails to retain private counsel unless valid waiver. Mont. Code Ann. § 41-5-1413	Initial presumption of indigence; for appointment of counsel. Juvenile and parent/guardian must complete affidavit and public defender determines if indigent. Counsel may be rescinded if not indigent. MONT CODE ANN § 47-1-111	Cannot waive if possibility of commitment for a period of more than 6 months. Mont. Code Ann. § 41-5-1413
Montana			
	Juvenile must request counsel and indigence determined before appointment. Neb. Rev. Stat. § 43-272	No presumption of indigence. Court makes initial determination, and may require an affidavit. Neb. Rev. Stat. § 29-3901-3903	No restrictions. Case law states that waiver must be knowing, intelligent, and voluntary. Neb. Rev. Stat. § 43-272
Nebraska			
	Juvenile must request counsel and indigence determined before appointment. Nev. Stat. § 62D.030. <u>The Clark County Public Defender Juvenile Division represents children in the Las Vegas area.</u>	No presumption of indigence. Juvenile and parent/guardian must complete affidavit and court determines if indigent. Nev. Rev. Stat. § 62D.030; Nev. Rev. Stat. § 171.188	No restrictions. Waiver must be "knowingly, intelligently, voluntarily and in accordance with any applicable standards established by the juvenile court" Nev. Rev. Stat. § 62D.030
Nevada			
	Counsel appointed if indigent unless valid waiver. Statute suggests that regardless of indigence, counsel is appointed for detention hearing. N.H. Rev. Stat. § 169-B:12	No presumption of indigence. Unsure of process, but court can require parent/guardian to pay for court-appointed counsel. N.H. Rev. Stat. § 169-B:12	Cannot waive counsel at detention hearing. If the court believes the minor has a cognitive, emotional, learning, or sensory disability he/she must consult with an attorney before waiving. Otherwise, waiver must be knowing, voluntary, intelligent, and a "non-hostile" parent/guardian must agree. N.H. Rev. Stat. § 169-B:12
New Hampshire			

New Jersey	Unsure when/how counsel is appointed. N.J. Stat. § 2A:4A-39. <u>The Office of Juvenile Services oversees planning, policy and training in juvenile delinquency cases.</u>	No presumption of indigence. Unsure of process.	<u>Must consult with an attorney (both juvenile and parent) before.</u> Waiver must be knowingly, willingly, and voluntarily, in writing and done in the presence of an attorney. Cannot waive if lack mental capacity. N.J. Stat. § 2A:4A-39
New Mexico	Counsel appointed if indigent or if parent/guardian has not retained counsel. N.M. Stat. Ann. § 32A-2-14; N.M. Children's Ct. Rule 10-223. <u>Dedicated juvenile divisions in Albuquerque and Las Cruces, and dedicated attorneys in Santa Fe and Farmington handle all juvenile cases in their respective counties.</u>	No presumption of indigence. Court determines if indigent. If parent able but unwilling to retain counsel, court will order reimbursement. NMRA 10-223 and NMRA 10-408	<u>Juveniles cannot waive counsel under any circumstances.</u> N.M. Stat. Ann. § 32A-2-14; N.M. Children's Ct. Rule 10-223
New York	Counsel automatically appointed if juvenile has not retained counsel. N.Y. Fam. Ct. Act § 320.2. <u>In New York City, the Juvenile Rights Practice Unit of the Legal Aid Society represents children.</u>	<u>Conclusive presumption of indigence. All children are entitled to counsel at state cost.</u> N.Y. Fam. Ct. Act § 241.	<u>Juveniles cannot waive counsel under any circumstances.</u> N.Y. Fam. Ct. Act § 249
North Carolina	Counsel automatically appointed if juvenile has not retained counsel. N.C. Gen. Stat. § 7B-2000. <u>The Office of the Juvenile Defender trains and supports juvenile defenders who contract with the state to provide representation.</u>	<u>Conclusive presumption of indigence.</u>	Statute interpreted to mean that <u>juveniles cannot waive counsel under any circumstances.</u> N.C. Gen. Stat. § 7B-2000; NORTH CAROLINA JUVENILE DEFENDER, NORTH CAROLINA JUVENILE DEFENDER MANUAL, Ch. 2 (2008)

	Counsel automatically appointed if not represented by parent/guardian. Otherwise, juvenile must request counsel and indigence determined before appointment. N.D. Cent. Code § 27-20-26	No presumption of indigence. Unsure of process. N.D. Cent. Code § 27-20-26	No statute or rule regarding waiver. Case law states that a juvenile cannot waive if not represented by parent/guardian. Otherwise waiver must be knowing, voluntary, and intelligent. N.D. Cent. Code § 27-20-26
North Dakota			
	Counsel appointed if juvenile "not represented by parent/guardian." Otherwise, appointed if indigent. Unclear if automatic or if juvenile must request counsel. Ohio Rev. Code § 2151.352; Ohio Juv. R. 4. <u>The Juvenile Defender Office represents juveniles across the state in post-conviction cases.</u>	No presumption of indigence. Unclear of process especially as it relates to mandatory representation.	Cannot waive if: (1) serious youthful offender sentence requested; (2) facing bindover to adult court; or (3) conflict between juvenile and parent/guardian. If charged with a felony, must consult with an attorney before waiving. Otherwise, waiver must be knowing, intelligent, and voluntary, made in open court and in writing. Ohio Rev. Code § 2151.352; Ohio Juv. R. 3
Ohio			
	Counsel appointed if indigent. If not indigent, court can order parents to retain private counsel. If not indigent, but parent refuses, court may appoint counsel <i>for detention hearings</i> . 10A Okl. St. § 2-2-301	No presumption of indigence. Court determines if indigent. 10A Okl. St. § 2-2-301	No restrictions. No statute, rule, or case law found regarding waiver. 10A Okl. St. § 2-2-301
Oklahoma			
	Juvenile must request counsel and indigence determined before appointment. Or. Rev. Stat. § 419C.200	No presumption of indigence. Juvenile and parent/guardian must complete financial statement, and court determines if indigent. Or. Rev. Stat. §135.050	No restrictions. No statute or rule regarding waiver. Case law states that a waiver must be an "intelligent and understanding choice." Or. Rev. Stat. § 419C.200
Oregon			

Pennsylvania^	Counsel automatically appointed if juvenile unrepresented at any hearing. 42 Pa. Cons. Stat. Ann. § 6337; Pa.R.J.C.P. 151. Counties are wholly responsible for defense delivery; <u>in Philadelphia County, the Juvenile Court Division of the Defender Assoc. represents juveniles.</u>	Conclusive presumption of indigence. PA Rules of Juvenile Court Procedure RULE 151.	Cannot waive if under 14. If over 14 cannot waiver for a detention, transfer, <u>adjudicatory, plea, or dispositional hearing; or a hearing to revoke or modify probation.</u> Otherwise, waiver must knowingly, intelligently, and voluntarily made. Pa.R.J.C.P. 152
Rhode Island	Unsure when/how counsel is appointed. R.I. Gen. Laws § 14-1-58. <u>But, the Juvenile Division of the State Office of the Public Defender represents children across the state.</u>	No presumption of indigence. Juvenile and parent/guardian must complete affidavit and public defender determines if indigent. R.I. Gen. Laws § 14-1-58; R.I. Gen. Laws § 12-15-8 and 9.	No restrictions in statute or rule. Case law states that waiver must be knowing and intelligent and only in "the most extraordinary circumstances" R.I. Gen. Laws § 14-1-58; <i>In re John D.</i> , 479 A.2d 1173, 1178 (R.I. 1984)
South Carolina	Counsel appointed if juvenile unrepresented at detention hearing. Otherwise counsel appointed if indigent. S.C. Code Ann. § 63-19-830; S.C. Fam. Ct. R. 36	Statute suggests presumption of indigence for detention hearings. Otherwise, court determines if indigent before appointing counsel. S.C. Code Ann. §63-19-1040	Must consult with an attorney before waiving <i>at a detention hearing</i> . Otherwise no restrictions. Court must specifically require juvenile to "consider whether they do or do not waive the right of counsel." S.C. Code Ann. § 63-19-830; S.C. Code Ann. § 63-19-1030(D)
South Dakota	Juvenile must request counsel and indigence determined before appointment. S.D. Codified Laws § 26-7A-30; S.D. Codified Laws § 26-7A-31	No presumption of indigence. Juvenile and parent/guardian must complete affidavit and court determines if indigent. S.D. Codified Laws § 23A-40-6	No restrictions in statute or rule. Case law states waiver must be knowing and intelligent, meaning juvenile must be aware of dangers of self-representation. <i>In re R.S.B.</i> , 498 N.W.2d 646, 647 (S.D. 1993)

	<p>Counsel automatically appointed if juvenile in jeopardy of being removed from the home and no parent/guardian is present or there is a conflict with the parent/guardian. Otherwise juvenile must request counsel and indigence determined before appointment. Tenn. Code § 37-1-126. <u>In Shelby County, the Juvenile Defenders Unit of the Office of the Public Defender, is responsible for juvenile defense.</u></p>		<p>Must consult with " a knowledgeable adult with no adverse interests to the juvenile" (not necessarily an attorney). Waiver must be knowing and voluntary, in writing, and the court must determine that the juvenile comprehends the right to an attorney and the consequences of waiving. Tenn. R. Juv. P. 30</p>
<p>Tennessee*</p>	<p>No presumption of indigence. Unsure of process. Tenn. Code § 37-1-126(b)</p>	<p>Counsel appointed if juvenile has not retained private counsel, is indigent, and/or has not or cannot waive counsel. Tex. Fam. Code § 51.10. <u>Dedicated juvenile defense offices are responsible for representation in Travis and Dallas Counties.</u></p>	<p>Cannot waive at: transfer hearing to adult court; adjudication hearing; disposition hearing; commitment hearing; or if juvenile has a mental or developmental disability. Otherwise, <u>waiver must be made by juvenile and his attorney</u>, it must be in writing or recorded, and found to be voluntary. Tex. Fam. Code § 51.10; Tex. Fam. Code § 51.09</p>
<p>Texas</p>	<p>No presumption of indigence. Juvenile and parent/guardian must complete affidavit and court determines if indigent. Utah Code Ann. § 78A-6-1111; Utah Code Ann. § 77-32-202</p>	<p>Juveniles must request counsel and indigence determined before appointment. Utah Code Ann. § 78A-6-1111</p>	<p>Waiver must be knowing and voluntary. If under 14 cannot waive without a parent/guardian present. Utah Code Ann. § 78A-6-1111; Utah Juv. P. R. 26(e)</p>
<p>Utah</p>			

