

Final
STAFF SUMMARY OF MEETING
JUVENILE DEFENSE ATTORNEY

Date: 10/04/2013

Time: **09:03 AM to 04:13 PM**

Place: HCR 0112

This Meeting was called to order by
Representative Levy

This Report was prepared by
Hillary Smith

ATTENDANCE

| | |
|---------------|---|
| Brant | X |
| Brodhead | E |
| Brown | * |
| Dvorchak | X |
| Harvey | X |
| Hudak | * |
| Jessel | X |
| Kagan | X |
| Koppes Conway | X |
| Lee | E |
| Lilgerose | X |
| Marble | X |
| Martin | X |
| Navarro | X |
| Smith | X |
| Ulibarri | E |
| Weinerman | X |
| Wright | X |
| Guzman | X |
| Levy | X |

X = Present, E = Excused, A = Absent, * = Present after roll call

| | |
|-------------------------------------|---|
| Bills Addressed: | Action Taken: |
| Opening Comments | Committee Discussion Only |
| Expungement Subcommittee Report | Committee Discussion Only |
| Discussion of Potential Legislation | Witness Testimony, Committee Discussion, 4 Bill Ideas |

09:05 AM -- Opening Comments

Representative Levy, chair, called the meeting to order. She noted that the committee received bill ideas from herself, Ms. Brown, and Ms. Dvorchak (Attachment A, Attachment B, and Attachment C, respectively).

09:06 AM -- Expungement Subcommittee Report

Ms. Martin explained the work of the Expungement Subcommittee. She said that the subcommittee felt that it would be too difficult to create legislation addressing expungement within such a short time. She listed several of the issues that the subcommittee discussed, including streamlining the process of expungement. Ms. Martin explained the current expungement process. She discussed concerns about sex offense cases involving deferred adjudications. Ms. Dvorchak shared additional information concerning access to records after they are expunged. Representative Levy asked about the membership of the subcommittee. Ms. Martin and Ms. Dvorchak offered to prepare an outline of topics of discussion to serve as a starting point for future efforts.

09:12 AM -- Discussion of Potential Legislation

Representative Levy asked Mr. Richard Sweetman from the Office of Legislative Legal Services to come to the table to assist the committee in its discussions. Representative Levy referred to Attachment A, containing her list of suggested topics, Attachment B, from the Office of the State Public Defender (OSPD), and Attachment C, from the Colorado Juvenile Defender Coalition.

09:13 AM

Mr. Sweetman briefly summarized his role in the process of discussing potential legislation. He noted that he has counted about a dozen individual bill requests, but several of the ideas could easily fit under a single bill title. He suggested that the committee consider how it would like to organize its ideas under various titles. He explained the drafting process he will follow to get initial drafts sent out to the designated "point people" as soon as possible. Mr. Sweetman said that the goal is to have each of the drafts prepared and posted online no later than Monday, October 21, 2013.

09:17 AM

Representative Levy asked the committee to consider whether there are issues that have not been included in any of the attachments that committee members would like addressed. Senator Marble spoke about the importance of allowing juveniles to receive copies of their police reports. She suggested that before the juvenile sees the district attorney, a copy of the police report should be made available to the juvenile. Representative Levy and Judge Smith responded to her remarks. Committee discussion continued. Magistrate Koppes-Conway said that the initial police report is an important element in a proper advisement.

09:20 AM

Ms. Jessel noted that prosecutors currently have obligations to provide discovery documents. She said that reports within the investigative phase may not be made available, and supplements are often filed. She asked about the timing that Senator Marble envisions, noting that district attorneys may not receive full charging documents immediately. Representative Levy asked at what point a district attorney's office is obligated to turn over discovery documents. She then asked whether Senator Marble is most concerned with whether the juvenile has access to charging documents, or whether other parties have such access. Senator Marble explained her concerns with the current process. Ms. Jessel expressed her concerns that a charging report could exacerbate family discord. Magistrate Koppes-Conway said that it important for the Judicial Branch to ensure that a parent and child have fully and adequately reviewed the police report. She suggested that it should be mandated that such a discussion be part of the colloquy during a plea.

