

Final
STAFF SUMMARY OF MEETING
JUVENILE DEFENSE ATTORNEY

Date: 07/30/2013

ATTENDANCE

Time: **09:05 AM to 03:37 PM**

Place: HCR 0112

This Meeting was called to order by
Representative Levy

This Report was prepared by
Dave DeNovellis

Brant	X
Brodhead	X
Brown	X
Dvorchak	X
Giron	X
Harvey	*
Jessel	X
Koppes Conway	X
Labuda	E
Lee	X
Lilgerose	X
Marble	X
Martin	E
Navarro	X
Smith	X
Ulibarri	X
Weinerman	E
Wright	X
Guzman	X
Levy	X

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

Bills Addressed:	Action Taken:
Opening Comments and Introductions	Committee Discussion Only
Juvenile Access to Counsel	Witness Testimony and/or Committee Discussion Only
Panel Presentation on the Juvenile Justice System	Witness Testimony and/or Committee Discussion Only
Other Committee Business	Committee Discussion Only

09:07 AM -- Opening Comments and Introductions

Representative Levy, chair, called the meeting to order. The committee members briefly discussed their backgrounds and reasons for wanting to serve on the committee.

09:16 AM

Hillary Smith, Legislative Council Staff, introduced the committee's staff and discussed the role of the Legislative Council Staff and the interim committee process. She went over House Joint Resolution 13-1019 and the committee charge memorandum (Attachment A and C wcej o gpvB). Ms. Smith discussed the deadlines and process for recommending legislation to Legislative Council. Representative Levy stated that the committee will address legislation in future meetings. She noted that the agenda is tentative and welcomes any input from the committee regarding issues that they would like to address.

09:28 AM -- Juvenile Access to Counsel

Patricia Puritz, executive director of the National Juvenile Defender Center (NJDC), introduced herself. She began discussing the NJDC report "Colorado: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings." A copy of the report was distributed to the committee and is available on the committee's website. She stated that the NJDC began conducting state assessments after a Department of Justice report in 1995 stated that state juvenile systems were often ad hoc, unchecked, and had very little available information regarding the quality of and access to counsel for juveniles.

09:40 AM

Ms. Puritz discussed the five steps the NJDC takes to conduct assessments, including mapping and site selection, stakeholder meetings, team selection and training, site work on the ground, and data analysis and report writing. She noted that each assessment is tailored to the law and culture of each state. She responded to questions from Ms. Brown and stated that the NJDC is independent of the American Bar Association.

09:51 AM

Ms. Puritz responded to questions from the committee and stated that the NJDC is a nonprofit funded by grants from private foundations and the federal government. Ms. Puritz said that the juvenile indigent defense system is neglected and youth do not get counsel in a timely manner. She discussed witnessing group advisements where both juveniles and parents were confused about their rights and the process. Ms. Puritz said that there are inadequate protections in place to limit waivers of counsel.

09:58 AM

Ms. Puritz stated that the indigency determination is not timely and causes problems for juveniles, parents, judges, and attorneys. She said that the shackling of youth is routine and indiscriminate across the state, and the practice chills due process. Ms. Puritz stated that resources need to be allocated and reallocated to support juvenile defense and youth in truancy court should have access to counsel. She said that Colorado has no statewide standards for the practice of juvenile justice and that youth do not receive counsel at all critical stages, including detention and post-disposition. Ms. Puritz recommended that the state clearly define the scope and role of representation, require early and timely appointment of counsel and an opportunity to consult with a lawyer, establish protections against waivers of counsel, keep case loads manageable for public defenders, and ensure that juveniles have an understanding of the impact of collateral consequences.

10:09 AM

Ms. Puritz recommended that the state make specialization in juvenile defense mandatory and provide ongoing training and support. She said that there should be adequate numbers of investigators and social workers available, as well as statewide oversight. Ms. Puritz responded to questions from Senator Harvey regarding instances where one juvenile case has multiple public defenders. Ms. Puritz responded to questions from Senator Marble and stated that school zero-tolerance polices have created numerous problems and have increased the number of children entering the judicial system.

