

Juvenile Defense Attorney Interim Committee

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Juvenile Defense Attorney Interim Committee Report to Legislative Council

Committee Charge

Pursuant to House Joint Resolution 13-1019, the Juvenile Defense Attorney Interim Committee was 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 was required to meet at least four times and permitted to meet up to six times during the 2013 interim. It was also allowed to form subcommittees as needed.

Committee Activities

The committee held six meetings during the 2013 interim. Presentations were made by representatives of the National Juvenile Defender Center, the Colorado Juvenile Defender Coalition (CJDC), parents and youth involved in the juvenile justice system, the Division of Youth Corrections, current and former judicial officers, public defenders, district attorneys, representatives of juvenile defense programs in other states, the National Conference of State Legislatures, and staff from the Office of Legislative Legal Services and Legislative Council Staff on a wide range of subjects, including:

- access to and quality of juvenile representation;
- the juvenile adjudication process;
- expungement of records;
- truancy; and
- the juvenile justice systems and practices of other states.

Three bills and one resolution were drafted at the request of the committee, and the committee ultimately recommended that two bills and one resolution be forwarded to the Legislative Council Committee.

The following subsections discuss the Juvenile Defense Attorney Interim Committee's activities in the 2013 interim.

Overview of the National Juvenile Defender Center (NJDC) assessment. The committee opened its proceedings with a presentation from Patricia Puritz, author of the NJDC report "Colorado: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings," which was published in 2012. The committee heard information about the phases of the assessment process and the report's findings, which raise concerns about: inadequate protections in place to limit waivers of counsel; group advisements; shackling of youth in the courtroom; the process for determining indigence; a lack of statewide standards for the early and timely appointment of counsel; and limited training and professional standards for practice in the juvenile justice community. Other committee discussion centered around growing knowledge of the importance of early intervention, the relationship between school zero-tolerance policies and juvenile justice involvement, and the NJDC's recommendation to mandate specialization in juvenile defense in Colorado.

Agencies and departments involved in the juvenile justice in Colorado. The committee heard from a number of state and local agencies that are involved in the juvenile justice system, including the Office of the State Public Defender, the Office of the Alternate Defense Counsel, the Office of the Child's Representative, the Department of Human Services, Senate Bill 94 programs, district attorneys' offices, juvenile diversion programs, and the Judicial Branch. Table 1 provides a brief summary of the role of each entity in the juvenile justice system.

**Table 1
Agencies and Departments involved in Colorado's Juvenile Justice System**

Agency or Department	Local or State	Role in the Juvenile Justice System
District Attorneys' Offices	Local	District attorneys' offices review law enforcement referrals to decide whether to file charges in court. District attorneys are responsible for prosecuting juvenile delinquency cases. District attorneys' offices also have the option of diverting a case or requesting an informal adjustment. District attorneys' offices receive state funding for juvenile diversion programs.
Division of Youth Corrections	State	The Division of Youth Corrections within the Department of Human Services provides residential and nonresidential services for juveniles aged 10 through 21, including juvenile detention (prior to the adjudication of a case or for certain short-term sentences), commitment (after the adjudication of a criminal case), and parole.
Office of the Alternate Defense Counsel	State	The Office of the Alternate Defense Counsel provides representation in cases in which an individual is charged with a crime, is indigent, and the Office of the State Public Defender determines that an ethical conflict prevents a public defender from being appointed.
Office of the Child's Representative	State	The Office of the Child's Representative contracts with attorneys to serve as guardians ad litem (GALs) in dependency and neglect, delinquency, domestic relations, paternity, truancy, and probate cases. GALs are required to independently represent and advocate for a child's best interests. GALs are not equivalent to defense attorneys.
Office of the State Public Defender	State	The Office of the State Public Defender provides representation for individuals, whether juveniles or adults, who are charged with a crime and are indigent. Individuals seeking representation by a public defender must apply and meet certain criteria.