Vermont	<p>Counsel is appointed if juvenile has not retained counsel. V.R.F.P. Rule 6 (2005). <u>The Juvenile Defender's Office represents juveniles in custody in post-disposition cases in the state.</u></p>	<p>No presumption of indigence. Court determines if indigent. Vt. Stat. Ann. tit. 13 § 5236</p>	<p><u>Juvenile (and juvenile's GAL or parent/guardian) must consult with an attorney prior to waiving.</u> In addition, court must find that there is (1) a factual and legal basis for the waiver; (2) the waiver must be in the best interests of the child; and (3) the waiver is voluntarily and knowingly entered into by both the child and the child's GAL. If under 13, presumption that juvenile cannot knowingly waive counsel. V.R.F.P. Rule 6</p>
Virginia	<p><u>Counsel appointed at detention hearing</u> unless juvenile has already retained counsel. Subsequent to detention hearing, court will continue appointment, or appoint if no detention hearing if juvenile requests and is indigent. Va. Code Ann. §16.1-266</p>	<p><u>Initial presumption of indigence for detention hearings.</u> Otherwise, juvenile and parent/guardian must complete affidavit and court determines if indigent. Va. Code Ann. §16.1-266</p>	<p><u>If charged with a felony, must consult with an attorney before.</u> Otherwise, waiver must be in writing, the juvenile and his parent/guardian consent, and the waiver must be consistent with the interests of the juvenile. Va. Code Ann. §16.1-266</p>
Washington ^	<p>Counsel appointed if indigent and juvenile subject to transfer to adult criminal court or in "danger of confinement." Wash. Rev. Stat. § 13.40.140</p>	<p>No presumption of indigence. Juvenile and parent/guardian must complete affidavit and court determines if indigent. However, may provisionally appoint counsel prior to indigence determination. Wash. Rev. Stat. 10.101.020; Wash Rev. Stat. 10-101. Wash. Rev. Stat. § 13.40.140</p>	<p>Cannot waive if under 12, but parent/guardian can for you. <u>Must consult with an attorney before waiving.</u> Waiver must be in writing and found to be knowing, intelligent, and voluntary on the record. Wash. Rev. Stat. § 13.40.140; JuCR 7.15</p>

	Counsel appointed if indigent and juvenile has not retained private counsel unless valid waiver. W. Va. Code § 49-5-9; W. Va. R. Juv. P. Rule 5	No presumption of indigence. Court determines if indigent. W. Va. R. Juv. P. Rule 5; West Virginia Code § 29-21-16	Statute requires that any waiver be knowing. <u>Case law interprets this to mean that a juvenile must consult with an attorney prior to waiving.</u> W. Va. Code § 49-5-9; <i>State ex rel. J.M. v. Taylor</i> , 166 W. Va. 511, 519 (W. Va. 1981)
West Virginia	Stature unclear: "shall be represented at all stages" and "upon request or on its own motion, the court may appoint counsel for the juvenile or any party, unless the juvenile or the party has or wishes to retain counsel of his or her own choosing" Wis. Stat. § 938.23	Presumption of indigence. Court may appoint counsel without a determination of indigency. Unclear if there are provisions requiring reimbursement from non-indigent parties. Wis. Stat. § 938.23	Cannot waive if under 15. Otherwise, waiver must be knowingly and voluntarily made and accepted by court. If accepted by court juvenile cannot be transferred to adult court, placed in a correctional facility or a secured residential care center; or participate in the serious juvenile offender program." Wis. Stat. § 938.23
Wisconsin	Juvenile must request counsel and indigence determined before appointment. Appointed counsel may be a GAL and must take into account the best interests of the child. Wyo. Stat. Ann. § 14-6-222; Wyo. Juv. Proc Rule 52	No presumption of indigence. Juvenile and parent/guardian must complete financial affidavit 5 days before hearing and court determines if indigent. Wyo. Stat. Ann. § 7-6-106	No restrictions specific to juveniles. Adult statute states that any waiver must be knowing and voluntary ("full awareness of his rights and of the consequences of a waiver"). Wyo. Stat. Ann. § 7-6-107; Wyo. Juv. Proc. Rule 5(d)
Wyoming			

^ indicates recent reforms

* indicates reforms that are pending or recent as of 2013

Georgia's House Bill 474 (revised significant portions of the state's juvenile code. Previously there were no restrictions on a juvenile's ability to waive counsel. The new legislation limit children who's "liberty is in jeopardy from waiving and automatically assign counsel in those cases. The bill passed unanimously, it was signed into law on May 2, 2013 and goes into effect January 1, 2014. <http://www.legis.ga.gov/legislation/en-US/display/20132014/HB/242>

Idaho passed H0149 which clarifies when juveniles are appointed counsel and limits the circumstances in which juveniles may waive their right to counsel. Previously, there were no restrictions on a juvenile's ability to waive counsel, but under the new legislation, juveniles charged with certain serious crimes or who are facing commitment cannot waive. The bill passed unanimously, was signed into law on April 2, 2013, and took effect on July 1, 2013. <http://legislature.idaho.gov/legislation/2013/H0149.htm>

Louisiana proposed a juvenile court rule regarding appointment and waiver or counsel in juvenile proceedings that is currently pending. The rule would ensure that counsel was appointed in all cases prior to the detention hearing or initial hearing, whichever came first, and would require any waiver to be done in open court on the record, confirmed in writing, and in the presence of an attorney. Proposed rule information is not included above. <http://www.in.gov/judiciary/4044.htm>

Ohio revised Rule of Juvenile Procedure 3 expanding the circumstances where a juvenile could not waive counsel; previous rule only restricted a child facing bindover to adult court from waiving counsel. New rule went into effect in July 2012.

In Shelby County, **Tennessee**, the County Public Defender's Office in an agreement with the Dept. of Justice, has, among other reforms, established the Juvenile Defender Unit which must be fully operational by the end of this year. In 2012 the DOJ found extreme deficiencies and due process violations in the juvenile court system.

MEMORANDUM

TO: Interim Committee to Study Juvenile Defense

FROM: Colorado Juvenile Defender Coalition, with research support from the National Juvenile Defender Center

DATE: September 25, 2013

RE: Waiver of Counsel, Presumption of Indigence, and Timing of Appointment

Juveniles have a right to counsel protected by Fourteenth Amendment's Due Process Clause.¹ The proceedings of this committee are ultimately about ensuring that our children are granted the "fundamental fairness"² of due process under the Fourteenth Amendment when they face delinquency charges. In the landmark juvenile defense attorney case *In re Gault*, the U.S. Supreme Court declared, "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone."³ The Court stressed the importance of protecting juveniles' due process rights:

Failure to observe the fundamental requirements of due process has resulted in circumstances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of individuals and delimits the powers which the state may exercise.⁴

In Colorado juvenile courts due process and fundamental fairness is undermined by the absence of defense counsel at critical stages of delinquency proceedings. Three factors in particular harm the execution of due process: (1) uninformed waiver of counsel; (2) cumbersome indigence determinations and procedures of the parents, guardian, or other legal custodian; and (3) denying access to counsel until after the critical stage of the detention hearing, and often until after a plea deal has been offered at the first appearance for consideration without an attorney.

¹ *Turner v. Rogers*, 131 S. Ct. 2507, 2516 (2011) ("[T]he Court has held that the Fourteenth Amendment requires the state to pay for representation by counsel in a *civil* 'juvenile delinquency' proceeding (which could lead to incarceration)"); *In re Gault*, 387 U.S. 1, 41 (1967) ("We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceeding to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to the child").

² *See, e.g., Ake v. Oklahoma*, 470 U.S. 68, 76 (1985) ("This Court has long recognized that when a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense. This elementary principle, grounded in significant part on the Fourteenth Amendment's due process guarantee of fundamental fairness, derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake.").

³ *In re Gault*, 387 U.S. 1, 13 (1967).

⁴ *Id.* at 19-20.

The committee can restore due process to delinquency proceedings by putting into law the following provisions: (1) requiring the presence of counsel at detention hearings and first appearances, particularly for plea negotiations; (2) presuming all juveniles to be indigent for purposes of appointing counsel; and (3) not allowing waiver of counsel until after thorough consultation with counsel and a determination on the record that the juvenile understands the rights being waived, and/or not allowing waiver for certain ages or for crimes like felonies or sex offenses. This memo will discuss those areas of needed legislative attention and reform.

Another area for improvement is the establishment of a Chief Juvenile Defender, within the Office of the State Public Defender or within an independent office. Colorado children need a chief advocate to protect their rights and interests within indigent defense systems, and regarding state and local policies and procedures. A juvenile chief or statewide coordinator can develop an infrastructure that supports specialization in juvenile defense at all stages of a juvenile case and oversee the training necessary to ensure high quality representation. Those issues are beyond the scope of this memo, but are urged for consideration by this committee.