10:23 AM

Ms. Puritz stated that there is innovative work being done with police departments to improve their relationships with juveniles. She responded to questions from Representative Levy and stated that the state could improve the system by promulgating standards and guidelines that clearly express the role and scope of the public defender.

10:31 AM

Ms. Puritz responded to questions from Senator Giron regarding whether any other states have seen cost savings due to changing structures and implementing standards. She discussed the models in Massachusetts and Louisiana. She responded to Magistrate Koppes Conway and noted that the NJDC did not study Colorado's guardian ad litem system.

10:43 AM

Ms. Puritz responded to questions from Senator Marble and said investigation in juvenile cases is just as important as in adult cases, but that both systems compete for resources. Ms. Brown and Ms. Puritz discussed the issues and costs associated with public defender representation in rural areas.

10:51 AM

Representative Levy spoke about Ms. Puritz's emphasis on early intervention. She discussed how these ideas relate to the differences between the adult and juvenile justice systems and spoke about the need to maintain a child-centered rehabilitation system. Ms. Lilgerose and Ms. Puritz discussed restorative justice programs.

11:00 AM

Ms. Puritz stated that lawyers specializing in juvenile matters understand that parental involvement is important. Ms. Dvorchak and Ms. Puritz discussed other states' models and the development of a chief juvenile defender, as seen in North Carolina and Washington.

11:14 AM

Ms. Puritz stated that some states have passed laws that give defendants a presumption of indigence where a juvenile is appointed counsel early in the process. She responded to questions regarding the waiver of counsel and said that often children do not understand what they are giving up when waiving counsel or the collateral consequences involved.

11:23 AM

Judge Smith and Ms. Puritz discussed conflict issues regarding the appointment of counsel. She said that some states, like Colorado, have two distinct offices and others have different offices under one umbrella.

11:31 AM

Ms. Puritz responded to questions from Ms. Brant regarding routine shackling in Colorado and in other states. She stated that she cannot say if it happened in every jurisdiction, but it did in most jurisdictions. Ms. Puritz noted that the decision to shackle is up to the sheriff. Ms. Jessel and Ms. Puritz discussed Ms. Puritz's statement that shackling chills due process.

11:39 AM

Ms. Puritz responded to questions from Magistrate Koppes Conway about a judge's ability to allocate court resources, including judicial time. She responded to Senator Giron about the differences in juvenile defense systems in urban, suburban, and rural areas.

11:48 AM

Ms. Brown asked about the disconnect between needing more time and money and the need to expedite cases. Ms. Brown and Representative Levy discussed the geographic issues, including the size of some judicial districts, that exist in Colorado. A fact sheet concerning juvenile indigent defense was distributed to the committee (Attachment C).

11:59 AM

The committee recessed.

01:33 PM -- Panel Presentation on the Juvenile Justice System

Representative Levy called the meeting back to order and addressed the committee on the topic of expungement. Representative Levy said future meeting agendas don't cover this subject and asked whether the committee wants to form a subcommittee to study this issue. Representative Levy reviewed the process for subcommittees and clarified she wasn't including the process of sex offender deregistration in the work of the subcommittee. The majority of members agreed the subcommittee should be formed and report its findings back to the overall committee. Representative Levy asked committee members to email her expressing their interest or recommendations for other community members to participate. She indicated there would be time during the October 4 meeting to review the subcommittee's findings.

01:40 PM

Judge Karen Ashby, Angela Brant, Kim Dvorchak, Sarah Ericson, Peggy Jessel, Hal Sargent and Sommer Spector came to the table to begin the panel presentation.