**Table 1 (Cont.)
Agencies and Departments involved in Colorado's Juvenile Justice System**

Agency or Department	Local or State	Role in the Juvenile Justice System
Judicial Branch	State, with variations among local judicial districts	Colorado's Judicial Branch includes the Colorado Supreme Court, the Colorado Court of Appeals, District Courts, and County Courts. Generally, juvenile cases are heard in district courts. There are 22 judicial districts in Colorado, and practices concerning juvenile cases may vary among the districts. For example, some districts have a designated juvenile court to hear all juvenile cases. The Probation Division within the Judicial Branch conducts a pre-sentence investigation and is responsible for supervising juveniles on probation. The Judicial Branch also provides a "Bench Book" to offer guidance to judges throughout the state on the proper form of advisements, but judges are allowed to tailor these forms to fit their needs.
Senate Bill 94 programs	State oversight, local implementation	Senate Bill 91-094 established a statewide grant initiative to provide community-based alternatives to detention for youth ages 10 to 17 involved in the juvenile justice system. The initiative provides structure and funding to local jurisdictions, and also funds a position in each judicial district to perform assessments on juveniles entering the juvenile justice system. The assessment process is the same in each judicial district.
Youthful Offender System	State	The Youthful Offender System within the Department of Corrections houses certain juvenile offenders who were charged and sentenced as adults.

Source: Legislative Council Staff

Overview of the phases of a juvenile case. A panel of public defenders, district attorneys, judges, and other experts provided the committee with an overview of the phases of a juvenile case and examples of areas in which judicial district practices may vary. Juveniles can enter the juvenile justice system either through a summons (an order to appear in court) or a warrant (an order for arrest). Depending on the circumstances of a juvenile's situation, he or she may be screened according to the Juvenile Detention Screening and Assessment Guide. This screening determines whether a juvenile should be held in detention, released with services, or held in a shelter or other facility. If the screening determines that a juvenile should be held in detention, the court must hold a detention hearing within 48 hours (excluding weekends and holidays). After this hearing, a juvenile may be released with or without posting bail, placed in a shelter, placed in detention, or placed in a service program. The committee debated whether counsel should be appointed for juveniles prior to a detention hearing, and also discussed whether the Office of the Public Defender receives adequate notice prior to a detention hearing.

Throughout the juvenile justice process, district attorneys investigate a case and consider whether to file charges or to divert the juvenile from the system through a diversion program or informal adjustment. If charges are filed, an advisement hearing is held to advise the juvenile and his or her guardian of their constitutional and legal rights, including the right to counsel. Other hearings may be held to determine probable cause, enter a plea, and begin an adjudicatory trial, if necessary. If a juvenile is adjudicated (the equivalent of being found guilty), he or she may be sentenced to: commitment to the Division of Youth Corrections; county jail; detention; placement with a suitable guardian; probation; juvenile intensive supervision; a community accountability

program; placement with social services or in a hospital; fines; restitution; or a treatment program. Juveniles committed to the Division of Youth Services have a mandatory six-month period of parole.

The committee paid particular attention to the differences between resources available in judicial districts serving large metropolitan areas, which may also have designated juvenile courts and attorneys who specialize in juvenile cases, and judicial districts encompassing rural or mountain areas, which often do not. In some areas of the state, juvenile cases are heard on certain days and public defenders are always present. Other areas do not have designated days devoted to juvenile cases due to the small number of such cases. The committee also discussed opportunities for counsel to meet with juveniles, and debated whether teleconferencing initiatives could be expanded to include more consultations. The committee also explored whether juveniles are advised of the potential collateral consequences of their case during the process. In some jurisdictions, juveniles are given a list of potential collateral consequences, but it is generally the responsibility of an attorney to explain individual and specific collateral consequences to a juvenile. The committee noted that recent legislation and materials posted online by the Office of the State Public Defender address collateral consequences for adults, but not for juveniles.

Expungement subcommittee. At the chair's request, a subcommittee was formed to study and report its findings on the topic of expungement. Benita Martin and Kim Dvorchak provided a brief summary of the subcommittee's discussions, noting that the group discussed the following topics:

- streamlining the expungement process, especially in cases of a deferred prosecution;
- making the expungement process more consistent across judicial districts;
- access to records following expungement; and
- victim notification when a juvenile petitions for expungement.

Ultimately, the subcommittee determined that further research was necessary prior to making any recommendations. The subcommittee indicated that it would ask the Juvenile Justice Task Force of the Colorado Commission on Criminal and Juvenile Justice to address the issue by discussing the topics listed above and the outcomes of House Bill 13-1082, which made several changes to the process of expunging juvenile records.

Indigency guidelines and the appointment of counsel. The committee received information from Legislative Council Staff and Carol Haller of the Colorado Judicial Branch regarding state-appointed counsel for indigent persons. State law requires that the Office of the State Public Defender represent indigent persons without charge. The Office of the State Public Defender determines whether a person is indigent based on financial guidelines established by the Colorado Supreme Court, using three factors to determine if an applicant is eligible for representation by a public defender:

- gross household income;
- household expenses compared to gross household income; and
- the criminal charge compared to assets which may be used to pay defense costs.