09:30 AM

Ms. Carol Haller, Legal Counsel for the Colorado Judicial Branch, who was sitting in for Mr. Brodhead, suggested that a requirement could be added to the Section 19-2-706, C.R.S. statute and also to Rule 3 of the Colorado Rules of Juvenile Procedure. Judge Smith said that law enforcement always has a report. He stated that the plea-taking stage is too late for the report to be made available to judicial officers. He said that the breakdown occurs during what he termed to be the ongoing battle of discovery between the defense and the prosecution.

09:34 AM

Senator Marble expressed her view that information about discovery and police reports should be given to a child in an age-appropriate manner. Judge Smith reiterated his comment that the police report already exists, it is just a matter of getting it to the appropriate people in a timely manner. He suggested that when the juvenile is detained, the arresting agency should provide the police report to counsel and to the court. Representative Wright asked whether the OSPD has already suggested this idea in Attachment B. Ms. Brown noted that a lot of these suggestions are included in Attachment B, although the wording could be amended to ensure that the arresting agency provides the police report to counsel and to the court. Senator Harvey noted that the child is not included in the list of entities who must receive discovery. Ms. Brown said that the OSPD lets all clients read discovery materials, but providing those materials to clients can cause issues, particularly if the juvenile is in detention.

09:40 AM

Ms. Jessel discussed the differences between the arrest report, Senate Bill 94 materials, police reports, and discovery. Senator Marble said that juveniles need more time than is currently given to review all of their documents. Representative Kagan asked if Senate Bill 94 screening materials include the arrest report. Representative Levy said that it is important to resolve whether the committee is concerned with the arrest report or the police report. Magistrate Koppes-Conway spoke about the probable cause affidavit that currently comes to the court through the arresting agency. She said that it is not necessarily true that Senate Bill 94 programs have that affidavit. She also spoke about the importance of ensuring that a juvenile and his or her parent review the discovery prior to a plea. Ms. Jessel spoke about the time lag that may prevent a district attorney's office from receiving a full report.

09:47 AM

Judge Smith said that the United States Supreme Court requires an affidavit of probable cause to support an arrest for anyone who is held. He suggested that the committee use this phrase in its legislation. Representative Wright spoke about his experience as a former police officer, noting that officers write an affidavit immediately. He noted that a police report can take more time to prepare and release. He said that the legislation should indicate that police reports should be provided as soon as possible. Representative Levy suggested that they should be provided when they are completed.

09:50 AM

Ms. Dvorchak spoke about the importance of looking at the Colorado Rules of Juvenile Procedure. She also discussed standards of practice for juvenile defense attorneys. Magistrate Koppes-Conway asked about language in Attachment B concerning when a court can hold a juvenile. Representative Levy asked Ms. Brown to address the language, which is on page 1 of Attachment B. Ms. Brown stated that too many juveniles are detained, and this language attempts to raise the bar for detention and to conform with language concerning detention hearings. Ms. Jessel suggested that the safety of the victim be added to the language concerning when a court can hold a juvenile. She noted that in some cases, a parent may not be ready to take a juvenile home. She said that if a parent cannot or will not take a child home, and the child is not a danger, there are no places to keep that child. Representative Levy discussed whether this issue is within the scope of the committee.

09:57 AM

Senator Marble noted that many cases come to a resolution without a chance for the juvenile to see the police report. Representative Wright expressed his concerns with amending the language concerning when a court can hold a child. He noted that it may not always be in the child's best interests to return home. Ms. Dvorchak discussed opinions concerning whether juveniles who are a danger to themselves should be detained and expressed the view that this particular issue is outside the scope of the committee.

10:02 AM

Magistrate Koppes-Conway encouraged the committee to adopt the language on page 2 of Attachment B concerning information that the promise to appear should include. Representative Levy noted that her bullet point number 6 on Attachment A also addresses this issue. Representative Levy asked the committee to address the issue of standards of practice. Senator Harvey referred back to the language on page 2 of Attachment B, stating his opinion that the language should state that the juvenile and/or his or her parent or legal guardian "shall" choose counsel that is experienced in representing juveniles in the juvenile justice system, rather than "should."