1. Timing of Appointment of Counsel

A. Goal

To require that juveniles be appointed counsel for the first appearance before a judge or first meeting with a prosecutor, so that defense counsel can be present for the detention hearing and any plea negotiations and have sufficient time to prepare for them.

B. Current Statute

“When representing an indigent person, the state public defender . . . shall: (a) Counsel and defend him, whether he is held in custody, filed on as a delinquent, or charged with a criminal offense or municipal code violation at every stage of the proceedings following arrest, detention, or service of process”⁵

Current practice is that juveniles are not provided counsel at detention hearings, first appearances, and during plea negotiations with the prosecutor. This practice persists despite the U.S. Supreme Court’s ruling in *Rothgery v. Gillespie Cnty.*, 554 U.S. 191 (2008), which held that the practice as applied to adults was unconstitutional.

Colorado’s current statute on the appointment of counsel for juvenile defendants states that, after a child has been advised of his or her rights at the first court appearance after the filing of a petition, the court “shall” appoint counsel (1) if the juvenile or his or her parents, guardian, or other legal custodian requests counsel and the same group does not have sufficient financial means to retain counsel; (2) if the parents, guardian, or other legal custodian refuses to retain counsel; or (3) if the court deems the appointment of counsel necessary to protect the child’s best interests.⁶

⁵ Colo. Rev. Stat. § 21-1-104(1).

⁶ Colo. Rev. Stat. § 19-2-706.

Colo. R. Juv. P. 3(a)(2) employs permissive language in describing the appointment of counsel on the basis of indigence: “the court shall make certain that [the juvenile and parent, guardian, or other legal custodian] understand . . . [t]he juvenile’s right to counsel and if the juvenile, parent, guardian, or other legal custodian is indigent, that the juvenile *may* be assigned counsel, as provided by law. . .” (emphasis added).

C. Argument

Limiting appointment of counsel until after the detention hearing is in direct opposition to the fundamental fairness requirements of the Fourteenth Amendment, as the policy deprives children of legal advice and assistance from arrest through the initial hearing and potentially into the critical stage of plea negotiations.⁷ Under current statute, a juvenile may be forced to wait as long as thirty days after the filing of the petition just to reach a preliminary hearing.⁸ Delaying the appointment of counsel means that children can be held in custody without someone on their side who can help them navigate the legal system and defend their rights or help them challenge the appropriateness of that detention decisions.

Colorado must protect the pre-trial procedural rights of young people by ensuring early appointment of counsel. The earlier counsel can meet with their clients, the more likely it is that young people will remain informed throughout the trial process. Early involvement by counsel demonstrates a commitment to the client, improves the attorney-client relationship, and ensures that the youth receives the best representation possible.⁹

According to the National Council of Juvenile and Family Court Judges “[d]elays in the appointment of counsel create less effective juvenile delinquency court systems.”¹⁰ Late appointment prevents youth from hearing the lawyer’s advice and information regarding pending trial stages, their own rights, and the trial process more generally. To avoid the trauma of the court experience, uncounseled juveniles are often overeager to plea as soon as possible. Such early resolution gives counsel no opportunity to explore the facts of the case or obtain discovery. Thus, the later counsel is appointed, the more it is rendered meaningless in the juvenile court setting. Immediate access to counsel is especially necessary for youth in confinement. Research establishes that even short-term incarceration is particularly harmful to adolescents.¹¹ In short, delays in appointing counsel not only deny youth the opportunity for meaningful communication with their lawyer, but lead to negative outcomes.

⁷ See *Missouri v. Frye*, 132 S. Ct. 1399 (2012) and *Lafler v. Cooper*, 132 S.Ct. 1376 (2012), where the United States Supreme Court found plea negotiations to be a critical stage of the proceedings requiring effective assistance of counsel.

⁸ Colo. Rev. Stat. § 19-2-705(1)(b). See also NJDC & CJDC, Colorado: An Assessment, *supra* note 6, at 38.

⁹ NATIONAL JUVENILE DEFENDER CENTER, NATIONAL JUVENILE DEFENSE STANDARDS, § 3.1: REPRESENTATION OF THE CLIENT PRIOR TO INITIAL PROCEEDINGS 52-53 (2012) [hereinafter NAT’L JUV. DEF. STDS.].

¹⁰ THE NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 90 (2005) [hereinafter NCJFCJ GUIDELINES].

¹¹ BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INSTITUTE, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES (2006), <http://www.justicepolicy.org/research/1978>; Maia Szalavitz, *Why Juvenile Detention Makes Teens Worse*, TIME, Aug. 7, 2009, <http://www.time.com/time/health/article/0,8599,1914837,00.html>.

Reforms aimed at guaranteeing early appointment of counsel are often criticized as too expensive to implement. But NCJFCJ reports that “juvenile delinquency courts have found that providing qualified counsel facilitates earlier resolution of summoned cases.”¹² Early appointment also conserves judicial resources by preventing delays and minimizing additional hearings.¹³

National standards of effective juvenile justice reform and accountability emphasize the importance of early appointment of counsel.¹⁴ The NCJFCJ *Guidelines* instruct that in a delinquency court of excellence, counsel must be appointed prior to any initial or detention hearing and must have enough time to prepare.¹⁵ The *National Juvenile Defense Standards* state that the appointment of counsel should occur as far as possible in advance of the first court appearance in order to allow meaningful consultation between counsel, the child, and the child’s family, if necessary.¹⁶ They further provide that the juvenile defender “must consult with the client and provide representation at the earliest stage possible.”¹⁷ Finally, “timely appointment helps defenders meet their ethical obligations and secure due process for children.”¹⁸

The U.S. Department of Justice (DOJ) has called for the provision of counsel to juveniles at detention hearings and interpreted the Fourth Amendment to require that juveniles have an opportunity to challenge probable cause determinations at detention hearings. In its assessment of the Juvenile Court of Memphis and Shelby County, Tennessee (JCMSC), the DOJ argued that the U.S. Supreme Court cases of *Gerstein v. Pugh*¹⁹ and *County of Riverside v. McLaughlin*,²⁰ and the Sixth Circuit case of *Cox v. Turley*²¹ require that juveniles be given an opportunity to challenge probable cause at a detention hearing within forty-eight hours of their arrest.²² One of JCMSC’s shortcomings was its failure to hold probable cause determinations over weekends, and DOJ declared that “JCMSC must implement a formal system in which at least one Magistrate, one JD [juvenile defender], one ADA [assistant district attorney], and one probation officer is available for several hours each weekend, three-day weekend, and holiday to hold probable cause and detention hearings.”²³

¹² NCJFCJ GUIDELINES, *supra* note 5, at 221-22.

¹³ NCJFCJ GUIDELINES, *supra* note 5, at 78, 90-91.

¹⁴ NCJFCJ GUIDELINES, *supra* note 5, at 25; NAT’L JUV. DEF. STDS., *supra* note 4, at § 10.4 cmt.: PREVENT INVALID WAIVER OF COUNSEL 157.

¹⁵ NCJFCJ GUIDELINES, *supra* note 5, at 77, 90.

¹⁶ NAT’L JUV. DEF. STDS., *supra* note 4, at §§ 2.5: PARENTS AND OTHER INTERESTED THIRD PARTIES, 3.1: REPRESENTATION OF THE CLIENT PRIOR TO INITIAL PROCEEDINGS.

¹⁷ NAT’L JUV. DEF. STDS., *supra* note 4, at § 1.4: SCOPE OF REPRESENTATION.

¹⁸ NATIONAL JUVENILE DEFENDER CENTER, ENCOURAGING JUDGES TO SUPPORT ZEALOUS DEFENSE ADVOCACY FROM DETENTION TO POST-DISPOSITION: AN OVERVIEW OF THE JUVENILE DELINQUENCY GUIDELINES OF THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES 4 (2006), available at www.njdc.info/pdf/NCJFCJ_Fact_Sheet_Reprint_Fall_2012.pdf.

¹⁹ 420 U.S. 103, 124 (1974) (A judicial officer must make a probable cause determination “either before or promptly after arrest.”).

²⁰ 500 U.S. 44, 57 (1991) (“A jurisdiction that chooses to offer combined [probable cause and arraignment] proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest.”).

²¹ 506 F.2d 1347, 1353 (6th Cir. 1974) (“Both the Fourth Amendment and the Fifth Amendment were violated because there was no prompt determination of probable cause – a constitutional mandate that protects juveniles as well as adults.”).

²² U.S. Dept. of Justice, Civil Rights Div., Investigation of the Shelby County Juvenile Court 17 (2012).

²³ *Id.* at 61 (emphasis added).

If detention hearings are to include a determination of the complex legal question of whether the arresting officer had probable cause, fundamental fairness considerations of the Fourteenth Amendment Due Process Clause require consultation with an attorney. As the Supreme Court declared in *Gault*:

A proceeding where the issue is whether the child will be found to be “delinquent” and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child “requires the guiding hand of counsel at every step in the proceedings against him.”²⁴

DOJ’s demands were not swept aside as infeasible: in January 2013, JCMSC came to an agreement with DOJ to implement reforms consistent with the changes demanded in DOJ’s assessment.²⁵

In addition to Fourteenth Amendment considerations, Sixth Amendment jurisprudence supports a constitutional obligation to entitle juveniles to counsel at detention hearings. Juveniles’ right to counsel is protected not only by the Due Process Clause of the Fourteenth Amendment, but also by the Sixth Amendment right to counsel: the Colorado Supreme Court has held that the Sixth Amendment applies to “adult proceedings which are criminal in nature and equivalent juvenile cases.”²⁶ The U.S. Supreme Court has held that the Sixth Amendment requires the provision of counsel at all “critical stages” of the court proceedings, including “the pretrial type of arraignment where certain rights may be sacrificed or lost.”²⁷

Determination of whether a particular point in court proceedings constitutes a “critical stage” requires analysis of “whether potential substantial prejudice to defendant’s rights inheres in the particular confrontation and the ability of counsel to help avoid that prejudice.”²⁸ Without counsel, a juvenile’s lack of familiarity with the intricacies of law and with legal strategies for protecting his or her interests presents substantial prejudice against the juvenile’s right to personal liberty, which is at stake in a detention hearing. The Colorado Supreme Court’s declaration that the Sixth Amendment applies to juvenile defendants, along with a critical stage analysis, supports a constitutional requirement to provide counsel at detention hearings.

