

**Final**  
**STAFF SUMMARY OF MEETING**  
**JUVENILE DEFENSE ATTORNEY**

Date: 09/25/2013

ATTENDANCE

Time: **09:03 AM to 04:15 PM**

Place: HCR 0112

This Meeting was called to order by  
Representative Levy

This Report was prepared by  
Kerry White

Brant	X
Brodhead	E
Brown	X
Dvorchak	X
Giron	E
Harvey	*
Jessel	E
Kagan	*
Koppes Conway	X
Lee	*
Lilgerose	*
Marble	*
Martin	X
Navarro	*
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	Witness Testimony and/or Committee Discussion Only
Opening Remarks on Juvenile Defense Models	Witness Testimony and/or Committee Discussion Only
Juvenile Defense Models in Other States	Witness Testimony and/or Committee Discussion Only
Presentations from Parents and Children	Witness Testimony and/or Committee Discussion Only
Colorado Juvenile Defender Coalition Research	Witness Testimony and/or Committee Discussion Only
Overview of Truancy Proceedings	Witness Testimony and/or Committee Discussion Only
Process for Requesting and Finalizing Bill Drafts	Witness Testimony and/or Committee Discussion Only
Discussion of Potential Legislation	Witness Testimony and/or Committee Discussion Only
Public Testimony	Witness Testimony and/or Committee Discussion Only

**09:06 AM -- Opening Comments**

Representative Levy called the meeting to order and reminded committee members to please contact her in advance if they will be late or absent.

**09:06 AM -- Opening Remarks on Juvenile Defense Models**

Sarah Brown introduced herself as a representative of the National Conference of State Legislatures (NCSL). She provided a brief overview of juvenile justice from a national perspective, referencing the "Trends in Juvenile Justice State Legislation 2001-2011" publication (Attachment A). Ms. Brown said that over the past 20 years, juvenile crime rates have been on a steady decline. She continued by discussing some of the factors that have prompted changes in state approaches to juvenile justice, such as advances in the knowledge of neurobiology and fiscal challenges. Ms. Brown reviewed the MacArthur Foundation's "Models for Change" initiative and its launch of new resource centers. She concluded her comments with a review of the services available through NCSL, including a juvenile justice bill tracking database.

**09:17 AM -- Juvenile Defense Models in Other States**

Josh Dohan, director of the Massachusetts Youth Advocacy Division, came to the table and introduced himself. He distributed a handout of his presentation (Attachment B) and a publication called Community Notebook: Education Edition, prepared by the Youth Advocacy Department and the Children's Law Center of Massachusetts (Attachment C). He discussed Massachusetts' perspective and history in terms of systems challenges. Mr. Dohan said the stakes are high for youth involved in the juvenile justice system, which is complicated and requires that defense counsel engage the family, as well as have knowledge of other systems, such as the welfare system, mental health challenges for youth, and the school system.

**09:27 AM**

According to Mr. Dohan, Massachusetts decided they needed leadership, training, support, and oversight for their attorneys in a central office. He review the certification process for attorneys to be permitted to practice juvenile defense and the structure of the central office. He said the state follows the practice of "zealous legal advocacy," which means following the wishes of the client.

Representative Kagan asked for clarification on the roles of the trial panel (contract attorneys) and whether this was due to conflicts. Mr. Dohan said offices handle 25 percent of cases and the trial panel handles 75 percent of cases. He said two years ago, 90 percent of cases were handled by the trial panel and members are paid about \$50 per hour. Representative Levy asked whether geography also plays into the allocation of cases between the offices and the trial panel. Mr. Dohan responded that it may be a factor, but if it is, it is not a predominate one.

Mr. Dohan continued his discussion with the topic of the positive youth development model. He reviewed the model and its origins, noting that this is a holistic approach or framework that is premised on recognizing that many defendants need mental health or substance abuse counseling or housing, among other needs, and having access to these services lead to a better long-term outcome. Mr. Dohan explained that the current system in Massachusetts is moving towards a rehabilitative and developmental focus, which is a shift from the punitive focus practiced nationally.

**09:41 AM**

At Representative Levy's request, Mr. Dohan described the integration of defense attorney and zealous advocacy in the Massachusetts model, noting that it has almost a social worker aspect. According to Mr. Dohan, this enables the defense attorney to build trust, which leads to better decision-making.

Judge Smith commented that magistrates and judges are the gatekeepers of the waiver process and asked how Massachusetts handles waivers. Mr. Dohan responded that, in Massachusetts, most judges do not like children to proceed without an attorney and said that many judges have self-selected to serve the juvenile docket. Senator Harvey asked about the role of specialization. Mr. Dohan replied that if the judges aren't specialists, it is important that the defense attorneys are. Senator Guzman asked about salaries for public defenders and whether Massachusetts has a divide between rural and urban areas. Mr. Dohan said the salaries are essentially equally poor, but the state has benefitted from requiring only experienced attorneys to be appointed to serve as juvenile defenders. Mr. Dohan said there are fewer attorneys in rural areas, but generally this translates to having attorneys who are experienced with the adult criminal system, rather than having no criminal experience.

Benita Martin asked about sentencing options in Massachusetts and how long public defenders remain involved with their clients. Mr. Dohan replied that this is an area of weakness for his state because there is no right to counsel following the classification process during commitment.

**09:54 AM**

Mr. Dohan concluded his presentation and Josh Perry, executive director of the Louisiana Center for Children's Rights came to the table to introduce himself. Mr. Perry distributed a copy of his presentation (Attachment D) and began by describing the role of his office as a nonprofit contracted to provide juvenile defense in New Orleans Parish. Mr. Perry reviewed the history of juvenile justice in Louisiana, noting that many of the state's changes were the result of an assessment completed in 2001 by the National Juvenile Defender Center (NJDC). Mr. Perry explained that Louisiana has made three significant changes since that assessment. He said that Louisiana now presumes indigency for all juveniles, attaches the right of counsel at the first appearance, and restricts the capacity of a juvenile to waive counsel. According to Mr. Perry, a court cannot accept a waiver when the mental health of the juvenile is at issue, when the juvenile is accused of a felony, or during a probation or parole revocation hearing. Mr. Perry said that the waiver rate in New Orleans is essentially zero and the rate is in the low single digits statewide.