10:06 AM

Ms. Jessel said that there are consequences when you take parental discretion away. Discussion continued on this issue. Magistrate Koppes-Conway noted that there is case law indicating that individuals have the right to choose their own attorney. Senator Marble said that the legislature cannot mandate whom a person can hire as an attorney, but it is possible to provide a definition of a juvenile defense attorney. Representative Levy suggested that the colloquy with the judge may be the best area for such advice. She noted that Colorado does not have a system for regulating most types of attorneys.

10:12 AM

Ms. Haller said that patients are required to ask certain questions of their doctors, and perhaps it would be helpful to inform juveniles of criteria to examine when choosing a lawyer for a juvenile case. She noted that many people may not be aware that attorneys specialize. Senator Harvey referred to testimony from a member of the public about hiring an excellent attorney who did not specialize in juvenile cases. He expressed support for requiring attorneys to have continuing education in order to provide counsel in juvenile cases. Discussion continued between Senator Harvey and Representative Levy, with Representative Levy noting that any attorney can practice in any field, with some exceptions such as patent law. She explained her concerns with creating a new specialty of law without fully thinking through the consequences.

10:16 AM

Representative Levy sought additional ideas for ways to ensure that juveniles have adequate counsel. Magistrate Koppes-Conway noted that some attorneys may be excellent at juvenile cases even without experience. She expressed her support for establishing a separate Office of the Juvenile Public Defender. Representative Levy asked how such an office would operate. Conversation continued, with Representative Levy sharing her thoughts on the Massachusetts juvenile defense system.

10:20 AM

Ms. Brown commented on the suggestion of creating an Office of the Juvenile Public Defender. She listed the various steps the OSPD took after the National Juvenile Defender Center assessment, noting that the OSPD has removed all obstacles to promotion to allow attorneys to specialize in juvenile defense. Representative Levy spoke about the need to have consistency throughout the OSPD, the Office of the Alternate Defense Counsel (OADC), and parental refusal attorney lists. Ms. Weinerman shared her thoughts on this issue, stating that where the OSPD focuses on juvenile defense, the office does an excellent job. She noted the importance of providing appropriate funding to the OSPD. Representative Levy said that it is important to have well-trained attorneys in rural jurisdictions as well. Ms. Dvorchak referred to Attachment C, which lists several options for ways to enhance the practice of juvenile defense in Colorado. She said that in her opinion, an Office of the Juvenile Public Defender would be ideal.

10:29 AM

Representative Levy asked for information about the differences between Option 1 and Option 2 on pages 3 and 4 of Attachment C. Ms. Dvorchak responded to her questions. Judge Smith discussed the history of the OSPD and spoke about the importance of having a statewide and state-funded program. He noted that the OSPD is independent of the Colorado Judicial Branch, although its budget comes from the Colorado Judicial Branch. Representative Levy asked how conflict counsel was handled prior to the OADC. Ms. Brown noted that there would be a conflict in bringing the OSPD and the OADC under one roof. Ms. Haller pointed out that Ms. Shawna Geiger from the OADC was available to answer any questions. Ms. Brown said that the legislature may not have the authority to set standards of practice for attorneys. She said that once standards are placed in law, new grounds are created for charges of ineffective assistance of counsel. Ms. Brown noted that a subcommittee of the Colorado Commission on Criminal and Juvenile Justice has been working on standards of practice for years.

10:37 AM

Ms. Jessel discussed developing standards of practice for district attorneys and defense counsel. She described her experience in drafting standards for guardians ad litem. Representative Levy stated that developing standards can be problematic, but the legislature could provide resources to the Colorado Judicial Branch and the OSPD to create standards of practice. Ms. Weinerman discussed comparing drafts of suggestions in order to provide guidance to Mr. Sweetman. Representative Kagan suggested designating on-call attorneys in rural areas. Representative Levy sought information about how such on-call attorneys would fit into the current system of OSPD, OADC, and parental refusal attorneys. Conversation continued between Representative Levy and Representative Kagan.