Model Language

Colorado should follow the example of other states and adopt measures to grant children the assistance of counsel at the initial hearing and any plea negotiations. States that have adopted these or similar measures include Iowa, Indiana, Louisiana, and Virginia.

²⁴ *In re Gault*, 387 U.S. 1, 36 (1967) (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932)).

²⁵ *DOJ and JCMSC Agreement Made in Memphis*, Correctional News (Jan. 15, 2013), <http://www.correctionalnews.com/articles/2013/01/15/doj-and-jcmsc-agreement-made-in-memphis>.

²⁶ *In re Marriage of Hartley*, 886 P.2d 665, 674 n.16 (Colo. 1994) (en banc).

²⁷ *Coleman v. Alabama*, 399 U.S. 1, 7 (1970) (citing *Hamilton v. Alabama*, 368 U.S. 52, 54 (1961)).

²⁸ *United States v. Wade*, 388 U.S. 218, 227 (1967).

Iowa:

1. **A child shall have the right to be represented by counsel at the following stages** of the proceedings within the jurisdiction of the juvenile court under division II:

a. From the time the child is taken into custody for any alleged delinquent act that constitutes a serious or aggravated misdemeanor or felony under the Iowa criminal code, and during any questioning thereafter by a peace officer or probation officer.

b. **A detention or shelter care hearing** as required by section 232.44.

c. A waiver hearing as required by section 232.45.

d. An adjudicatory hearing required by section 232.47.

e. A dispositional hearing as required by section 232.50.

f. Hearings to review and modify a dispositional order as required by section 232.54.²⁹

Indiana:

(A) **Right to Counsel. A child charged with a delinquent act is entitled to the representation of counsel at all stages of proceedings.**

(B) Appointment of Counsel. **Counsel must be appointed prior to the detention hearing or initial hearing, whichever occurs first.**

(C) Waiver. Any waiver of the right to counsel must be made in open court, on the record and confirmed in writing, and in the presence of the child's attorney.

(D) Withdrawing Waiver. Waiver of the right to counsel may be withdrawn at any stage of a proceeding, in which event the court must appoint counsel for the juvenile if otherwise required by statute.³⁰

Louisiana:

At every stage of [juvenile delinquency proceedings], the accused child shall be entitled to the assistance of counsel at state expense. The court shall appoint or refer the child for representation by the district public defender.³¹

²⁹ Iowa Code §232.11 (2013).

³⁰ See Ind. Proposed Rule Amendment: Right to Counsel in Juvenile Court Delinquency Proceedings (March 2013), available at <http://www.in.gov/judiciary/files/rules-prop-2013-1-right-to-counsel.pdf>. The current Indiana Rule reads: If: (1) a child alleged to be a delinquent child does not have an attorney who may represent the child without a conflict of interest; and (2) the child has not lawfully waived the child's right to counsel . . . the juvenile court shall appoint counsel for the child at the detention hearing or at the initial hearing, whichever occurs first, or at any earlier time.

³¹ La. Child. Code art. 809(A).

Virginia:

Prior to the detention hearing . . . , the court shall appoint a qualified and competent attorney-at-law to represent the child unless an attorney has been retained and appears on behalf of the child. For the purposes of appointment of counsel for the detention hearing . . . only, a child's indigence shall be presumed. Nothing in this subsection shall prohibit a judge from releasing a child from detention prior to appointment of counsel.³²

2. **Presumption of Indigence**

A. *Goal*

To codify a presumption that all juveniles, by the virtue of their age and inability to care for themselves, are indigent and, therefore, are automatically entitled to counsel appointed without the necessity of an investigation of the child's or the family's financial status.

B. *Current Statute*

After a child has been advised of his or her rights at the first court appearance after the filing of a petition, the court "shall" appoint counsel (1) if "the juvenile or his or her parents, guardian, or other legal custodian" requests counsel and the same group does not have sufficient financial means to retain counsel; (2) if the parents, guardian, or other legal custodian refuses to retain counsel; or (3) if the court deems the appointment of counsel necessary to protect the child's best interests.³³ Thus, unless the court goes out of its way to appoint counsel or the child's parents/guardian/legal representative refuse to hire counsel, the financial resources of the child's parents/guardian/legal representative are a major factor in determining whether the child is legally entitled to counsel.

C. *Argument*

Current indigence determination requirements are a barrier to the delivery of legal representation for our children in delinquency proceedings. Indigence requirements delay delinquency proceedings, deny legal assistance to those just above indigence cutoff levels, and pressure children to waive counsel altogether.³⁴ In practice, if a youth intends to exercise the right to appointed counsel, family members in many jurisdictions must then meet with the public defender, bring financial records that establish their need, and fill out an application. Parents, unaware of these requirements, rarely have that information at the ready and the process for applying can therefore stretch out for days or weeks. When this is explained to the child and the family, the pressure to not exercise the right is immense, to the point of coercion. Colorado

³² Va. Code § 16.1-266(B).

³³ Colo. Rev. Stat. § 19-2-706.

³⁴ See Brenan Center for Justice, *Eligible for Justice: Guidelines for Appointing Defense Counsel 18-19 (2008)*. ("The right to counsel belongs to the defendant, and the decision whether to retain counsel cannot be left to a third party. Accordingly, some jurisdictions appropriately bar consideration of the resources of friends or relatives. . . . However, because spouses and parents may be reluctant to pay legal costs, and because it may take time for defendants to enforce legal obligations establishing their right to this support, the better practice is for jurisdictions to provide free counsel to defendants and seek reimbursement from liable spouses or parents afterward.").

should eliminate this due process barrier, as several other states have done, by adopting a presumption of indigence for the purposes of appointing juvenile defense counsel.

In 2012, Pennsylvania adopted a presumption of indigence for the purposes of appointing counsel in delinquency proceedings.³⁵ In its recommendation to the Pennsylvania Supreme Court in favor of adopting the presumption, the Commonwealth's Interbranch Commission on Juvenile Justice stated:

[T]here is an inherent risk that the legal protections afforded juveniles could be eroded by the limited financial resources of their parents, particularly those parents whose income is just above the guidelines, or by the unwillingness of parents to expend their resources. There is also the risk that the attorneys hired by parents might rely upon the parents for decision-making in a case rather than rely upon the juvenile as the law requires.³⁶

The indigence determination process itself also poses problems. It wastes court resources, is time-consuming, and delays the appointment of counsel.³⁷ This unnecessary process is also a cause of fear and concern for youth, whose parents and relatives are threatened with a thorough investigation of their assets.³⁸ Additionally, the time and effort that the parent must assert in order to engage in this process – including the potential need to take additional days off work and jeopardize the already stressed family finances – may put the family's interests at odds with the child. The pressures of getting through court proceedings quickly and protecting one's family can push children to waive counsel.³⁹

D. *Model Language*

Colorado should follow the example of other states and adopt a presumption that all juveniles are indigent for the purposes of appointing counsel. States that have adopted a presumption of indigence include Louisiana, North Carolina, Pennsylvania, and Virginia.

Louisiana:

For purposes of the appointment of counsel, children are presumed to be indigent.⁴⁰

North Carolina:

- (a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. Counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged

³⁵ 2012 Pa. Legis. Serv. 2012-23 (S.B. 815) (amending 42 Pa. Cons. Stat. § 6337 and adding § 6337.1).

³⁶ Interbranch Commission of Juvenile Justice, Report 50 (2010). See also Nat'l Juvenile Defender Ctr., National Juvenile Defense Standards 155-56 (2012), available at <http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf> [hereinafter NJDC, Standards].

³⁷ See NJDC & CJDC, Colorado: An Assessment, *supra* note 6, at 38.

³⁸ See NJDC, Standards, *supra* note 32, at 156.

³⁹ See *id.*

⁴⁰ La. Child. Code art. 320(A).

to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined.

(b) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency.⁴¹

Pennsylvania:

All juveniles are presumed indigent. If a juvenile appears at any hearing without counsel, the court shall appoint counsel for the juvenile prior to the commencement of the hearing.⁴²

In delinquency cases, all children shall be presumed indigent. If a child appears at any hearing without counsel, the court shall appoint counsel for the child prior to the commencement of the hearing. The presumption that a child is indigent may be rebutted if the court ascertains that the child has financial resources to retain counsel of his choice at his own expense. The court may not consider the financial resources of the child's parent, guardian, or custodian when ascertaining whether the child has the financial resources to retain counsel of his own choice at his own expense.⁴³

Virginia:

Prior to the detention hearing . . . , the court shall appoint a qualified and competent attorney-at-law to represent the child unless an attorney has been retained and appears on behalf of the child. **For the purposes of appointment of counsel for the detention hearing . . . only, a child's indigence shall be presumed.** Nothing in this subsection shall prohibit a judge from releasing a child from detention prior to appointment of counsel.⁴⁴

3. **Waiver of Counsel**

A. *Goal*

“Children should not be allowed to waive the initial appointment of counsel; but after appointment and thorough consultation with counsel, those who insist on going *pro se* should be allowed to waive continued representation by counsel only if the court determines on the record that the child has a full understanding of the rights he or she is waiving.”⁴⁵ In particular there should be restrictions of waiver based upon age and offense, like felony or sex offenses.