**10:08 AM**

Mr. Perry discussed the model of his office, which also uses a positive youth development approach. He reviewed this model in detail, discussing how advocacy, assessment, case planning, referral and case management are interrelated components of a system that functions well. According to Mr. Perry, this model has resulted in savings for the state, reduced delinquency arrests, and declining average daily population rates for secure custody facilities.

**10:20 AM**

Magistrate Koppes-Conway asked how Louisiana deals with advocacy in other places, such as in schools. Mr. Perry responded that there is no formal guardian ad litem system in Louisiana, so this role is performed by social workers and youth advocates because most disciplinary hearings do not require an attorney.

Representative Kagan asked about the practices in rural areas. Mr. Perry said that the model he has described works well in New Orleans, but noted that each parish is different and has access to different resources, which may be constrained. Mr. Perry suggested that having regional offices, rather than district offices, may help for resource sharing. Frances Brown said Colorado's structure is regional rather than district-based and asked Mr. Perry to comment on whether any of Louisiana's model could be applied to Colorado. Mr. Perry replied that specialization, training, independence, and a positive youth development approach are key.

Linda Weinerman asked about the intersection of juvenile justice and the child welfare system in Louisiana. Mr. Perry said there is an enormous amount of crossover.

Representative Levy asked about presumption of indigence and whether it is rebuttable in Louisiana. Mr. Perry said it is, but he's never seen it rebutted in practice. He explained that indigence criteria in Louisiana is set in statute as 200 percent of the federal poverty level. He said that if there is a parental conflict, the court automatically appoints counsel.

Judge Smith asked how Mr. Perry's office deals with post-police contact. Mr. Perry responded that the appointment of counsel is made when the juvenile first appears in court and that if a juvenile is arrested, but released, he or she will be issued a subpoena and appointment begins at that stage. Mr. Perry noted that if the district attorney offers diversion, that is done without counsel, which is a point of contention.

**10:38 AM**

Mr. Perry concluded his remarks and Mr. George Yeannakis came to the table, introducing himself as special counsel from the state of Washington. Mr. Yeannakis distributed copies of several documents (Attachment E) for the committee to review.

Mr. Yeannakis described the system in Washington, where there is no centralized public defender and each of the 39 counties have their own requirements. He said that most counties hire defense counsel via contracts and he has spent time creating a model contract for this purpose. He described the history of Washington's juvenile justice system, noting that it too was assessed by the NJDC about 10 years ago. Mr. Yeannakis discussed waivers, which have dropped from about 2,000 per year in 2004 to 200 per year as a result of rule changes by the Washington Supreme Court. Concerning indigency, Mr. Yeannakis said Washington does not have a presumption of indigency, but there is a process for provisional appointments.

**10:49 AM**

Mr. Yeannakis discussed a demonstration project that was implemented to study outcomes related to having an attorney present at the juvenile's first appearance. He said the results showed that the number of releases from detention increased and parents became more involved. He indicated that the county has continued to fund the program following the project's completion and that other counties are beginning to implement this model.

Senator Harvey asked about provisional appointments. Mr. Yeannakis said that generally provisional appointments transition to regular appointments because if the family has funds to hire counsel, this is done immediately. He explained that Washington is unique in that it has a determinate sentencing scheme.

**10:59 AM**

Mr. Yeannakis discussed the role of his office as an advocacy organization and as a resource for providing training and technical assistance. Senator Harvey asked who attends training. Mr. Yeannakis responded that the model contract calls for attorneys to get seven hours of continuing training per year.

Concerning the quality of representation, Mr. Yeannakis reviewed cases that led to changes in standards. He said that the Washington Supreme Court now limits caseloads to 250 cases and requires attorneys to have minimum qualifications to handle certain kinds of cases (i.e. sex offenses), access to investigative services, access to an office for a private consultation, and telephone service.

**11:14 AM**

Ms. Brown stated that she assumes that this committee will propose legislation to require notification of the public defender when a juvenile is detained and wondered if Washington had any statistics that would be helpful for Colorado to determine the impact of this requirement on caseloads. Mr. Yeannakis responded that he would be happy to provide a copy of a report on the findings in Yakima County, but his impression is that caseloads don't increase, the timing of appointment is quicker. Representative Levy said it would be worth following up to get statistics from other states.

Senator Harvey said automatic appointment increases workloads for judges and courts, too, and asked how the counties have handled that increased expense. Mr. Yeannakis said he thought the time increase was offset by a decreased amount of time needed to respond to questions from youth and parents. He remarked that, in Washington, detention bed placement was reduced. Mr. Yeannakis explained the diversion process in Washington, which does not require a plea.

**11:20 AM**

Mr. Yeannakis completed his presentation and Eric Zogry came to the table, introducing himself as the juvenile defender from North Carolina. Mr. Zogry distributed copies of his materials (Attachment F) and reviewed his background. He described North Carolina's system as being comprised of 100 counties and 44 judicial districts. He indicated that juvenile court is under the purview of the district courts and that, since 2000, indigent defense has been managed by the Office of Indigent Defense Services (IDS). According to Mr. Zogry, IDS is responsible for payment and quality but doesn't supervise the attorneys. He reviewed the manner in which attorneys are assigned as including appointment as a public defender, contract-based, private panels, and law clinics.

Mr. Zogry discussed North Carolina's assessment by the NJDC in 2003 and commented that many of Colorado's issues were also issues in North Carolina at that time. He discussed how IDS was established, its mission, and its role in developing and providing training and resources for juvenile defense attorneys.