Judge Ashby began her remarks and introduced herself as the presiding judge in Denver's Juvenile Court. She commented on the National Juvenile Defender Center (NJDC) 2012 Winter Report and emphasized that this report contains aggregate data and that local data may be available if committee members are interested. According to Judge Ashby, there are a variety of issues and concerns that impact access to representation and the quality of that representation, including the resources available in a particular jurisdiction. She noted that some courts only meet for juvenile cases on one or two afternoons per month, while in other jurisdictions, cases are heard more frequently. Judge Ashby stated that it appears in some cases resources are diverted to the adult system, which may reflect a belief that juvenile cases are a lower priority because the consequences for juveniles may not be as severe as those for adults. She noted that the various judicial districts are complying with statutory requirements and that judges are consistently appointing guardians ad litem when there is a clear conflict between a juvenile and his or her parent. Concerns she expressed are the inconsistent appointment of guardians ad litem in other circumstances; quick cycling of defense attorneys in the juvenile rotation; access to counsel in some parts of the state; and lack of clarity between the role of juvenile counsel and a guardian ad litem, although this latter item has improved as a result of training done by the Office of the Child's Representative. Judge Ashby concluded her remarks by noting that consideration for the differences in rural jurisdictions, among other issues, must be factored into consideration when discussing the implementation of statewide policies.

Sommer Spector introduced herself as a representative of the Office of the State Public Defender (OSPD), serving the 5th Judicial District and based in Dillon. She reviewed the makeup of the OSPD district office and noted that all five attorneys in her office handle mixed caseloads of misdemeanors and felonies for both juveniles and adults. She continued by stating that there are no separate juvenile courts or holding facilities in the district, which is common for rural areas. Ms. Spector shared her perspective on various challenges within the district, placing particular emphasis on its size and geography, which encompasses portions of multiple counties, is subject to extreme weather, and has a lack of public transportation options, all of which can make court appearances difficult for juveniles and their parents. She said that OSPD staff are challenged in terms of meeting with clients who may be located in a juvenile facility in Lakewood or in group homes in Grand Junction or Colorado Springs and discussed how extensive travel times reduce their availability to other clients. Other concerns raised by Ms. Spector included a belief that OSPD staff are not always notified of hearings and in some cases juveniles are not always brought to court, which may result in a judge asking the defense attorney to make decisions without having a chance to consult with the juvenile, which is a concern for due process reasons. Ms. Spector said her district has a large population of immigrants and persons with lower-paying jobs and her belief is that many parents are under economic and childcare pressures to resolve cases quickly without really understanding the long-term impact of a decision to accept a plea agreement. She noted that once a juvenile has three adjudications, there is a mandatory sentencing requirement, which requires out-of-home placement for at least a year, and that having access to an attorney improves the chances of a juvenile being given a deferred judgment or diversion, which when completed successfully, do not count towards the mandatory sentencing requirement.

02:05 PM

Peggy Jessel introduced herself as the chief of the juvenile division in the Boulder District Attorney's Office. She discussed the practices in her district, noting that there are both dedicated prosecutors and defense attorneys juvenile cases now, whereas in the past it was not uncommon for a juvenile to have three to five defense attorneys work on their case. She indicated that it is her belief that this structure allows for the justice system to better identify and connect kids and families to resources and services in the community and expedite their cases. Ms. Jessel said that one of the benefits from expediting cases is that the juvenile is more likely to learn from the event when the consequences occur closer to the criminal act. One suggestion Ms. Jessel offered is to revise the advisement process so that juveniles have a better understanding of their rights, using plain language and terms they can understand, while still meeting statutory requirements. She stated a concern that juveniles are not comfortable expressing their lack of understanding of certain terms, such as the word subpoena.

02:13 PM

Angela Brant introduced herself as the juvenile supervising attorney in Arapahoe County. She reviewed her work history, changes in OSPD's performance review structure that benefits the juvenile defenders, and a perception that there is now greater awareness of the need to have specialists in juvenile defense work. She raised questions about some of the data in the NJDC report, citing discrepancies in the reported caseloads. She continued by saying that in her experience, OSPD attorneys do investigate their cases for juveniles in the same manner as they do for adults. She said the report also doesn't discuss the extensive training opportunities available to OSPD attorneys, which have been in place since 2006 and include an annual conference with a juvenile justice track and various ongoing training and webinars on topics such as transfer hearings, sentencing options for juveniles, and how to represent clients at detention hearings. Ms. Brant discussed how being in the Metro area allows her to regularly visit clients and set aside one day per week for such visits and how this contrasts with rural jurisdictions. Concerning problems within the system, Ms. Brant said one of her biggest concerns is the shackling of youth while in court, which can be quite painful and even affects their ability to write while accepting a plea. She said that shackling of youth is more common than the shackling of adults and that judges defer to sheriffs regarding this practice. She expressed a concern that shackling is being done as a means for reducing staffing costs and noted that other states have prohibited this practice. Ms. Brant said another concern is that juveniles have a limited ability to request a jury trial, even in a felony sex offense case. She said that defense attorneys are hindered by the lack of automatic rights to a jury trial because judges don't often grant requests when it is discretionary and access to a jury is an important negotiating tool for protecting client rights.