⁴¹ N.C. Gen. Stat. § 7B-2000.

⁴² Pa. R. Juv. Ct. P. No. 151.

⁴³ 42 Pa. Cons. Stat. § 6337.1.

⁴⁴ Va. Code § 16.1-266(B).

⁴⁵ Nat'l Juvenile Defender Ctr. & Colo. Juvenile Defender Coal., Colorado: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings 40 (2012), available at http://www.njdc.info/pdf/Colorado_Assesment.pdf [hereinafter NJDC & CJDC, Colorado: An Assessment].

B. Current Statute

At a juvenile's first appearance before a court, the court shall advise "the juvenile and parent, guardian, or other legal custodian" of the juvenile's right to counsel.⁴⁶ The Colorado Court of Appeals interpreted this rule to mean that a parent's presence is "of critical significance to any knowing and intelligent waiver of a constitutional right," which in this case was the right to counsel.⁴⁷ A totality of the circumstances test is used to determine whether the waiver of rights is valid in juvenile delinquency proceedings.⁴⁸ The factors the court will consider in conduct this test "are the age and intelligence of the child and his prior experience with the juvenile justice system."⁴⁹

C. Argument

The decision to waive the right to counsel in a juvenile delinquency proceeding is an important one, and is not to be taken without serious contemplation of the disadvantages and consequences. **In waiving counsel, a child dispenses with the advice of the only professional in the process charged with promoting the child's expressed interest,** as opposed to what a judge, prosecutor, medical expert, or other party deems the child's "best interest."⁵⁰ At its core, preventing waiver of counsel is about protecting fairness and due process.⁵¹

Social science research shows that on their own, uncounseled youth sometimes lack the capacity to understand the nature of the long- and short-term consequences of juvenile court involvement and to successfully navigate the increasingly complex dimensions of the modern juvenile court.⁵² Adolescents are, on average, less future-oriented and less likely to properly consider the consequences of their actions when making decisions.⁵³

As a result of immaturity, anxiety, stress, and direct and indirect pressure from judges, prosecutors, parents, or probation officers, unrepresented youth often feel compelled to resolve their cases quickly. Without being fully informed, juveniles too often succumb to the pressures to waive counsel regardless of their level of understanding in order to expedite their cases, entering admissions without legal advice about possible defenses, mitigation, or the consequences of juvenile

⁴⁶ Colo. R. Juv. P. 3.

⁴⁷ *People ex rel. J.F.C.*, 660 P.2d 7, 8 (Colo. App. 1982). *See also* Colo. Rev. Stat. § 19-2-109(6) (requiring that a parent, guardian, or other legal custodian attend all hearings and other proceedings involving the juvenile).

⁴⁸ *J.F.C.*, 660 P.2d at 9.

⁴⁹ *Id.*

⁵⁰ *See* U.S. Dep't of Justice, Civil Rights Div., Investigation of the Shelby County Juvenile Court 47 (2012) ("Unlike probation officers, psychiatrists and others, the defense counsel must protect the youth's expressed interest and cannot supplant it with his or her judgment about what is in the youth's best interest.").

⁵¹ *See id.* ("Vigorous advocacy by defense counsel ensures that the youth's voice is heard in the process and a fair, just and appropriate result is achieved.").

⁵² *See, e.g., Graham v. Florida*, 130 S. Ct. 2026, 2032 (2010) (noting that youth's limited understanding puts them at a "significant disadvantage in criminal proceedings").

⁵³ Brief for the American Psychiatric Association as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2004) (No. 03-633), 2004 WL 1636447.

adjudications.⁵⁴ Research shows that without appropriate guidance, juveniles are unlikely to understand rights they are asked to waive, let alone the consequences of waiving them.⁵⁵

Even prior court experience bears no direct relationship to juveniles' ability to understand their legal rights.⁵⁶ Experts find that youth are able to make much better decisions when informed and unhurried than when under stress and peer or authority influences—meaning juveniles are less likely to waive their rights, including their right to counsel, if they are able to consult with counsel first.⁵⁷

National standards similarly hold that waiver of counsel must be limited to situations where the juvenile has been able to first consult with counsel. The National Council for Family and Juvenile Court Judges believes that juvenile judges should be extremely reluctant to allow young people to waive their right to counsel.⁵⁸ “On the rare occasion when the court accepts a waiver of the right to counsel, the court should take steps to ensure that the youth is fully informed of the consequences of the decision.”⁵⁹ Namely, “[a] waiver of counsel should only be accepted after the youth has consulted with an attorney about the decision and continues to desire to waive the right.”⁶⁰

Current law and practice in Colorado makes it too easy for a juvenile to waive counsel without knowing the consequences of waiver and without realizing that an attorney is there to both represent his or her interests and protect his or her rights. The only required component of waiver now is a parent's presence at waiver.⁶¹ The lack of clear statutory requirements for waiver means that different courts have varying standards for approving waiver of counsel.⁶²

D. Model Language

Colorado should follow the example of other states and adopt measures that require a juvenile's consultation with counsel and clear understanding of the consequences of waiving the right to counsel before such a waiver is acceptable. States that have adopted these or similar

⁵⁴ NAT'L JUV. DEF. STDS., *supra* note 4, at § 10.4 cmt.: PREVENT INVALID WAIVER OF COUNSEL 157.

⁵⁵ Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Court*, 54 FLA. L. REV. 577 (2002) [hereinafter Berkheiser] (citing THOMAS GRISSO, JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 193-194 (1981)) [hereinafter GRISSO]; *see generally* Norman Lefstein et al., *In Search of Juvenile Justice: Gault and Its Implementation*, 3 LAW & SOC'Y REV. 491 (1969) (discussing an empirical study demonstrating the difficulty of obtaining juvenile waivers with confidence that they are knowing and voluntary).

⁵⁶ GRISSO, *supra* note 10, at 193-194.

⁵⁷ Lawrence Steinberg et al., *Are Adolescents More Mature than Adults?: Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop"*, 64 AM. PSYCHOLOGIST 583 (2009).

⁵⁸ *See* PREVENT INVALID WAIVER OF COUNSEL 157; NCJFCJ GUIDELINES, *supra* note 5, at 25.

⁵⁹ NCJFCJ GUIDELINES, *supra* note 5, at 25.

⁶⁰ *Id.*

⁶¹ *See J.F.C.*, 660 P.2d at 8 (interpreting Colo. R. Juv. P. 3 to mean that a parent's presence is “of critical significance to any knowing and intelligent waiver of a constitutional right,” including the right to counsel). *See also* Colo. Rev. Stat. § 19-2-109(6) (requiring that a parent, guardian, or other legal custodian attend all hearings and other proceedings involving the juvenile).

⁶² *See* NJDC & CJDC, Colorado: An Assessment, *supra* note 6., at 40.

measures include Alaska, Florida, Kentucky, Louisiana, Maryland, Minnesota, New Jersey, Ohio, Pennsylvania, Vermont, Virginia, and West Virginia.⁶³

Alaska:

The court shall appoint counsel in [juvenile delinquency cases where the child is indigent] unless it makes a finding on the record that the minor has made a voluntary, knowing, and intelligent waiver of the right to counsel and a parent or guardian with whom the minor resides or resided before the filing of the petition concurs with the waiver. **In cases in which it has been alleged that the minor has committed an act that would be a felony if committed by an adult, waiver of counsel may not be accepted unless the court is satisfied that the minor has consulted with an attorney before the waiver of counsel.**⁶⁴

Florida:

The court shall appoint counsel as provided by law unless waived by the child at each stage of the proceeding. **Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.** This waiver shall be in writing.⁶⁵

Kentucky:

(a) **No court shall accept a pleas or admission or conduct an adjudication hearing involving a child accused of committing any felony offense, any [sexual offense], or any offense, including the violation of a valid court order, for which the court intends to impose detention or commitment as a disposition unless that child is represented by counsel.**

(b) For a child accused of committing any other offense, before a court permits the child to proceed beyond notification of the right to counsel . . . without representation, the court shall:

1. Conduct a hearing about the child's waiver of counsel; and
2. Make specific findings of fact that the child knowingly, intelligently, and voluntarily waived his right to counsel.⁶⁶

⁶³ Some of these states require consultation with an attorney only in juvenile felony proceedings. This may not go far enough to protect the rights of all children. These statutes, however, still provide a solid framework for Colorado's reforms.

⁶⁴ Alaska Stat. § 47.12.090.

⁶⁵ Fla. R. Juv. P. 8.165(a).

⁶⁶ Ky. Rev. Stat. Ann § 610.060(2).

Louisiana:

A. The court may allow a child to waive the assistance of counsel if the court determines that all of the following exists:

- (1) **The child has consulted with an attorney**, parent, or, if no parent, a caretaker
- (2) That both the child and the adult consulting with the child as provided in Subparagraph (A)(1) of this Article have been instructed by the court about the child's rights and the possible consequences of waiver.
- (3) That the child is competent and is knowingly and voluntarily waiving his right to counsel.

B. Such waiver may be accepted at any stage in the proceedings and shall be evidenced by a writing reciting the requirements contained in Paragraph A of this Article and signed by the child and the adult consulting with the child and filed in the record or by a verbatim transcript of the proceedings which demonstrates compliance with Paragraph A of this Article.

...

D. The child shall not be permitted to waive assistance of counsel in the following circumstances:

- (1) **In proceedings in which it has been recommended to the court that the child be placed in a mental hospital, psychiatric unit, or substance abuse facility, nor in proceedings to modify said dispositions.**
- (2) **In proceedings in which he is charged with a felony-grade delinquent act.**
- (3) **In probation or parole revocation hearings.**⁶⁷

Maryland:

- (1) Except as provided in paragraph (3) of this subsection, a child may not waive the right to the assistance of counsel in a [juvenile proceeding].
- (2) **A parent, guardian, or custodian of a child may not waive the child's right to the assistance of counsel.**
- (3) After a petition or citation has been filed with the court . . . , **if a child indicates a desire to waive the right to the assistance of counsel, the court may not accept the waiver unless:**
 - (i) **The child is in the presence of counsel and has consulted with counsel;** and
 - (ii) The court determines that the waiver is knowing and voluntary.