**11:31 AM**

Mr. Zogry said North Carolina follows the "expressed interest advocacy" model of defense and has attorney qualification standards, such as training requirements and performance guidelines, which create a juvenile specialization. Representative Kagan asked who issues the licenses. Mr. Zogry responded that the North Carolina State Bar does, although there is also a voluntary bar. Senator Harvey asked if juvenile defense attorneys are required to be specialized. Mr. Zogry responded that they aren't required to have the specialization, but it is an option that allows someone to position him or herself as having expertise in the field.

**11:41 AM**

Regarding the presumption of indigence, Mr. Zogry referenced North Carolina's statute, which was included in the packet of handouts. He said that in North Carolina, paperwork is completed through a petition, but once this is filed, the summons shows the assigned counsel as part of the process. He noted that there really isn't a waiver process in North Carolina because everyone is presumed indigent and appointed an attorney prior to the first hearing. Concerning cost, Mr. Zogry said juvenile defense makes up less than 3 percent of the statewide budget for attorney costs.

Ms. Brown asked if there are any recoupment provisions in place in North Carolina. Mr. Zogry responded that yes, this is typically handled by IDS and the court can order the parent to pay the fees. Magistrate Koppes-Conway asked how indigency is determined in North Carolina. Mr. Zogry said the court usually does this, although in Charlotte, there is a separate entity that makes these determinations.

Judge Smith asked about adjustments prior to sanctions. Mr. Zogry responded that this process occurs through local juvenile justice offices and said that anyone can file a complaint, but the local office determines whether a case will be filed. Mr. Zogry noted that in North Carolina, this function is handled by a division of the Department of Corrections, which has local court counselors who function as a hybrid of intake and probation roles. According to Mr. Zogry, the local court counselors determine filing of cases, rather than the district attorney, but that if no case is recommended, a victim can appeal that decision to the district attorney. He said that in North Carolina, a youth is considered an adult at the age of 16.

#### **11:56 AM**

Representative Levy asked all presenters to come back to the table for questions as a panel. Senator Harvey asked about the cost of specializing in juvenile defense. Mr. Dohan responded that there is no data on this. He said the Ways and Means Committee in Massachusetts did an analysis that found annual costs would be offset by reductions in long-term costs. Mr. Perry said that he agrees that dedicated juvenile defense does create additional costs, but the human capital costs of failing to get appropriate services and early interventions must also be considered. According to Mr. Perry, a juvenile who is involved in the justice system is 13 percent less likely to graduate high school and incarceration in a juvenile facility makes a youth 16 percent more likely to go to an adult jail. Representative Levy said it appears that in other states there are less rigid boundaries in terms of accessing services, but that in Colorado it may be that one has to become involved with the juvenile delinquency system to get services. Mr. Perry and Mr. Dohan both commented that in some cases these boundaries do exist in their states, which is why it's important for defense attorneys to be aware of and advocate for youth to access the services that are available in their communities. Senator Harvey asked when the Massachusetts model was established, to which Mr. Dohan responded that they moved from a pilot project to a statewide division in 2009.

Kim Dvorchak discussed how these four states have centralized leadership and asked them to comment on the benefits of this approach in terms of reform. Mr. Zogry said its been absolutely necessary because its takes the pressure off local actors to push reform and ensures that juvenile defense has a seat at the table with other stakeholders in improving the criminal justice system.

#### **12:19 PM**

Representative Levy recessed the committee until 1:30 pm.

#### **01:23 PM -- Presentations from Parents and Children**

Representative Levy called the meeting back to order and invited Feliciano Lilgerose and her son, Lorenzo Lilgerose, to begin their presentation. Mr. Lilgerose introduced himself as a 17-year-old who has been involved with the juvenile justice system for two years. He reviewed his criminal history and experiences with courts in Denver, Adams, and Arapahoe Counties, describing how in one case, he had three separate attorneys. Mr. Lilgerose said he believes that for serious cases, consultation with an attorney shouldn't happen minutes before a court appearance. He also expressed concern that juveniles are waiving their right to counsel without really understanding what that means.

**01:47 PM**

Ms. Lilgerose provided some background on their family dynamic and her perspectives on the process for appointing counsel. She described her frustration at not being made aware of services that may have helped her son, difficulties with the process of obtaining counsel through the parental refusal process, and concerns about the quality of the representation that was provided. Ms. Lilgerose noted that the appointed attorney did not attend sentencing, which she views as unacceptable. She also described being confused as to why, when Mr. Lilgerose needed representation while in the custody of the Division of Youth Corrections, he wasn't determined indigent and appointed counsel. According to Ms. Lilgerose, one of her biggest frustrations is how different the process is in each county. She expressed a desire for counties to be more consistent. She said a review of the alternative defense options is warranted, particularly how attorneys are appointed and who is permitted to be on the parental refusal list. Ms. Lilgerose recommended that the state produce a handbook to help guide parents and juvenile through the process.

**02:01 PM**

Ms. Brown clarified that the counsel who represented Mr. Lilgerose was not a public defender but private counsel. Ms. Lilgerose agreed, saying she was referring to private counsel appointed through the parental refusal process. Representative Levy commented that the system is fractured and that often people are left to fend for themselves.

Magistrate Koppes-Conway said she often appointed guardians ad litem even if the parent was involved because of concerns about the attorney. She asked whether Mr. Lilgerose was offered a guardian ad litem. Mr. Lilgerose responded that he was in one case, but that the appointment was removed when the court realized his parent was involved. Magistrate Koppes-Conway asked Mr. Lilgerose if he had any impressions from his peers on the helpfulness of guardians ad litem. Mr. Lilgerose responded that his impression is that they are not helpful and can interfere in the parent-child relationship.

Angela Brant asked Mr. Lilgerose why he feels it's important to have an attorney at detention. He responded that he didn't have representation at his detention hearings, but that he found that he was nervous and that court was hectic. Mr. Lilgerose said he felt pressured to sign paperwork saying that he understood his rights, but that really he didn't understand what he was signing.