10:48 AM

Representative Levy discussed Option 2 in Attachment C. She asked what the difficulty would be in making juvenile defense more of a specialty at the OSPD. She spoke about the organization of the OSPD and the care taken not to create conflicts by sharing too much case information.

10:53 AM

Ms. Geiger, representing the OADC, answered questions from Representative Levy concerning the OADC's practices for screening attorneys to represent clients in juvenile cases. Ms. Geiger said that the OADC's process for ensuring qualifications has been evolving. She said that it is easier to choose specialized contract attorneys in larger jurisdictions. She noted that the OSPD is the first line of defense for detention hearings in rural areas. She addressed previous comments from Ms. Brown, noting that both agencies can do a better job in coordinating training. Representative Levy asked if the OADC has standards of practice or training qualifications in its contracts. Ms. Geiger noted that in the past year, the OADC added a training component for criminal procedure or juvenile law to its contracts. She spoke about a budget proposal to send more attorneys to training.

10:59 AM

Ms. Brown sought additional information from Ms. Geiger concerning the training sponsored by the OADC. Ms. Brown noted that training offered by the OSPD is required and free. Senator Harvey asked Ms. Geiger for additional information about the OADC training requirements. Conversation continued between Senator Harvey and Ms. Geiger. Ms. Geiger addressed previous questions concerning quality control. Ms. Lilgerose asked how long OADC contracts last for. She also asked whether attorneys on parental refusal lists require training. Ms. Geiger stated that OADC contracts are three-year contracts. She stated that she is not able to do as much court observation as she would like.

11:07 AM

Magistrate Koppes-Conway asked whether the OADC would like to be in charge of parental refusal lists. Ms. Geiger said that she would personally be happy to do that, although she is unsure how such a change would impact the OADC's budget. Representative Levy said that there seems to be no quality control for attorneys on the parental refusal list. Conversation continued on this topic. Ms. Geiger spoke about respondent parent counsel, and Representative Levy noted that this committee cannot address that issue.

11:11 AM

Ms. Haller agreed that parental refusal attorneys should be part of the OADC. She also stated that she supports a presumption of indigence. She said that the emotional toll of hiring attorneys for a juvenile delinquency case should not be discounted. She spoke about potential methods to recoup the costs of appointed counsel. Ms. Haller expressed support for a flat fee, rather than an hourly rate. Conversation continued on this point.

11:15 AM

Ms. Geiger listed the reasons to presume that children are indigent. Magistrate Koppes-Conway suggested that the front-end increase in costs for the OADC may create a decrease in costs for the Department of Human Services. She spoke about other areas in which children are presumed indigent.

11:19 AM

Representative Levy asked the committee to further discuss the idea of a presumption of indigence. Ms. Brown referred to Attachment B, which proposes that every child have representation at detention hearings through the first advisement. Ms. Brown noted that the term "presumption" may indicate that it is a rebuttable presumption. She addressed the idea of establishing a series of flat fees for representation and expressed her opposition to a presumption of indigency all the way through a case.

11:23 AM

Representative Levy discussed the goal of getting attorneys to children at detention hearings and first appearances without paperwork and without delay. She also expressed the goal of ensuring that juveniles have proper advisement on waivers. She referred to the draft language in Attachment B concerning amendments to Section 19-2-508, C.R.S. Ms. Dvorchak expressed her concerns with the OSPD's language in Attachment B, noting problems with interruptions and changes in counsel. Conversation continued between Representative Levy and Ms. Dvorchak.

11:30 AM

Judge Smith asked how the issues of multiple attorneys are handled in adult court. Ms. Haller spoke about the OSPD's complaint process when there are concerns about multiple public defenders or unqualified public defenders. Ms. Haller described problems caused by turnover within the OSPD. Ms. Jessel spoke about issues involving co-defendants. She expressed concern with taking away a parent's right to make decisions concerning counsel.