⁶⁷ La. Child. Code art. 810.

- (4) In determining whether the waiver is knowing and voluntary, the court shall consider, after appropriate questioning in open court and on the record, whether the child fully comprehends:
- (i) The nature of the allegations and the proceedings, and the range of allowable dispositions;
 - (ii) That counsel may be of assistance in determining and presenting any defenses to the allegations of the petition, or other mitigating circumstances;
 - (iii) That the right to the assistance of counsel in a delinquency case, or a child in need of supervision case, includes the right to the prompt assignment of an attorney without the charge to the child if the child is financially unable to obtain private counsel;
 - (iv) That even if the child intends not to contest the charge or proceeding, counsel may be of substantial assistance in developing and presenting material that could affect the disposition; and
 - (v) That among the child's rights at any hearing are the right to call witnesses on the child's behalf, the right to confront and cross-examine witnesses, the right to obtain witnesses by compulsory process, and the right to require proof of any charges.⁶⁸

Minnesota:

Any waiver of counsel must be made knowingly, intelligently, and voluntarily. Any waiver shall be in writing or on the record. **The child must be fully and effectively informed of the child's right to counsel and the disadvantages of self-representation by an in-person consultation with an attorney, and counsel shall appear with the child in court and inform the court that such consultation has occurred.** In determining whether a child has knowingly, voluntarily and intelligently waived the right to counsel the court shall look at the totality of the circumstances including, but not limited to: the child's age, maturity, intelligence, education, experience, ability to comprehend, and the presence of the child's parents, legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding. The court shall inquire to determine if the child has met privately with the attorney, and if the child understands the charges and proceedings, including the possible disposition, any collateral consequences, and any additional facts essential to a broad understanding of the case. . . . Any child subject to competency proceedings . . . shall not be permitted to waive counsel.⁶⁹

Additionally, **in a proceeding in which out-of-home placement is proposed; in a probation violation and modification of disposition for a delinquent child; or in a detention hearing: If the child waives the right to counsel, the court shall appoint stand-by counsel to be available to assist and consult with the child at all stages of the proceedings.**⁷⁰

⁶⁸ Md. Code Ann., Cts. & Jud. Proc. § 3-8A-20(b).

⁶⁹ Minn. R. Juv. Delinq. P. 3.04.

⁷⁰ *Id.* 3.02.

New Jersey:

In every court proceeding in a delinquency case, the waiving of any right afforded to a juvenile shall be done in the following manner:

- (1) **A juvenile who is found to be competent may not waive any rights except in the presence of and after consultation with counsel**, and unless a parent has first been afforded a reasonable opportunity to consult with the juvenile and the juvenile's counsel regarding the decision. **The parent or the guardian may not waive the rights of a competent juvenile.**
- (2) Any such waiver shall be executed in writing or recorded. Before the court may accept a waiver, the court shall question the juvenile and his counsel to determine if the juvenile is knowingly, willingly and voluntarily waiving his right. If the court finds after questioning the juvenile that the waiver is not being made voluntarily and intelligently, the waiver shall be denied.
- (3) An incompetent juvenile may not waive any right. A guardian ad litem shall be appointed for the juvenile who may waive rights after consultation with counsel for the juvenile, and the juvenile.
- (4) Waivers shall be executed in the language regularly spoken by the juvenile.⁷¹

Ohio:

- (A) **A child's right to be represented by counsel may not be waived in the following circumstances:**
 - (1) **at a hearing conducted pursuant to Juv.R 30** [transfer to criminal court];
 - (2) **when a serious youthful offender dispositional sentence has been requested;**
or
 - (3) **when there is a conflict or disagreement between the child and the parent, guardian, or custodian;** or if the parent, guardian, or custodian requests that the child be removed from the home.
- (B) If a child is facing the potential loss of liberty, the child shall be informed on the record of the child's right to counsel and the disadvantages of self-representation.
- (C) **If a child is charged with a felony offense, the court shall not allow any waiver of counsel unless the child has met privately with an attorney to discuss the child's right to counsel and the disadvantages of self-representation.**
- (D) Any waiver of the right to counsel shall be made in open court, recorded, and in writing. In determining whether a child has knowingly, intelligently and voluntarily waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age; intelligence; education; background and

⁷¹ N.J. Stat. Ann. § 2A:4A-39(b).

experience generally and in the court system specifically; the child's emotional stability; and the complexity of the proceedings. The court shall ensure that a child consults with a parent, custodian, guardian, or guardian ad litem, before any waiver of counsel. However, no parent, guardian, custodian, or other person may waive the child's right to counsel.

(E) Other rights of a child may be waived with permission of the court.⁷²

Pennsylvania:

A. Waiver requirements. **A juvenile who has attained the age of fourteen may waive the right to counsel if:**

- (1) the waiver is knowingly, intelligently, and voluntarily made; and
- (2) the court conducts a colloquy with the juvenile on the record; and
- (3) **the proceeding for which waiver is sought is not one of the following:**
 - (a) **detention hearing . . . ;**
 - (b) **transfer hearing . . . ;**
 - (c) **adjudicatory hearing . . . , including the acceptance of an admission . . . ;**
 - (d) **dispositional hearing . . . ;** or
 - (e) **a hearing to modify or revoke probation**

B. Stand-by counsel. The court may assign stand-by counsel if the juvenile waives counsel at any proceeding or stage of a proceeding.

C. Notice and revocation of waiver. **If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time. At any subsequent proceeding, the juvenile shall be informed of the right to counsel.**⁷³

Vermont:

(3) *Waivers of Constitutional and Other Important Rights.* When a ward or guardian ad litem wishes to waive a constitutional right of the ward, enter an admission to the merits of a proceeding. . . , **the court shall not accept the proposed waiver or admission unless the court determines, after opportunity to be heard, each of the following:**

- (A) that there is a factual and legal basis for the waiver or admission;
- (B) **that the attorney has investigated the relevant facts and law, consulted with the client and guardian ad litem,** and the guardian ad litem has consulted with the ward;
- (C) that the waiver or admission is in the best interest of the ward; and

⁷² Ohio Juv. R. 3.

⁷³ Pa. R. J. C. P. 152.

(D) that the waiver or admission is being entered into knowingly and voluntarily by the ward and also by the guardian ad litem, except as set forth in (4) below.

(4) *Approval Without Ward's Consent of Constitutional or Other Important Waivers.*

A waiver or admission listed in subdivision (d)(3) of this rule may be approved of with the consent of the guardian ad litem but without the consent of the ward if the ward, because of mental or emotional disability, is unable to understand the nature and consequences of the waiver or admission or is unable to communicate with respect to the waiver or admission.

A person who has not attained the age of thirteen shall be rebuttably presumed to be incapable of understanding the nature and consequences of the waiver or admission and of communicating with respect to the waiver or admission; a person thirteen years old or older shall be rebuttably presumed to be capable.

The rebuttable presumptions shall have effect set forth by Vermont Rule of Evidence 301 [Presumptions in Civil Cases] and shall also allocate the burden of persuasion. Notwithstanding this subdivision, in all cases in which it is alleged that a person had committed a crime or delinquent act, that person's knowing and voluntary consent shall be required with respect to the waiver or admission.⁷⁴

Virginia:

Subsequent to the detention hearing, if any, and prior to the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services, in need of supervision or delinquent, such child and his parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services . . . and be given an opportunity to:

3. Waive the right to representation by an attorney, if the court finds that the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, and such waiver is consistent with the interests of the child. Such written waiver shall be in accordance with law and shall be filed with the court records of the case. **A child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive such right only after he consults with an attorney and the court determines that his waiver is free and voluntary.** The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case.⁷⁵

⁷⁴ Vt. Fam. P. R. 6(d)(3)-(4).

⁷⁵ Va. Code § 16.1-266(C)(3).

West Virginia:

At the [preliminary] hearing, the court or referee shall: . . . Appoint counsel by order entered of record, if counsel has not already been retained, appointed or knowingly waived.⁷⁶

The Supreme Court of Appeals of West Virginia has held that a juvenile's waiver of a constitutional right is valid and knowing only if it is done upon the advice of counsel.⁷⁷

⁷⁶ W. Va. Code § 49-5-9(a)(2).

⁷⁷ *State ex rel. J.M. v. Taylor*, 276 S.E.2d 199, 204 (W. Va. 1981).

Kids Without Counsel

Colorado's Failure to Safeguard Due Process for Children
in Juvenile Delinquency Court



A Report by the Colorado Juvenile Defender Coalition

Fall 2013



INTRODUCTION

“The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him.”

In re Gault, 387 U.S. 1, 36 (1967)

In the case of *In re Gault*, the United States Supreme Court ruled that children have a constitutional right to defense counsel in juvenile delinquency court under the Due Process Clause of the 14th Amendment. Most people would assume that when a child is accused of a crime, the child would be provided a lawyer to advocate for the child, represent the child’s point of view, make sure the child understands the court process and the consequences of his or her decisions, and to protect against unfairness or government overreach in the case.

Yet, many Colorado children never receive counsel and plead guilty to crimes without a lawyer’s review of the case, the child’s family circumstances, the short and long term consequences of pleading guilty, and whether the proposed sentence is appropriate or even necessary.