Senator Marble asked Mr. Lilgerose if he was allowed to review his police report. Mr. Lilgerose responded that he was told how serious the charge was but he wasn't able to review the documents until a year later. Mr. Lilgerose said that he felt that he should have been able to read them before he accepted a plea and that he was very frustrated by this.

Representative Levy asked if the financial burden affected the quality of representation Mr. Lilgerose received. Ms. Lilgerose responded that she wasn't worried about the costs, but the attorney was and it did appear to affect the quality of representation.

**02:11 PM**

Senator Marble stated that police reports can be requested for a small fee from the appropriate agency. She said that a lot of the problems start with police contact and asked whether Mr. Lilgerose knew if his peers had access to their files. Mr. Lilgerose responded that to his knowledge, they didn't. Ms. Lilgerose commented that they weren't offered the opportunity to have an investigator and that in her opinion, the attorney was predisposed towards accepting a plea rather than fighting for Mr. Lilgerose.

**02:18 PM -- Colorado Juvenile Defender Coalition Research**

Kim Dvorchak and Anne Bingert from the Colorado Juvenile Defender Coalition (CJDC) came to the table to discuss their research (Attachment G). Ms. Dvorchak stated that their research principally focused on gathering juvenile data, trying to answer the question of why juveniles waive counsel, and understanding differences in practices among counties. Ms. Dvorchak reviewed the sources of data used, noting that of the 15,000 cases pulled over the most recent three-year period, the most serious charge in over 75 percent of cases was a class 1 misdemeanor. She said the portion of the handout called "Kids Without Counsel," is an advance copy of a forthcoming report on the CJDC's court-watching program. According to Ms. Dvorchak, the program's intent was to observe the reasons for juveniles waiving counsel. She discussed their conclusions, stating that the first barrier to representation is the absence of a juvenile defense attorney in the courtroom in most jurisdictions. She said that the absence of defense attorneys contributes to the number of waivers because without counsel, advisements are performed by the prosecutor, who is also handling plea paperwork. Ms. Dvorchak said that the implication is participants can accept a plea deal and resolve the case, or they will need to hire an attorney and come back to court at a later date. She suggested that some jurisdictions, such as Denver, Boulder, and El Paso Counties, which are staffed with defense attorneys have lower waiver rates.

**02:27 PM**

Ms. Dvorchak said that the second factor that affects access to counsel is the application process for indigence determination. She noted that, with the exception of Denver, in most jurisdictions, determinations are not done on the same day, which results in people having to come back to court and take additional days off from work. She commented that it would be helpful to include the application requirements on the summons itself. She said the other aspects of the report discuss practice issues. Specifically, Ms. Dvorchak said that juveniles are not waiving counsel to proceed *pro se*; they are waiving counsel in the context of entering a guilty plea. She said this may be happening because of pressure to wrap things up and hectic courtrooms.

Representative Kagan asked Ms. Dvorchak to explain how the application process for indigency deflects people from obtaining counsel. Ms. Dvorchak responded that because people aren't aware of the requirements, they don't come to court prepared, which means that they could potentially have to take two more days off from work to complete the forms and gather the required paperwork.

Representative Levy commented that at times judges are appointing counsel prior to the parents filling out paperwork. Ms. Brown and Ms. Brant each agreed, saying that at times a judge accepts what is being said in court and doesn't require the paperwork. According to Ms. Brown, this is more likely when the public defender is already present in the courtroom. Ms. Dvorchak commented that she has wondered, in cases where a guardian ad litem is appointed but a public defender is not, whether this is due to indigency qualifications.

**02:37 PM**

At Representative Levy's suggestion, Ms. Bingert provided a review of the materials concerning appointment, indigence, waiver of counsel, and defense delivery systems in other states. She explained that 38 states automatically appoint counsel and 12 states require the juvenile to request counsel and to have indigency established. She noted that most states do determine indigence, but they are more flexible about the timing of that determination and it doesn't prevent appointment of counsel.

Regarding waivers, Ms. Bingert said that 20 states limit the ability of a juvenile to waive counsel. She said that typically, this restriction is for certain types of charges, such as felonies or sex offenses. She explained that in some states, the juvenile must consult with an attorney in order to waive counsel and in others, the restriction is age based. Ms. Bingert said that in Idaho and Pennsylvania, children under the age of 14 may not waive counsel and in Wisconsin, the age requirement is 15.

Ms. Dvorchak said that goals for Colorado should be to have counsel at the first appearance and to have a presumption of indigence in statute. She said another goal would be to prevent juveniles from waiving counsel unless they have had the opportunity to consult with counsel and that this process would happen independently of any discussion of a plea deal. Ms. Dvorchak said limits on waivers should also exist for certain offenses and there should be age restrictions.

Representative Kagan asked for clarification on their recommendations. Ms. Dvorchak responded they are recommending that the acceptance of a waiver be clearer in that it is to proceed *pro se* versus accepting a plea agreement.

Judge Smith mentioned the waiver of counsel process in Washington and asked whether they saw documents similar to this in their site visits. Ms. Bingert responded yes. Judge Smith asked if they observed a range of attitudes from judges on the acceptance of waivers. Ms. Bingert replied that her sense was that judges generally appeared to feel as if the conversation with the prosecutor was sufficient. Ms. Dvorchak remarked that what appears to vary is the level of attention that this matter is given by a judge.

**02:50 PM**

Representative Lee asked whether there was a need to conduct an independent determination of competency to waive counsel, based on age. Ms. Dvorchak responded that if the requirement is to consult with counsel before making a waiver, this would be resolved.

Senator Guzman asked about the connection between indigency and waivers. Ms. Dvorchak responded that she is not asking for waivers to be denied altogether, but that there instead be restrictions and guard rails in place to protect children. Representative Levy commented that the presumption of indigence ensures access to counsel at an earlier point. She said the policy goal would be to try to remove the paperwork impediments but that how a waiver is accepted is separate. Ms. Dvorchak noted that children do not have control of their parents' assets, but those assets affect their ability to get counsel.