02:25 PM

Hal Sargent introduced himself as the chief deputy district attorney in Jefferson County. Mr. Sargent briefly reviewed the structure of his office and programs, which focus on the use of quick targeted interventions to improve outcomes. He noted that there has been significant improvement in recidivism and incarceration rates as a result of their juvenile program. He commented that the NJDC report is focused on process improvements and he thinks more emphasis should be placed on outcomes.

02:30 PM

Sarah Ericson introduced herself as handling the juvenile docket in Douglas County for the 18th Judicial District. She said she wanted to address the topic of waiver of counsel. According to Ms. Ericson, juveniles in Douglas County rarely have attorneys and, as a result, she decided to informally poll parents about why this occurs given their high income levels. Ms. Ericson said she talked to about 45 families, none of whom said lack of resources was an issue. She said parents indicated to her that they didn't want to lose control of the case and wanted to prevent lack of input, especially in revocation hearings. Ms. Ericson said parents also expressed a concern about the court would perceive their child having representation as being adversarial, and that often these parents wanted their kids to be held accountable and treated fairly, but didn't want them to view having an attorney as giving them an excuse for their behavior. Finally, she said parents were afraid that if they hired an attorney, they wouldn't get the help they need to improve the family dynamic because the attorney would be focused on winning the case or the wishes of the juvenile. Ms. Ericson concluded her remarks by saying that she is concerned that taking the adult model for justice and applying it to juveniles creates other issues.

02:37 PM

Kim Dvorchak introduced herself as representing the Colorado Juvenile Defender Coalition and stated that she believes Colorado already applies the adult justice model to juveniles. Ms. Dvorchak expressed concern that the early appointment of counsel is treated as optional, which is not a rural versus urban issue, and noted that due process is important for constitutional reasons. She said that often, for Colorado youth, the right to an attorney depends on whether the courtroom has defense attorneys present at first appearances and expressed concern that courtrooms are not always staffed with defense counsel. Ms. Dvorchak discussed research done by her organization, which has found that 45 percent of youth are not represented at any stage of proceedings. She stated her belief that families frequently waive counsel on behalf of juveniles. Ms. Dvorchak commended OSPD for their work and commitment to juvenile defense, and suggested that the state needs to make an infrastructure commitment towards paying the costs for better representation rather than increasing allocations for incarceration.

02:42 PM

Representative Levy invited the committee members to ask questions of the panel.

Senator Ulibarri asked about collateral consequences for immigrant children. Ms. Spector responded that they are not supposed to be removed from the country, but that it can happen in rare cases. She reviewed how waiver of counsel and language difficulties create barriers in these cases. Mr. Sargent expressed surprise that this occurs, noting that in Jefferson County, bilingual services are offered. Senator Guzman asked for perspective on the frequency of these cases, to which Ms. Jessel stated that it happens frequently. Ms. Jessel said the legal status of some parents may cause issues with children accessing certain services, although she has not seen counsel be denied as a result of immigration status. Senator Ulibarri commented on how lack of expungement can create larger challenges for immigrant youth, such as not being able to become naturalized. Ms. Jessel and Ms. Spector offered examples of youth that had been deported without their parents as a result of adjudications. Judge Ashby commented that removal can occur after commitment, but is not usually done due to other types of placements.

02:53 PM

Judge Ashby commented that she cannot think of an example of a juvenile not being represented in Denver courts.

Magistrate Koppes Conway asked about mandatory sentence offenses. Judge Ashby said the presumption is that the juvenile will be placed out of the home if he or she has three offenses and that the severity of the offenses are not necessarily a factor. She said judges don't have to place youth outside of the home, but they'd have to issue findings about why that placement was not occurring.