11:38 AM

Representative Levy explained her goal to get the entire universe of issues on the table. Ms. Jessel spoke about removing the contempt powers of the court in juvenile cases. Magistrate Koppes-Conway noted that contempt powers are an issue in delinquency procedures, not just truancy cases.

11:41 AM

Representative Wright referred to language on page 10 of Attachment B. Ms. Brown explained that the language matches language in a Chief Justice Directive. She continued to explain her reasoning. Representative Levy thanked everyone for their work. The committee recessed for lunch.

01:34 PM

The committee reconvened. Ms. Dvorchak distributed a flyer to the committee regarding a screening of "Kids for Cash," a movie about the juvenile defense system in Pennsylvania (Attachment D).

01:35 PM

Mr. Doug Wilson, representing the OSPD, came to the table to discuss issues concerning juvenile defense. He distributed a handout regarding juvenile defense training for public defenders in Colorado (Attachment E). He noted that the office has one training manger for more than 450 lawyers and that another training manager will be hired soon who will also focus on juvenile defense. Mr. Wilson discussed how juveniles enter the system, expanding representation for juveniles, waiveable and nonwaiveable offenses, and the coordination of summons return dates for smaller counties and districts. He said consistent summons return dates will help ensure that public defenders are available in each courthouse.

01:44 PM

Mr. Wilson stated that, as caseloads increase, conflicts of interest in both juvenile and adult cases will also increase. He noted that the departments will see costs increase somewhat significantly if all juveniles are represented. Senator Harvey noted that Massachusetts has seen the number of juvenile cases go down since the state restructured its juvenile system.

01:53 PM

Representative Levy asked Ms. Dvorchak and Ms. Brown to explain their draft suggestions to the committee. (Attachments B and C). She asked if the committee had any objections to changing the waiver of counsel rules. Ms. Dvorchak discussed why she believes there should be no waivers of counsel for children under 15.

02:03 PM

Representative Kagan asked whether juveniles should be allowed to waive counsel. Ms. Dvorchak discussed amending the statute to address guardians ad litem. Magistrate Koppes-Conway discussed with Ms. Dvorchak whether guardians ad litem should be allowed to waive counsel for juveniles.

02:12 PM

Ms. Jessel stated that guardians ad litem often have a better understanding of the issues than some parents do. Mr. Weinerman discussed the role of Colorado's Office of the Child's Representative (OCR) and guardians ad litem.

02:16 PM

Ms. Brown discussed the draft suggestions she submitted from the OSPD. Ms. Brown, Magistrate Koppes-Conway, and Ms. Jessel discussed mandatory screening and notification. Ms. Brown said the OSPD would most likely support electronic consultations. Judge Smith commented on the cost of transporting juveniles and how video consultation will improve efficiency. Ms. Haller stated that the Judicial Branch allows video consultation.

02:27 PM

Judge Smith and Representative Levy discussed electronic consultation. Magistrate Koppes-Conway said that each district handles the situation differently. The committee discussed issues related to juvenile detention. Representative Levy stated that if arresting officers transport a child to a detention center, they should have to take the child back home, especially in rural and mountain districts.

02:36 PM

Ms. Brown, Representative Levy, and Magistrate Koppes-Conway discussed whether it would be proper to limit waivers of counsel based on the age of the juvenile. Representative Levy stated that adding competency requirements may help address whether a child is old enough to waive counsel. Ms. Brown said it is important to note that what constitutes the best interests of a child differs between the OSPD and the Department of Human Services.

02:43 PM

The committee discussed Ms. Brown's suggestions regarding indigency requirements. Ms. Haller stated that recoupment from indigency determinations reverts to the General Fund. Ms. Jessel stated that parents should know up front the financial responsibilities that may come with parent refusal cases.

02:52 PM

Representative Levy discussed a suggestion about post-disposition representation. Ms. Haller stated that public defenders should have post-adjudication jurisdiction. Ms. Brown said that there must be a definite end to public defender representation, mainly to keep caseloads manageable.