Ms. Brown clarified that states that have a presumption of indigence do still have a process to determine indigence and to recoup expenses as necessary. Senator Marble stated that she believes a juvenile should be determined indigent by virtue of their age and in accordance with federal labor laws.

### **03:02 PM -- Overview of Truancy Proceedings**

Hillary Smith from Legislative Council Staff introduced herself and reviewed a memorandum she prepared on truancy (Attachment H). She began with a brief review of state law on truancy, noting that state law is premised on the concept of having court proceedings as a last resort. She reviewed the process for court proceedings to occur and the requirements and outcomes of court intervention. Ms. Smith said that over the prior five years, truancy filings have declined by about 17 percent.

Senator Harvey asked whether truancy cases are heard in municipal court. Ms. Weinerman commented that these cases must be filed in district court. Carol Haller, sitting in for Patrick Brodhead, stated that it may be that a hearing occurs in a municipal court if the district has a special program, such as a teen court, but noted that this is still a district case.

Ms. Smith explained that the court may appoint a guardian ad litem in a truancy case and that about 15 percent of the cases over the prior five years had a guardian ad litem attached at some point during their case.

Regarding the use of detention in truancy cases, Ms. Smith said this data is required to be tracked by the Division of Criminal Justice within the Department of Public Safety because it involved status offenders. Ms. Smith said a status offense is something that is violation for a minor, but not an adult, such as truancy. According to Ms. Smith, it is a violation to hold an accused juvenile for more than 24 hours or an adjudicated one without a valid court order. She said Colorado has violated these requirements, but has not approached the threshold for funding reductions.

Magistrate Koppes-Conway asked if there have been other observations that a holistic approach is changing the number of actual truants. She noted that there are 15 school districts in her jurisdiction and asked whether these interventions are effective in reducing truancy. Ms. Smith said the Colorado Department of Education is required to track some of this information. Ms. Weinerman commented that truancy cases are not just older youth who are skipping classes, but are also filed against younger children, who often have different root issues, such as poverty and homelessness.

**03:18 PM -- Process for Requesting and Finalizing Bill Drafts**

Ms. Smith explained the process and timelines for requesting and finalizing bill drafts, noting that the committee may approve a total of eight bill drafts. Specifically, she said requests must be made on or before October 4, and be approved during the final committee meeting on October 28. Ms. Smith noted that any committee member can request a bill, but it must have a support of the majority of the legislators to be drafted. Ms. Smith said that Representative Levy will gauge support by asking for a show of hands on October 4.

Ms. Smith said that Representative Levy will assign a point person to work with Richard Sweetman, drafter, during the drafting process, but noted that anyone can talk to Richard. She explained that bill drafts will be distributed and posted online at least a week before the October 28 meeting. She said that Legislative Council Staff will assume the bill is not confidential if requested in an open meeting, but asked any members who wish to keep their bill idea confidential to please let staff know. Ms. Smith said that small, technical changes can be conceptually offered on October 28, but substantive changes must be requested in advance. She said that any committee member who has suggestions for amendments can contact Richard directly.

According to Ms. Smith, during the October 28 meeting, Richard or the point person will walk the committee through the draft and amendments. She said only legislative members can move, second, and vote on prepared amendments and bills and that, apart from any minor technical changes by Richard, no changes may be made to bill drafts after October 28. She explained that Legislative Council is meeting on November 14 to consider proposed bills and determine if they fit the charge of the committee. Ms. Smith said approved bills will be introduced in the 2014 session and noted that any ideas not approved by the committee can be pursued by an individual legislator if he or she is interested.

**03:28 PM -- Discussion of Potential Legislation**

Representative Levy recommended that the committee brainstorm on topics for potential legislation. She observed that the committee has discussed the following topics:

- restrictions on waiver of counsel;
- the timing of the appointment of counsel;
- the presumption or determination of indigency;
- providing counsel at all detention hearings, which would entail addressing how different districts conduct their dockets and provide notice to public defenders;
- the issue of training and standards of quality for defense counsel;
- expungement; and
- data collection.

Representative Lee indicated he would like to consider having a juvenile public defender office within the Office of the State Public Defender (OSPD). Ms. Brown added advisement of collateral consequences as a topic for consideration. Ms. Dvorchak asked the committee to consider the process of issuing a summons and whether that can provide information on how to obtain counsel.

Representative Lee commented that most of the successful models involve providing services to juveniles early in the process, ideally aligned with the appointment of counsel. Ms. Brown suggested that adding social workers to OSPD staff may be one option, to which Ms. Weinerman agreed. Representative Kagan commented that this could come under the rubric of training and standards. Magistrate Koppes-Conway added that adequate training and having "cost money" available for children are key. She explained that "cost money" is a term used for funding that is used to pay the costs of getting transcripts or police reports.

Senator Harvey said prosecutors need to be adequately educated as well, not just defense counsel. Ms. Weinerman suggested that specialized juvenile courts outside of Denver may be worth considering. Ms. Dvorchak suggested that if there is no automatic appointment of counsel, it may make sense to move the parental refusal process to another agency.

Representative Levy said that the expungement task force will report at the next meeting and there will be additional time for brainstorming during the October 4 meeting.

#### **03:44 PM -- Public Testimony**

Representative Levy opened public testimony, calling Diana Richett to the table. Ms. Richett explained her background as a juvenile defense attorney and guardian ad litem. She stated that she believes juveniles should be determined indigent and appointed counsel automatically and expressed concerns about the current process.