Ms. Dvorchak noted that diversion is usually only available for a first offense, and that if a juvenile accepts a plea agreement in the first adjudication for a very minor offense, that can result in a larger impact later.

Judge Smith asked whether judges were issuing findings about whether the waivers were properly taken. Ms. Ericson said that families are advised in writing, the judge does an oral individual advisement, and her office also asks parents.

Representative Levy asked why there is such a difference in presence of counsel. Mr. Sargent indicated that counsel is present in about 30 percent of cases in Jefferson County, with it being more likely for serious offenses. Judge Ashby restated her belief that the differences may be cultural in the various jurisdictions, but noted that it doesn't need to be that way. Judge Smith indicated his belief that judges would object to having different rules about this issue although he thinks the process now is coercive and that judges should require juveniles to have an attorney. Judge Ashby discussed how, in Denver, families don't have to come back in a few weeks to find out if they qualify for OSPD counsel because these determinations are made up front. She noted that Denver has more juveniles who make their first appearance while in custody, rather than as a result of a summons, which may account for why attorneys are appointed earlier in the process. Mr. Sargent said that the process in Douglas County is similar to the process in Jefferson County. He said there is always a public defender in the courtroom for detention hearings following the first appearance. Mr. Sargent said advisement is done as a group but juveniles are also given a written advisement. According to Mr. Sargent, parental influence over their children is to be expected and that oftentimes parents are more interested in addressing the behavior that led to the criminal conduct rather than the legal outcomes. He affirmed Ms. Ericson's statement that parents also want their children to take responsibility for their actions, which may result in accepting pleas agreements or not hiring counsel.

03:07 PM

Judge Smith stated he believes waiver issues only come to light when the juvenile gets into trouble later. Representative Levy said discussion of what happens when there is a conflict between the parent and child is a good topic for another discussion.

Senator Harvey raised the topic of juveniles in the foster care system who do not have parents to advocate for them, asking panelists for comments on the issues facing these children. Ms. Jessel responded by saying that all youth in foster care are automatically appointed counsel in Boulder. Ms. Ericson said that youth who are not living with a parent are eligible for counsel in Douglas County. Ms. Brant said that children in the custody of the Department of Human Services are appointed counsel in Arapahoe County.

Feliciano Lilgerose asked about counsel for youth already committed to the Division of Youth Corrections. Ms. Ericson and Mr. Sargent each responded that counsel is provided in their respective jurisdictions. Ms. Lilgerose described her experiences as a parent of a child involved in the juvenile justice system, noting that she had a good experience in Denver, but not in Arapahoe County. She said that she thinks the decision to appoint counsel should be based on the child's means, not the parents.

Ms. Ericson raised the topic of attorney-client meetings, noting that in Douglas County, these meetings often occur while the juvenile is in court. She expressed her belief that interaction right before a decision is to be made is inherently unfair to the juvenile.

Senator Guzman asked about the age at which youth are included in the juvenile justice system. Ms. Jessel responded that the minimum age is 10.

Ms. Dvorchak recommended that the committee address data challenges, in particular the lack of capturing accurate data on when an attorney is appointed and when families are denied access to OSPD services for failing to qualify as indigent.

03:19 PM

Representative Levy asked for more information about representation at detention hearings. Ms. Spector responded that detention hearings are being held and that her office is not made aware of them. She said that there are also a lot of ex parte hearings in the 5th judicial district, which often results in juveniles being transported to the detention facility in Lakewood before OSPD is notified. Magistrate Koppes Conway responded that in the 19th judicial district, OSPD sometimes declines to send counsel due to resource issues but noted that many cases are heard as a result of summons, in which case parents usually don't want counsel.

Ms. Brown said keeping certain financial data on families who apply for OSPD counsel would violate federal law.

Ms. Lilgerose asked Ms. Brant whether attorney training was mandatory. Ms. Brant responded that juvenile defense attorneys are required to attend the annual conference and if they are handling certain types of cases, are required to have specialized training as well. She said she believes this is uniform across the OSPD system, not just in Arapahoe County. According to Ms. Brant, there are attorneys listed with the courts for parental refusal cases who do not have specialized knowledge of juvenile law, but these individuals are not affiliated with her office.