In the 2012 special report: “*Colorado: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings*,” the National Juvenile Defender Center (NJDC) detailed findings and recommendations following an 18 month study of juvenile defense and the wide disparities in access to counsel and the quality of representation for Colorado children. The Colorado Juvenile Defender Coalition (CJDC) took a second look at state and local data on unrepresented children and visited courtrooms across Colorado to further probe the circumstances that drive so many children to waive their right to counsel.

Comparing the data to the delivery of legal services, we identified a combination of obstacles confronting children and families in juvenile court stemming from public defender staffing practices, state law, and court procedures and policies that must be remedied to safeguard due process and fundamental fairness for Colorado’s children.

For the last ten years, children in over 40% of all juvenile delinquency cases in Colorado had no defense attorney representation at any stage in their case.

Last year, children in three judicial districts had no defense attorney representation in over 60% of juvenile cases.

STATISTICS

The Colorado judicial branch does not currently collect data on the numbers of children waiving counsel or the timing of the appointment of counsel. The best information we could obtain is the number of juvenile delinquency cases that had no defense attorney at any point during the case, which means the figures below do not include late appointment of counsel. Thus, these **statistics understate the number of kids without counsel** because they do not include additional cases where counsel was appointed late in the process.

Percentage of Kids Without Counsel in 2012

Percentage	District	Counties	Cases
66.6	8	Larimer (Fort Collins), Jackson	1003
62.3	9	Garfield (Glenwood Springs), Pitkin, Rio Blanco	154
61.5	1	Jefferson (Golden), Gilpin	984
57.5	5	Clear Creek, Eagle, Lake, Summit	205
55.2	18	Arapahoe, Douglas, Elbert, Lincoln	1318
54.6	19	Weld (Greeley)	985
48.6	6	Archuleta, La Plata, San Juan	72
47.5	14	Grand, Moffat, Routt	82
45.9	10	Pueblo	287
42.8	11	Chaffee, Custer, Fremont, Park	161
36.7	21	Mesa (Grand Junction)	264
36.3	2	Denver	1096
34.6	22	Dolores, Montezuma	49
33.3	13	Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Yuma	156
32.4	17	Adams (Brighton), Broomfield	616
32.1	3	Huerfano, Las Animas	84
30.5	20	Boulder	566
30.4	7	Delta, Gunnison, Hinsdale, Montrose, Ouray, San Miguel	161
28.5	12	Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache	126
27.7	16	Bent, Crowley, Otero	54
26.2	4	El Paso (Colorado Springs), Teller	1160
23.1	15	Baca, Cheyenne, Kiowa, Prowers	69

While juvenile crime is down and the number of delinquency cases has greatly declined, **high percentages of unrepresented youth persist** and data show a recent increase:

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
56%	56.7%	56.9%	54.2%	50%	49.3%	44.8%	43.2%	41.4%	43.3%	45.7%

COLORADO COURT WATCHING

CJDC sent trained volunteers to observe juvenile court proceedings in urban, suburban, and rural counties during a four month period in the summer of 2013. Court watchers collected data on the cases they witnessed, the parties and the practices in the courtroom, and recorded their observations of the decisions faced and made by children and families.

Court watchers made 20 visits to 16 courtrooms across 15 judicial districts, visiting some locations twice, and collecting observational information from over 250 cases.

Most of the courtrooms we visited were located in the same city as the public defender's office serving that county. We planned court visits for the earliest stages of a juvenile delinquency case, such as detention hearings and first appearances, where we knew from the NJDC Assessment that children had difficulty accessing a juvenile defense attorney.

Counties Observed	Judicial District	Courthouse Location	Public Defender's Office
Adams	17	Brighton	Brighton
Alamosa	12	Alamosa	Alamosa
Arapahoe	18	Centennial	Centennial
Boulder	20	Boulder	Boulder
Denver	2	Denver	Denver
Douglas	18	Castle Rock	Castle Rock
El Paso	4	Colorado Springs	Colorado Springs
Jefferson	1	Golden	Golden
Fremont	11	Canyon City	Salida
Garfield	9	Glenwood Springs	Glenwood Springs
Larimer	8	Fort Collins	Fort Collins
Kit Carson	13	Burlington	Sterling
Pueblo	10	Pueblo	Pueblo
Weld	19	Greeley	Greeley

Upon review of the information collected, CJDC concluded the most significant factors contributing to kids without counsel across Colorado are the following:

- **The absence of a juvenile defense attorney in the juvenile courtroom**
- **Cumbersome procedures determining eligibility for a public defender**
- **Waiver of counsel occurs without counsel while a child pleads guilty**
- **Judges appoint GAL's and not defense counsel in delinquency cases**

THE ABSENCE OF A JUVENILE DEFENDER IN THE COURTROOM

The number one factor that appears to affect whether a child gets a lawyer is presence or absence of a juvenile defense attorney in the courtroom. In some places, like Denver, Boulder, and Colorado Springs there are public defenders in juvenile court nearly every day and the majority of kids are spoken to or represented by counsel. In other places, like Arapahoe, Larimer, Jefferson, and Weld Counties, public defenders only appear on days when their clients are scheduled, which leaves space on the calendar for kids without counsel.

On one day in Larimer County we observed *20 out of 22 kids unrepresented*; on another day in Arapahoe County *15 out of 23 children had no counsel*; while in Weld County *21 out of 21 children had no counsel* for their first appearance in juvenile court. The absence of a defense lawyer is permitted and tolerated by court scheduling and public defender staffing practices.

First Appearances

A first appearance may only take a few minutes in front of the judge, but families may wait in the courtroom for hours before their case is called. In Arapahoe, Douglas, Jefferson, and Weld Counties, **prosecutors called out names of children** and met directly with children and families, **advising them about the court process**, the right to an attorney, **and the plea bargain** the prosecutor was offering the child. These conversations rarely lasted more than a few minutes and prosecutors were unable to answer many of the questions families had. Sometimes these conversations took place in the middle of a busy noisy public courtroom where children have no privacy and families have no one to turn to for help.



The absence of a juvenile defender in the courtroom means families are informed about the court process and what might happen by a prosecuting attorney followed by a judicial advisement given to everyone in the courtroom. In most courtrooms children and parents are given three “options” (1) hire a private attorney and come back another day, (2) apply for the public defender and come back another day, or (3) talk to the prosecutor and work out a deal that day.

Those options lead the majority of children we watched to plead guilty and waive their right to counsel. Across the state children were pleading guilty to misdemeanor and felony offenses without counsel, entering into sentencing agreements requiring years of supervision, evaluations, classes, electronic home monitoring, and/or drug and alcohol testing. Parents too can be bound by sentencing agreements and may not be fully aware of the burdens on their schedules or wallets. **One mother in Arapahoe County told the court she lost three jobs trying to keep up with her sons’ appointments** and his case was not yet resolved.

Detention Hearings

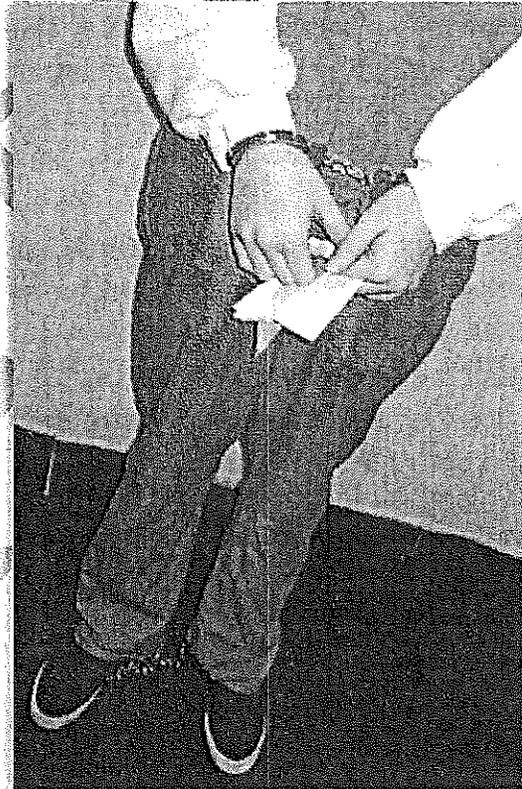
When a child is arrested, handcuffed, and taken to a detention center, the child's first court date is called a detention hearing. At the detention hearing the child comes to court in a jumpsuit, handcuffed (and sometimes the handcuffs are attached to a chain around their waist), and in many places the child is also shackled at the ankles. Nearly all children from juvenile detention facilities are shackled in court, regardless of the seriousness of the accusation. *In Weld County we observed five children shackled and chained together at the ankles walking into court.* The deputy removed the chain linking them together but not the shackles when the children sat down in the courtroom.

At the detention hearing the judge decides whether to let the child go home or keep the child locked up. Unlike adults, children can be held without bond. Even when children are released, the child and their families are subject to a series of restrictions and supervisions. We observed many children put on Electronic Home Monitoring, which can cost families money, places a transmission device on the child's ankle, and may be highly unnecessary and traumatic.

In many courtrooms **there was no juvenile defense attorney present for detention hearings.** In Glenwood Springs, one young man spent over six weeks in secure custody without a lawyer; the case had to be continued three times in order to obtain counsel. While he waited for mental health evaluations, it was reported his depression and anxiety worsened. He was finally released at his third hearing when a defense attorney was appointed and advocated for his release.

Sometimes parents want their children to stay in custody, and when that child has no lawyer there really is no one there to advocate for the child. In another case of an unrepresented child in El Paso County the mother had previously waived counsel for her child and was now telling the court that her child didn't accept the opportunity the court gave him. The court did not appoint counsel but set the case over for another hearing and kept the child in custody.

In contrast we were told that **in Denver, public defenders appear regularly at detention hearings** and they already have a file with client information and are prepared to argue for release. The uneven representation in detention hearings across the state must be fixed.