#### **03:53 PM**

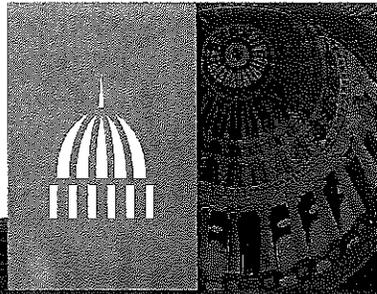
Heather Rice-Minus came to the table and introduced herself as a representative of the Justice Fellowship. She reported talking with persons providing programming in juvenile facilities and their concerns that public defender caseloads are too high. She said that often kids get two minutes with their public defender and don't understand the collateral consequences of a juvenile adjudication. Ms. Rice-Minus said that juvenile defense attorneys need appropriate training to understand that kids are different from adults and to learn how to relate to kids. Representative Levy suggested that the committee also consider looking at caseload standards. Ms. Martin asked about the Justice Fellowship and at what stage they get involved. Ms. Rice-Minus responded that they are working with youth after they have contact with the juvenile justice system.

**04:02 PM**

Bonnie Saltzman came to the table to testify, introducing herself as a juvenile defense attorney who performs a lot of pro bono work. She expressed concerns about the parental refusal process, arguing that this sets up a horrible dynamic as the juvenile has the emotional burden of being aware of the financial pressure appointment of counsel places on his or her parents. She also said she believes it is a conflict for the judicial officer to make decisions on appointing counsel when the cost is coming out of the Judicial Branch's budget. Ms. Saltzman said that appointments of guardians ad litem often occur instead of an attorney when a juvenile does not qualify as indigent, which is not appropriate in her view. She said that a guardian ad litem does not have the same role as an attorney and the same protections, such as attorney-client privilege, don't apply. Ms. Saltzman concluded her testimony by advocating for more frequent and standardized training for juvenile defense counsel, distributing recommendations for such through a handout called "Colorado Youth Workforce Development Enterprise" (Attachment I).

**04:15 PM**

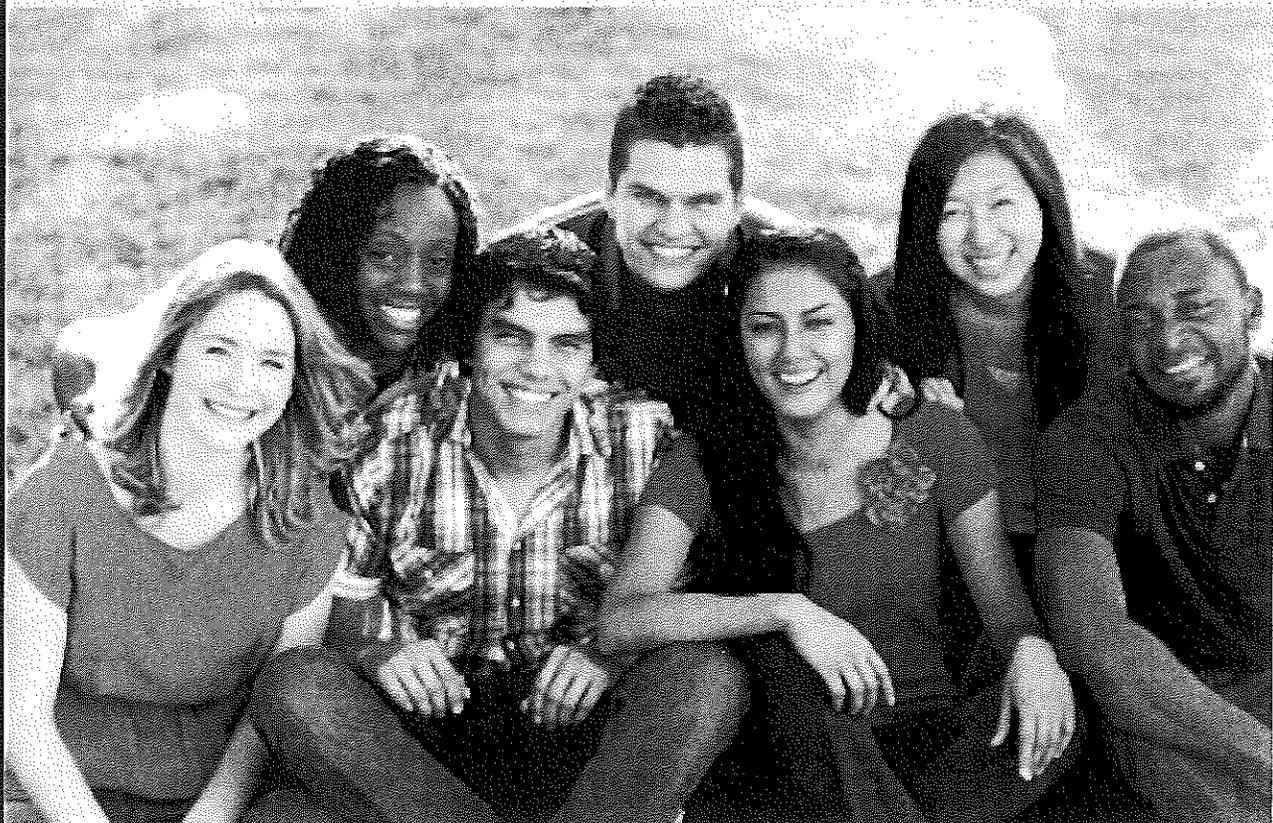
Representative Levy adjourned the committee.



NATIONAL CONFERENCE *of* STATE LEGISLATURES

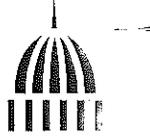
*The Forum for America's Ideas*

# Trends in Juvenile Justice State Legislation 2001 – 2011



# Trends in Juvenile Justice State Legislation: 2001-2011

By  
Sarah Alice Brown



NATIONAL CONFERENCE  
*of* STATE LEGISLATURES  
*The Forum for America's Ideas*

National Conference of State Legislatures  
William T. Pound, Executive Director

7700 East First Place  
Denver, Colorado 80230  
(303) 364-7700

444 North Capitol Street, N.W., Suite 515  
Washington, D.C. 20001  
(202) 624-5400

[www.ncsl.org](http://www.ncsl.org)

June 2012



Printed on recycled paper.