Representative Levy asked Ms. Brant to provide an explanation of a parental refusal case. Ms. Brant explained that these are appointments made when a parent notifies the court that they are refusing to hire counsel. These attorneys are billed at a reduced rate and do not require a retainer. Senator Harvey asked how an attorney gets on the parental refusal appointment list. Ms. Jessel responded that there is an application process and that the chief justice makes the decisions within each jurisdiction.

03:31 PM

Representative Levy concluded the presentation and thanked the panel members.

Representative Levy reminded the committee that LCS staff can do research and said that members who would like copies of publications should also see LCS staff.

03:32 PM -- Other Committee Business

Representative Levy asked whether the committee had suggestions for other topics to address. Magistrate Koppes Conway said it would be a good idea to discuss truancy representation and additional resources that the Judicial Department will need. Representative Levy said she'd work with staff to look at research concerning these topics. Ms. Dvorchak commented that her organization pulled data from truancy cases and found 90 percent were not represented.

Representative Levy reminded the committee that the next meeting is August 5 at 9:00 a.m. in HCR 0112 and said that public comment will be part of all future meetings, either following lunch or at the end of the day.

03:37 PM

The committee adjourned.

2013



HOUSE JOINT RESOLUTION 13-1019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) Office of the State Public Defender;

- (II) Juvenile defense attorneys;
- (III) State Court Administrator's Office;
- (IV) Juvenile court judges and magistrates;
- (V) Youth and parents of youth previously involved in the juvenile court system;
- (VI) District attorneys;
- (VII) Office of Child's Representative;
- (VIII) Community victim rights organizations; and
- (IX) Community organizations.

(3) That the committee shall study and address:

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

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

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

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

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

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

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

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

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

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

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

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

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

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi Markwell
SECRETARY OF
THE SENATE



**Colorado
Legislative
Council
Staff**

Room 029 State Capitol, Denver, CO 80203-1784
(303) 866-3521 • FAX: 866-3855 • TDD: 866-3472
www.colorado.gov/lcs
E-mail: lcs.ga@state.co.us

M E M O R A N D U M

July 26, 2013

TO: Members of the Juvenile Defense Attorney Interim Committee

FROM: Hillary Smith, Senior Research Analyst, 303-866-3277;
Dave DeNovellis, Research Analyst, 303-866-3140; and
Kerry White, Senior Fiscal Analyst, 303-866-3469

SUBJECT: Overview of the Juvenile Defense Attorney Interim Committee

This memorandum provides an overview of the membership of the Juvenile Defense Attorney Interim Committee, the charge of the committee, bill limits, bill request deadlines applicable to the committee, and information regarding committee staff and the committee website.

Membership

The committee consists of ten legislative members, as shown in Table 1.

**Table 1
Voting Committee Membership**

Representatives	Senators
<i>Claire Levy, Chair</i>	<i>Lucia Guzman, Vice-Chair</i>
Jeanne Labuda	Angela Giron
Pete Lee	Senator Ted Harvey
Representative Clarice Navarro	Senator Vicki Marble
Representative Jared Wright	Senator Jessie Ulibarri

The chair and vice-chair of the committee are authorized to jointly select up to ten persons to serve as nonvoting members of the committee within certain designated categories. These persons are required to have knowledge and experience in the areas of juvenile defense, juvenile delinquency court administration, and professionalism in the law, and have been selected as follows:

- *Office of the State Public Defender:* Frances Brown;
- *Juvenile defense attorneys:* Arapahoe County Juvenile Supervisor Angela Brant;
- *State Court Administrator's Office:* Patrick Brodhead, legislative liaison;

- *Juvenile court judges and magistrates:* Magistrate Rebecca Koppes Conway;
- *Youth and parents of youth previously involved in the juvenile court system:* Feliciano Lilgerose (parent);
- *District Attorneys:* Boulder County District Attorney Peggy Jessel;
- *Office of the Child's Representative:* Linda Weirnerman, executive director;
- *Community victim rights organizations:* Denver District Attorney, Director of Juvenile Diversion Benita Martin, nominated by the Colorado Organization for Victim Assistance and the Colorado Coalition Against Sexual Assault;
- *Community organizations:* Judge Jack Smith, nominated by the Denver Inner City Parish; and
- *Other:* Kim Dvorchak, Colorado Juvenile Defender Coalition.