02:59 PM

Ms. Brant discussed post-adjudication representation, especially when there is a chance for time added to a juvenile's sentence. Representative Levy discussed the feasibility of adding post-adjudication representation to statute. Ms. Brown stated that the OSPD would oppose any requirement that requires the OSPD to represent juveniles post-disposition. Magistrate Koppes-Conway stated that she would prefer representation up to placement in the Division of Youth Corrections. Ms. Brown stated that they would welcome adding social workers to the OSPD.

03:08 PM

Representative Levy stated that she would be in favor of a broad presumption of indigence. Senator Harvey stated that he would like to see statistics from other states with a broad presumption of indigence. Ms. Dvorchak stated that there is a significant gap between being eligible for a public defender at 125 percent of the Federal Poverty Level (FPL) and being able to afford a private attorney. Senator Harvey stated that he might support raising the percent of the FPL to include more people. Ms. Lilgerose and Ms. Jessel discussed restitution levels. Representative Levy stated that there is a dilemma in informing parents of an appropriate estimate of the costs without scaring them away from representation.

03:19 PM

Representative Levy stated that perhaps the committee should draft a bill that makes the indigence determination based on the assets of the juvenile. She said the system is currently set up where the person being represented is not in control of the assets. Representative Kagan suggested making parent refusal services a disclosure on the state income tax form. Ms. Haller stated that the Judicial Branch does currently do tax intercept for fees that go to collections. She suggested making a flat fee for parental refusal attorney services.

03:27 PM

Richard Sweetman, Office of Legislative Legal Services, returned to the table to assist the committee with bill draft ideas. He stated that there appeared to be general consensus among the committee for a bill that includes restricting waiver of counsel; changing the timing of the appointment of juvenile representation; adjusting the indigence determination for juveniles; requiring counsel at all detention hearings; requiring that juveniles be advised of collateral consequences; and addressing the process for issuing summons. Mr. Sweetman noted that there appeared to be interest in individual bills concerning additional data collection for juvenile cases; a dedicated state juvenile defender; and specialized juvenile courts.

03:36 PM

Representative Levy said that she would like to see a bill with an age limit for waiving counsel, but may reconsider later. Ms. Dvorchak stated that she believes juveniles should be 15 or older in order to waive counsel. Ms. Brown stated that she would like a requirement that juveniles be advised by counsel before being allowed to waive. She said the OSPD included a list of nonwaiveable offenses in its recommendations. Ms. Dvorchak said that she would like to see nonwaiveable offenses include an automatic appointment of counsel.

03:44 PM

Representative Levy discussed creating a committee resolution asking the Chief Justice to convene a committee to update the Rules of Juvenile Procedure. She stated that she does not see a practicable way to address standards of practice through legislation. Ms. Dvorchak commented that standards of practice would be created if the state created a dedicated state juvenile public defender. Representative Wright expressed his support for a dedicated state juvenile public defender.

03:53 PM

The committee discussed adding additional support services, including social workers, to the OSPD. Representative Levy and Ms. Jessel discussed whether additional support services should also be added to district attorney's offices.

04:01 PM

Representative Levy stated that Representative Wright and Ms. Dvorchak would be the point people for the bill concerning the creation of a dedicated state juvenile public defender. Ms. Brant, Ms. Weirnerman, and Ms. Dvorchak stated they would serve as the point people for the resolution concerning an update to the Rules of Juvenile Procedure and for a bill adding support services to the OSPD. Representative Levy stated that she and Ms. Brown would serve as point people for the omnibus bill.

04:09 PM

Representative Levy discussed the process for approving committee bills and getting them to the Legislative Council Committee. She said that she would prefer not to see conceptual amendments at the next meeting, and to send all comments concerning bill ideas to the dedicated Juvenile Defense Attorney Committee mailbox. Mr. Sweetman stated that he plans to have drafts available to the public by October 21.

04:13 PM

The committee adjourned.