© 2012 by the National Conference of State Legislatures. All rights reserved.

ISBN 978-1-58024-668-2

## Executive Summary

Two main goals drive the nation's juvenile justice system: protecting both public safety and the welfare and rehabilitation of young offenders who break the law. State juvenile justice policies require balancing these interests, while also preserving the rights of juveniles.

A rise in serious juvenile crime in the late 1980s and early 1990s led to state laws that moved away from the traditional emphasis on rehabilitation in the juvenile justice system toward tougher, more punitive treatment of youth, including adult handling. During the past decade, juvenile crime rates have declined, and state legislatures are reexamining juvenile justice policies and rebalancing approaches to juvenile crime and delinquency.

Today, more and better information is available to policymakers on the causes of juvenile crime and what can be done to prevent it. This includes important information about neurobiological and psychosocial factors and the effect on development and competency of adolescents. The research has contributed to recent legislative trends to distinguish juvenile from adult offenders, restore the jurisdiction of the juvenile court, and adopt scientific screening and assessment tools to structure decision-making and identify needs of juvenile offenders. Competency statutes and policies have become more research-based, and youth interventions are evidence-based across a range of programs and services. Other legislative actions have increased due process protections for juveniles, reformed detention and addressed racial disparities in juvenile justice systems.

The very difficult budget climate in states recently has prompted questions about the effectiveness of punitive reforms and the high economic costs

they can impose. States are re-evaluating their juvenile justice systems in order to identify methods that produce better results for kids at lower cost. This has contributed to a state legislative trend to realign fiscal resources from state institutions toward more effective community-based services.

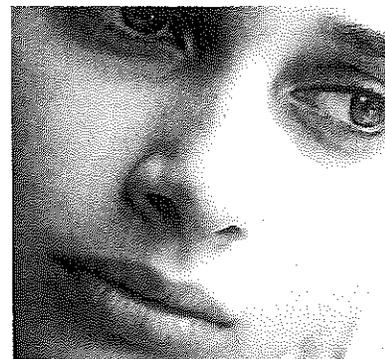
The appendix contains citations to referenced legislation.

## Distinguishing Juvenile Offenders from Adults

Research distinguishing adolescents from adults contributed to a state trend to re-establish boundaries between the adult and juvenile justice systems. One of the more prominent shifts in juvenile justice policy has been the focus on juveniles' developmental needs.

### *Adolescent Development Research*

A growing body of research on the brain development of children, as compared to adult brains, has received national attention. Findings by the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice show that adolescent brains do not fully develop until about age 25, and the immature, emotional and impulsive nature characteristic of adolescents makes them more susceptible to committing crimes. Studies also have shown that juveniles who commit crimes or engage in socially deviant behavior are not necessarily destined to be adult criminals. This research has provided the basis for widespread state legislative policy reforms in juvenile justice systems.



## *Federal Standards*

Significant rulings at the federal level also have helped reshape juvenile justice policies. In a 2005 case, *Roper v. Simmons*, the U.S. Supreme Court held the Eighth Amendment's ban against cruel and unusual punishment prohibits juveniles from being sentenced to death for crimes they committed before they reached age 18. The court cited MacArthur Research Network research as evidence that adolescents' brains are not fully developed, which affects mental abilities such as self-control and, thus, their ability to take responsibility for their actions. The Court also held that there was a "consensus" in society that juveniles lack the requisite "culpability" for their crimes, as demonstrated by the fact that 47 percent of state legislatures had already outlawed execution of juveniles in the 1980s and 1990s.

Then again in 2010, the Court abolished the sentence of life without the possibility parole for youth convicted of non-homicide crimes in *Graham v. Florida*, building on the reasoning it applied in *Roper*. On June 25, 2012, the Court in *Miller v. Alabama* ruled that imposing mandatory life sen-

tences without the possibility of parole on juveniles also violates the Eighth Amendment.

Twelve states—**Alaska, Colorado, Kansas, Kentucky, Maine, Montana, New Jersey, New Mexico, New York, Oregon, Vermont** and **West Virginia**—and the **District of Columbia** currently prohibit juvenile life without parole sentences or have no juvenile offenders who are serving the sentence. In 2006, **Colorado** changed its mandatory sentence of life without parole to 40 years before the possibility of parole, and in 2011, in response to the *Graham* ruling, **Nevada** ended the sentence of life without parole for juveniles for non-homicide crimes.

## *Raising the Age of Juvenile Court Jurisdiction*

A major trend in juvenile justice policy in the past decade has been to expand the jurisdiction of the juvenile court by increasing the upper age of jurisdiction. Today, 38 states set the maximum age at 17, 10 states—**Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas** and **Wisconsin**—set the age at 16, and two states—**North Carolina** and **New York**—set it at 15; therefore, 16- and 17- year-olds automatically are tried in the adult system.

In 2007, a **Connecticut** law raised the age of juvenile court jurisdiction from 16 to 18. Connecticut previously had the largest number of inmates under age 18 in its adult system. According to recent data, the proposed change in the age of juvenile jurisdiction moves more than 10,000 new cases a year from the adult criminal justice system to the juvenile justice system. Research also shows that moving 16- and 17-year-old youth out of the adult system into the juvenile system

### **Landmark Juvenile Life Without Parole Decision: *Miller v. Alabama* (2012)**

In this case, the U.S. Supreme Court determined that proportionality—punishment be appropriate to the crime committed—must take into account “the mitigating qualities of youth.” The Court’s rationale extended from previous cases (*Roper v. Simmons* and *Graham v. Florida*) detailing how juveniles differ from adults—they are prone to impulsive behavior and less able to understand the full impact of their actions—and how this makes them somewhat less culpable for their crimes, even when egregious. Those who sentenced the two defendants, Evan Miller and Kuntrell Jackson, had no discretion to impose different punishments because of mandatory minimum sentencing. Under these sentencing structures, judges who decided Miller’s and Jackson’s sentences could not consider youth or any other factors that may make the sentence disproportionate to the crime. The Court ruled that judges need to examine all circumstances of a case and, therefore, sentencing schemes that require life in prison without the possibility of parole for juvenile offenders violates the Eighth Amendment.

will return about \$3 in benefits for every \$1 in cost.