Meeting Dates

The committee may meet at the call of the chair up to six times. Table 2 shows the meeting dates of the committee, with planned discussion topics. All meetings will be held in HCR 0112 and are planned to begin at 9 a.m. Members of the public are welcome to attend.

Table 2
Meeting Dates and Discussion Topics

Meeting Date	Discussion Topics
Tuesday, July 30	<ul style="list-style-type: none"> • overview of the committee's charge; • presentation of findings of the National Juvenile Defender Center on access to counsel and quality of representation in juvenile detention proceedings in Colorado and a brief discussion of models in other states; and • panel discussion on the juvenile justice system.
Monday, August 5	<ul style="list-style-type: none"> • review of Colorado statutes affecting the juvenile justice system; • panel discussion on the provision of juvenile counsel; • panel discussion on the standards of professionalism for juvenile counsel; and • public comments.
Monday, August 19	<ul style="list-style-type: none"> • presentation on research activities by the Colorado Juvenile Defender Coalition; • presentation on court rules and directives affecting juveniles; • panel discussion on indigency determination, waivers of counsel, the role of parents, and the quality of representation in Colorado's juvenile justice system; and • public comments.
Wednesday, September 25	<ul style="list-style-type: none"> • review of other state's models; • discussion of committee findings; and • public comments.
Friday, October 4	<ul style="list-style-type: none"> • continued discussion of committee findings; • request drafting of proposed legislation; and • public comments.
Monday, October 28	<ul style="list-style-type: none"> • approval of drafted legislation, wrap up.

Committee Details and Charge

Pursuant to House Joint Resolution 13-1019, the Juvenile Defense Attorney Interim Committee is directed to meet at least four times after July 1, 2013, and is authorized to meet up to six times during the 2013 interim. Members serve without compensation, but legislative members may receive per diem and be reimbursed for travel expenses. The committee is charged with studying and addressing the following topics:

- current laws, procedures, and practices for the appointment of counsel, advisement of rights, and waivers of counsel for children in juvenile delinquency court;
- the role of defense counsel as distinct from the role of a guardian ad litem and the scope of the right to counsel;
- current laws, procedures, and guidelines for the determination of whether a child is indigent for the purposes of providing court-appointed counsel;
- methods for improving professionalism in the practice of juvenile defense;
- the impact of inadequate access to counsel on minority, immigrant, and disabled children and children with mental health needs;
- funding attorneys to represent indigent children and the most efficient way to provide counsel to juveniles in delinquency proceedings; and
- the scope of public access to juvenile delinquency records, the laws and procedures for expunging juvenile adjudications, and the laws and procedures for petitioning for removal from the juvenile sex offender registry.

The committee may form subcommittees to accomplish its goals and invite additional community members to participate on subcommittees. The committee may also solicit and receive written comments from members of the public.

In addition to testimony presented, the committee is directed to review any available, nonidentifying Colorado data collected by the Judicial Department, Office of the State Public Defender, Office of the Alternate Defense Counsel, and other agencies that have data relating to access to courts and defense counsel for children. The committee may also solicit information from the National Conference of State Legislatures, other national nonpartisan organizations, and other states and organizations that have studied or introduced legislation regarding access to courts and counsel for children in juvenile court.

Committee Recommendations to Legislative Council

Bill limits. The committee may report up to eight bills or other measures to the Legislative Council, unless the Executive Committee of the Legislative Council approves a greater number. Bills approved by the Legislative Council *do not* count against a member's five-bill limit for the regular legislative session.¹ The committee may recommend legislation to continue its activities beyond the 2013 interim.