State law also permits the court to appoint counsel for a juvenile in situations in which his or her parent refuses to retain counsel. The court may order the parent or guardian to reimburse the cost of representation if it does not find good cause for the refusal. In parental refusal cases, the court appoints an attorney from a list, often the same list of attorneys contracted by the Office of Alternate Defense Counsel.

The committee discussed whether a broad presumption of indigence for juveniles would ensure adequate representation for juveniles and how to fairly address recoupment from parents and juveniles found not to be indigent.

Numerous discussions concerning waivers of counsel occurred over several meetings. Ms. Haller provided the committee with the Colorado Supreme Court waiver advisement guidelines and noted that every judge has the option to tailor the guidelines to fit the district's needs. Discussion focused primarily on whether a juvenile should be prevented from waiving counsel until after he or she had consulted with an attorney, or whether other restrictions on waivers were necessary. Suggestions from the committee included separate advisements in hearings, detailed descriptions of collateral consequences, an age limit for waivers, and removal of the option to waive counsel for certain offenses.

Standards of professionalism. Representatives from the Office of the State Public Defender, the Office of the Alternate Defense Counsel, and private practice attorneys presented information to the committee about professionalism standards for juvenile defense attorneys. The committee spoke about the differences between juvenile and adult cases and discussed possible ways to address juvenile defense specialization, noting that, outside of patent law, the Colorado Supreme Court does not certify or designate individual subject areas. Representatives from the Office of the State Public Defender discussed the juvenile defense continuing education classes it presents for employees and private attorneys, and also noted that promotion policies within the office have been changed to ensure that choosing to remain in juvenile justice does not prevent an attorney from advancing within the office. Representatives from the Office of the Alternate Defense Counsel noted that the contract attorneys are required to complete five hours of juvenile defense continuing education every year.

Court rules and their modification. The committee devoted considerable discussion to the effects of state and federal law (including case law), Chief Justice directives, and court rules on Colorado's juvenile justice system. Ms. Haller from the Colorado Judicial Branch spoke to the committee about the process of creating and modifying court rules and the possibility of forming a committee to update the Colorado Rules of Juvenile Procedure. The committee discussed possible legislative avenues for amending the juvenile court rules, noting that the rules are set by the Colorado Supreme Court. Discussion centered on the separation of powers between the governmental branches and the feasibility of a resolution requesting that the Chief Justice amend the rules, forms, or directives that structure the juvenile justice system.

Colorado Juvenile Defender Coalition research. Representatives of the CJDC presented information on the CJDC's court-watching program, the intent of which was to try to understand why juveniles waive counsel and how the practices among Colorado's various counties and judicial districts may differ. The committee discussed the CJDC's findings, including an observation that waiver rates were higher in the many counties without defense attorneys present at the juvenile's first appearance and that the process to apply for an indigency determination is cumbersome at best. Concerns were raised that juveniles are waiving counsel in many jurisdictions in the context of accepting a plea agreement without a full understanding of the collateral consequences.

Other states' juvenile defense models. Information on other states was provided by a number of sources during the course of several committee meetings. Legislative Council Staff and representatives from the CJDC each discussed research on legislation and the practices in other states. This research shows that multiple states have a presumption of indigence for juveniles or provide for appointment from the first appearance through the time indigency status is determined.

A panel of juvenile defense experts from Louisiana, Massachusetts, North Carolina and Washington also presented information and responded to questions about the practices of their respective states, highlighting the systems for appointing counsel, providing ancillary support services, and the process for determining indigency.

Truancy. In addition to discussing detention and representation related to juvenile delinquency cases, the committee also addressed truancy proceedings. Under Colorado law, court proceedings may be initiated to compel compliance with school attendance laws. A school district may only initiate court proceedings as a last resort and only if the child continues to be habitually truant after the school has created and implemented a plan to improve the child's attendance. If a school district initiates court proceedings, it is required to submit evidence related to the child's attendance record and the strategies used to improve it. A court may order a child to attend school. If the child does not comply with the order, the court may hold him or her in contempt and sentence the child to no more than five days in a juvenile detention facility. Staff research indicates that truancy filings have declined by 17.2 percent from FY 2007-08 through FY 2011-12.

The court may appoint counsel or a GAL for any child in a truancy proceeding. Staff research indicates that from FY 2007-08 through FY 2011-12, an attorney was involved in about 1.0 percent of cases, while a GAL was involved in about 15.0 percent of cases. The committee also discussed the use of detention in truancy cases. Staff research indicates that from 2010 through 2012, detention admissions in truancy cases fell 6.5 percent.