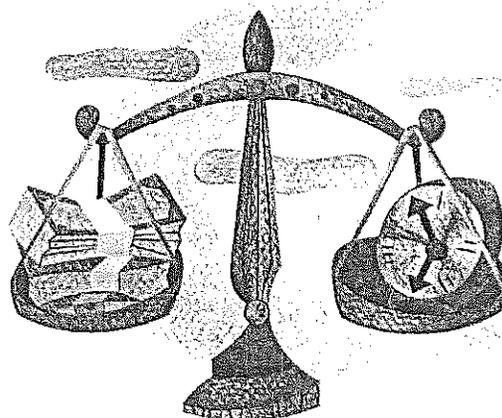
THE PUBLIC DEFENDER APPLICATION PROCESS

The second greatest barrier we observed affecting children's access to counsel was the public defender application process. Under Colorado law children and families first request an attorney and then are told to apply for a public defender. The parents or legal guardian of the child then have to go through the process of determining whether they are indigent to qualify for counsel at state expense. Indigence is measured by the parent's, not the child's income.

This process varied in every courtroom we visited. In Boulder and Fremont counties, a public defender was present in the courtroom to help answer questions and provide applications. In Adams County, the judge directed every juvenile to apply for a public defender. In Larimer County, the magistrate simply asked if the child would like to speak to the District Attorney or apply for a Public Defender, as if it was an either/or, it's all the same to the court comment.

Indigence Determinations

Under state law, the Public Defender's office can only represent the child if the child's parent or legal guardian qualifies as indigent. In Colorado, a family of four will qualify only if their income is below \$32,000. Yet a private attorney can cost as much as \$150 to \$300 dollars or more per hour, and require several thousand dollars up front as a retainer. This pits a child's right to an attorney against the other expenses the family has, creating great tension between the child and parent. Yet a child whose parents refuse, neglect, or are incapable of hiring an attorney has no less right to counsel than a child whose parents hire a lawyer.



Delayed Proceedings

The Public Defender's office is required to review every application to determine who is indigent before the court can appoint the child a public defender. Although applications may be filled out and reviewed in the courtroom and the judge may immediately appoint counsel, most courts do not make an indigence determination on the same day and instead direct families who request counsel to go to the public defender's office. Even if applications are available, most families are not aware of the financial paperwork required to complete it. Court hearings are often rescheduled for the purpose of applying for a public defender and determining eligibility. This causes unnecessary delay in the case and means another lost day at work or school, while pre-trial supervision requirements continue, and encourages waiver.

WAIVING COUNSEL WITHOUT COUNSEL WHILE PLEADING GUILTY

In courtrooms we observed across the state, very little time was spent explaining the charges and the rights of children. The advisement was often a set of written documents handed to the child and parent by a prosecutor. **In Larimer County children were handed a 7-page advisement of rights that the magistrate spent 2 minutes reviewing** from the bench before calling the first case. Most families appeared preoccupied with what was happening in the courtroom and likely did not fully read the advisement packet. Yet when the judge asked the child or parent if he or she understood the advisement, the child always answered yes (one time we saw a mom nudge her child to say "yes").

Children are not waiving counsel and then continuing through the case "pro se," they are simply waiving their right to counsel as one of the many rights they give up by pleading guilty

In other courtrooms, like in Adams County and some in Jefferson County, where judges spent more time advising children individually and encouraging applications to the public defender, more children and their families chose to obtain counsel. But more often parents and children do not request an attorney.

Court watchers witnessed prosecutors in Arapahoe, Douglas, Jefferson, and Weld Counties offering a plea deal to juveniles at their first appearance, before the child has been advised of their right to counsel or had an opportunity to request counsel. In Alamosa and Weld Counties the prosecutor was observed meeting with children and families outside the courtroom.

In Arapahoe County we heard the prosecutor tell a family "I know this is a lot to throw at you" as the prosecutor walked between the benches in the courtroom, talking to kids and parents as they sat waiting for court to start. **In Douglas County the prosecutor handed every child and parent paperwork and then came back and asked families if they wanted a lawyer.** Children and families, hoping to quickly resolve the case, often take the offer and plead guilty, waiving their constitutional right to counsel in the process.

Many judges encouraged children and parents to meet directly with the prosecutor, and when that happens early in the court's calendar, other parents and children tend to follow suit. In Fort Collins, the judge at first appearance asked the child and parent if they would like to speak to the district attorney about their case or apply for a public defender. Of 20 first appearances, only 3 wanted to apply for a public defender. **Larimer County was the only location we observed where cases were continued to a later date so kids and parents could meet with the prosecutor at their office before the next court date.** In contrast in Denver, Boulder, and Fremont County public defenders called the calendar and talked to kids.

Parents are put in a difficult position in juvenile delinquency court. On the one hand they are placed in the position of a defense attorney, to represent and assist their child through big decisions like waiving constitutional rights, and then on the other hand they are sometimes put in conflict with the child when the court asks the parent how the child is doing at home. Parents can both waive counsel and make statements that keep their child in custody. In those circumstances, **there is no one representing the child.**

Juvenile court is complicated and confusing, with lots of legal language and acronyms. One parent had no idea who the parties in the courtroom were, even after talking to them. Another parent didn't realize that it was a prosecutor they were speaking to about their case. One mom, frustrated with the imposition of an electronic monitoring device placed on her son, commented that beside her, no one was there to advocate for its removal. It was only after this dialogue that the court referred the family to the public defender's office.

On some occasions the parent was upset with their child and wanted the child to be punished. This is understandable from the parent point of view, but for a child who has waived his or her right to counsel, there is no one left to advocate for the child. In such cases, the child is left completely unrepresented and Colorado law does not require the court consider whether the interests of the parent are in conflict with the wishes of the child. In an El Paso courtroom, parents, who did not want their son to be released from detention, were also allowed to waive his right to an attorney. Their son, who was handcuffed and shackled was never told his rights and was not asked if he would like counsel.

In other instances parents believed that an attorney was not necessary because their child had not committed the offense he was charged with, or thought that requesting one would make their child seem guilty. Other parents express open frustration and confusion with the process. One parent in Weld County complained that her child was on Electronic Home Monitoring and "there was no one in court to argue for the removal of the ankle bracelet but her." A dad in El Paso County lamented "all the faces keep changing." One grandmother was confused about the application process. When there is no defense attorney in the room there is no professional responsible for advocating for the child's interest to explain the juvenile court process.

APPOINTMENT OF GAL INSTEAD OF DEFENSE COUNSEL

In delinquency cases, the court may appoint a Guardian ad Litem (GAL) for reasons including if a parent does not accompany the child or if there is conflict between parent and child. Although a GAL is an attorney, he or she is not a defense attorney. The GAL's role is to stand in the place of the parent and provide the court information about the child's circumstances and represent what they think are the *best interests* of the child. GALs do not have a

confidential attorney-client relationship with children and they do not represent the child's *expressed* interests as a defense attorney must.

Yet, in many courtrooms GALs are present more often than defense counsel. In multiple counties, **judges appointed a GAL outright, or to a child to advise the child of their right to counsel, instead of simply appointing defense counsel for the child.** For instance in Adams County a child's uncle was the victim in the case and expressed concern about the expense of hiring a private attorney, so the judge appointed a GAL to advise the child about the right to counsel. In one courtroom in Fort Collins there was a desk for the GAL but there was no public defender present. A similar practice was observed in Weld County. In at least 30 instances in our study we observed the court appoint a Guardian ad Litem (GAL) but not defense counsel. This is problematic because appointing only a GAL leaves the child without counsel against the charges in the case.

One factor contributing to the appointment of a GAL instead of defense counsel could be that **there is no indigence requirement or application for a Guardian ad Litem.**

CONCLUSION

Whether or not a child gets a lawyer in juvenile delinquency court varies widely across the state. Even within the same courthouse, whether a child gets a lawyer can depend on which side of the hallway and to which judge their case is assigned. When the professionals in the courtroom are committed to ensuring representation for children and the public defender is often present, kids are far more likely to get counsel. Where there is an accepted absence of defense counsel, children are more likely to plead guilty and families fend for themselves.

Laws are meant to ensure equal access to counsel and due process for all people. Yet, Colorado systemically fails to safeguard children's right to counsel in law and practice on many levels. Children need the guiding hand of counsel, but court and public defender staffing practices, indigence determinations, and judicial policies undermine the importance of counsel and the constitutional mandate to provide children counsel. It's time for Colorado to develop consistent laws, rules, and practices that ensure due process.

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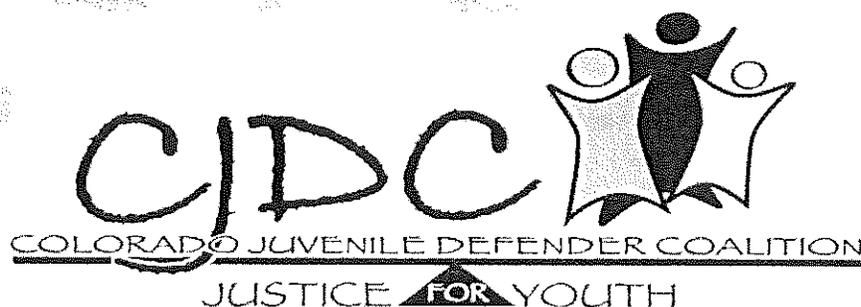
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About CJDC: The *Colorado Juvenile Defender Coalition* is a nonprofit organization dedicated to excellence in juvenile defense and advocacy and justice for all children and youth in Colorado. We believe all children and youth should experience adolescence free from over-criminalization in a just society that promotes their well-being and provides second chances. The principal author of "*Kids Without Counsel*" is CJDC's Executive Director Kim Dvorchak.

See also, "*Colorado: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Court*", published by the National Juvenile Defender Center and CJDC.



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