Legislative Council review. The Legislative Council is set to review interim committee recommendations on Thursday, November 14, 2013. Bills not approved by Legislative Council may be introduced in the regular session, but such bills *will* count against a member's five-bill limit. Interim committee bills must have prime sponsors prior to consideration by the Legislative Council.²

¹Joint Rule 24 (b) (1) (D)

²Joint Rule 24 (b) (1) (E)

Requirements for bill drafts. Requests for bill drafts must be made no later than Thursday, October 10, 2013, to allow sufficient time for drafting and final consideration by the members. Final proposed legislation must be approved by Thursday, October 31, 2013, in order to be considered at the November 14, 2013, meeting of the Legislative Council. The committee is scheduled to request bill drafts on Friday, October 4, 2013, and to meet for final consideration of bill drafts on Monday, October 28, 2013.

Committee Staff and Website

The Legislative Council Staff (LCS) and Office of Legislative Legal Services (OLLS) are charged with assisting the interim committee in its activities. If you have any questions or need additional information about the committee, please contact juveniledefenseattorney@state.co.us or the Legislative Council Main Office at 303-866-3521. In addition, individual staff member contact information is as follows:

- Hillary Smith, LCS, hillary.smith@state.co.us, 303-866-3277
- Dave DeNovellis, LCS, dave.denovellis@state.co.us, 303-866-3140
- Kerry White, LCS, kerry.white@state.co.us, 303-866-3469
- Richard Sweetman, OLLS, richard.sweetman@state.co.us, 303-866-4333

You may also follow the committee on twitter: <https://twitter.com/COJuvDefComm> or visit the committee website at: <http://www.colorado.gov/lcs/Juvenile>



Key Facts Regarding Juvenile Indigent Defense

Most young people who go before the court do not have qualified, well-resourced defense counsel.

Serious systemic issues impact juvenile defense.

- Juvenile defenders carry staggering caseloads – many juvenile defenders spend no more than a few minutes on routine cases.
- Juvenile defense practice is not specialized – most offices use juvenile court as a training ground for new attorneys.
- Practice standards, if they exist at all, vary widely and are not enforced.
- Oversight and monitoring of cases is highly unusual.
- Juvenile courts have become increasingly adversarial and punitive.

Juvenile defense delivery systems suffer from a crippling lack of resources.

- Juvenile defenders do not receive specialized comprehensive training on juvenile issues.
- Juvenile defenders lack basic support such as technology and adequate office space.
- Juvenile defenders lack access to adequate non-legal support, including access to investigators.
- Juvenile defense is considered less important than criminal defense, and receives far fewer resources.

Juvenile court culture is often perceived as hostile to due process and vigorous representation.

- Juvenile court suffers from second class status within the judicial system.
- Juvenile defenders feel pressured by other courtroom actors to bypass due process in the name of “saving and treating” children.
- Youth are encouraged to waive their right to counsel and proceed unrepresented by an attorney.

States have varied and inconsistent juvenile defense systems.

- The majority of states do not have statewide juvenile indigent defense delivery systems.
- Most juvenile indigent defense systems are funded by county or local dollars.
- Most jurisdictions independently choose whether to establish county or state-based public defender offices; contract or court-appointed counsel; non-profit law centers; and/or law school clinical programs.
- Juvenile indigent defense services are rarely free - children and families are assessed significant court costs.

Lack of qualified counsel has a lifelong, harmful impact on children caught in the delinquency system.

- Juvenile adjudications have serious collateral consequences, like: expulsion from school, limiting job prospects, disqualification and eviction from public housing, ineligibility to serve in the military.
- Low-income children of color who are adjudicated face a much greater likelihood of out-of-home placement.
- Studies show that time spent in detention actually increases the likelihood that children will recidivate.
- Resources are wasted when ineffective secure placements are used in lieu of highly successful community programs.

Deficiencies in the juvenile defense system can be addressed.

- Juvenile defense must be viewed as a specialty and forced rotation out of juvenile court must be eliminated.
- Model juvenile defender programs must be based on existing best practices.
- Juvenile court rules must be amended to reflect best practices.
- Additional data must be collected.
- Monitoring and oversight must be put in place.
- Juvenile defenders must have ongoing access to training and technical support.
- No child should ever be permitted to waive counsel without prior consultation with such counsel.