Committee Recommendations

As a result of its deliberations, the Juvenile Defense Attorney Interim Committee recommended two bills and one resolution for consideration in the 2014 legislative session.

Bill A — Defense Counsel for Juvenile Offenders. Bill A makes a number of changes to the provision of defense counsel for juveniles. Specifically, the bill:

- requires certain information about defense counsel to be included in a promise to appear or court summons for a juvenile;
- requires the screening team at a detention facility, temporary holding facility, or shelter facility to promptly notify the court, the district attorney, and the local office of the state public defender upon a juvenile's placement at the facility;
- requires the law enforcement agency that arrested the juvenile and the screening team to provide certain information to the court and to defense counsel;
- specifies that the court may not deem a guardian ad litem to be a substitute for defense counsel for the juvenile; and
- includes several provisions addressing detention hearings, the appointment of counsel, and waivers of counsel, which are explained in more detail below.

Detention hearings. Bill A requires a juvenile who is detained to be represented at the detention hearing by counsel. If the juvenile does not retain private counsel, he or she will be appointed an attorney from the Office of the State Public Defender (OSPD) or the Office of the Alternate Defense Counsel. This representation will continue unless the juvenile later retains private counsel or makes a knowing, intelligent, and voluntary waiver of the right to counsel.

Appointment of counsel. At a juvenile's first appearance before the court, the court must advise the juvenile of his or her constitutional and legal rights, including the right to counsel. The court must appoint counsel for the juvenile unless the juvenile has retained private counsel or makes a knowing, intelligent, and voluntary waiver of the right to counsel. This appointment continues until the court's jurisdiction is terminated, the juvenile retains counsel, or the juvenile makes a knowing, intelligent, and voluntary waiver of the right to counsel.

Under current law, the assets and income of the juvenile's parents or guardian are taken into account when determining whether a juvenile meets the indigency level to qualify for court-appointed counsel. Under Bill A, for purposes of applying for court-appointed counsel, only the assets and income of the juvenile are considered.

Waiver of counsel. Currently, state law is silent on the procedure for waiving counsel in juvenile cases, although case law does provide some guidance. Bill A specifies that the court may accept a waiver of counsel by a juvenile only if the juvenile:

- is of a sufficient maturity level to make a voluntary, knowing, and intelligent waiver;
- has consulted with counsel and understands the sentencing options available to the court;
- has not been forced by any other party into making the waiver;
- understands that the court will provide counsel for the juvenile; and
- understands the possible consequences that may result from an adjudication or conviction.

The bill states that only a juvenile may waive the right to counsel, after consulting with his or her attorney. If the juvenile is in the custody of the Colorado Department of Human Services or a county department of social services, a waiver will not be permitted. In addition, waivers are not allowed in any proceeding related to:

- a sexual offense;
- a crime of violence;
- an offense for which the juvenile will receive a mandatory sentence;
- an offense for which the juvenile is being charged as a repeat juvenile offender, aggravated juvenile offender, or mandatory sentence offender;
- a case in which the prosecutor has announced that he or she is seeking to file charges in adult court; or
- a case in which the prosecutor has announced that he or she is seeking to transfer the case to adult court.

Bill B — Social Workers for Juveniles. Bill B specifies that the OSPD may hire social workers to assist in defending juvenile defendants. Any report prepared by the social worker and submitted to the court by the juvenile's attorney must be considered as evidence in the proper disposition of the juvenile's case.

Resolution A — Request Judicial Action on Juvenile Defense. Resolution A requests that the Chief Justice of the Colorado Supreme Court take certain actions concerning the adjudication of juvenile delinquency cases. Specifically, the resolution requests that the Chief Justice:

- issue a directive to state judges to assign juvenile delinquency cases, to the extent practicable, to a single courtroom within each judicial district and to allow judges with

- juvenile dockets to remain in that rotation so that they may develop expertise in the handling of juvenile cases;
- convene a task force within the Judicial Branch to manage juvenile delinquency cases in a manner that includes best practices in: the education of judicial officers; docket rotation and assignment; management of juvenile delinquency cases; and regular educational opportunities for judicial officers relating to the science of juvenile and adolescent maturity and brain development; and
 - establish a committee to review the Colorado Rules of Juvenile Procedure, juvenile court forms, and Chief Justice Directive 04-04 and make recommendations concerning any amendments that may be necessary to improve the juvenile justice system.

Other. The committee considered, but ultimately did not recommend, a bill creating a Division of Juvenile Defense within the OSPD.