Also in 2007, the **Rhode Island** General Assembly reversed the governor's recommendation to decrease the age of juvenile jurisdiction from 18 to 17 and restored the jurisdiction age to 18. The same year, **Missouri** expanded juvenile court jurisdiction to include status offenders age 18 and younger. In 2009, an **Illinois** act raised the age of juvenile court jurisdiction from 17 to 18 for youth charged with misdemeanor offenses, while **Colorado** expanded eligibility for sentencing for select youth ages 18 to 21 to the youthful offender system instead of to the adult offender population.

In 2010, a **Mississippi** law allows juveniles charged with certain felonies— robbery, drug offense and arson— to remain in the juvenile justice system. Previously, all 17-year-olds charged with felonies were tried in adult court. The same year, an **Oklahoma** measure provided that those up to six months into age 18 can be adjudicated in the juvenile system for misdemeanors.

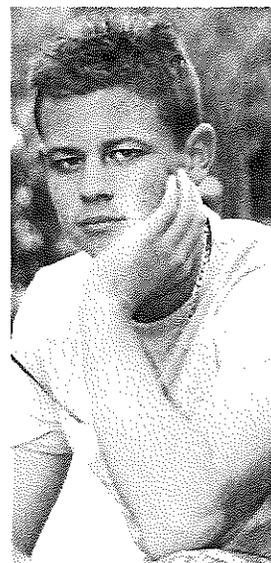
These actions are significant because extending the age limit in juvenile court affects the lives of hundreds of thousands of youths.

### *Reforming Transfer and Direct File Laws*

As the decade moved forward, other age-related statutory changes were made to juvenile court jurisdiction. State legislative actions began to refine circumstances under which juvenile offenders are treated as adult criminals, leaving transfer to adult court for only the most serious crimes and offenders. Other laws returned discretion to juvenile court judges to determine the best interests of the juvenile.

A 2007 **Virginia** measure changed the “once an adult, always an adult” law. Previously, a one-time

transfer of a juvenile to adult court was enough to keep a juvenile in the adult system for all future proceedings, no matter how minor the charge, or even an acquittal. The law requires that youth now must be convicted of an offense in order to be tried in adult court for all future offenses. In 2008, a **Colorado** act allowed a juvenile charged with felony murder to serve in the juvenile justice system. The same year, a **Maine** law provided that juveniles under age 16 who receive adult prison sentences can begin serving the sentence in a juvenile facility. Similarly, **Virginia** allowed a juvenile sentenced as an adult to gain earned sentence credits while serving the juvenile portion of the sentence in a juvenile center, rather than in an adult facility.



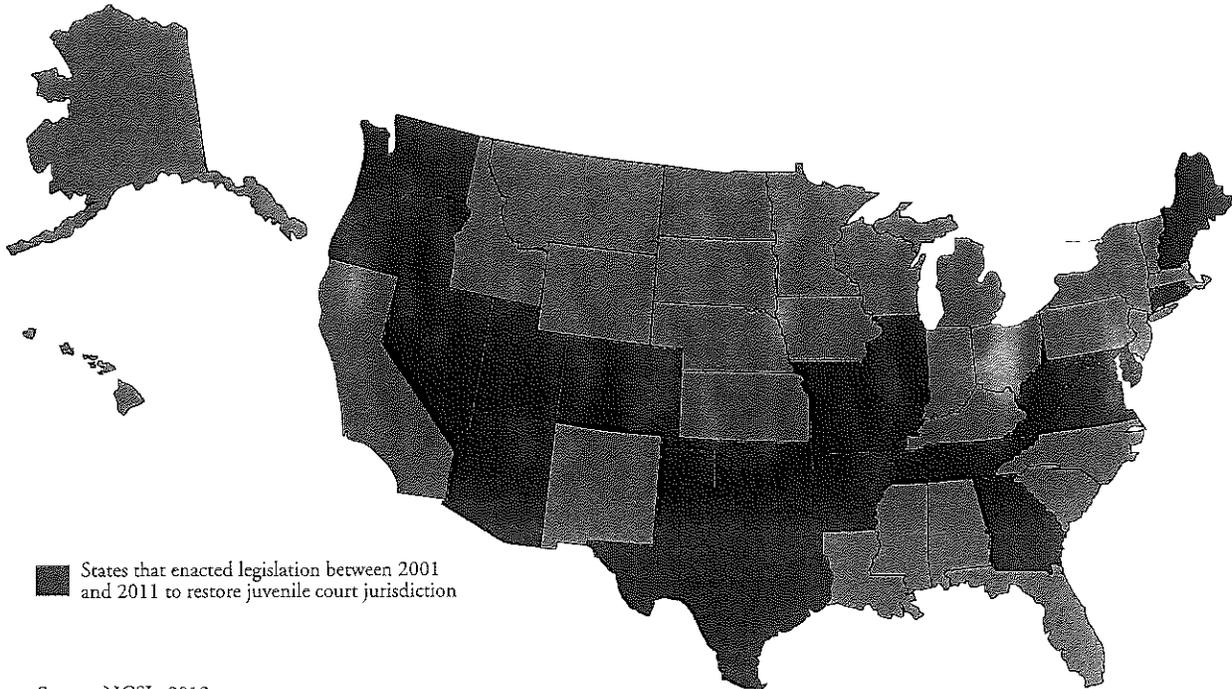
In 2009 - 2010, three states—**Nevada**, **Mississippi** and **Utah**—left it to the juvenile court to determine whether transfer to the adult court was necessary. Most recently, a 2012 **Colorado** law bars district attorneys from charging juveniles as adults for many low- and mid-level felonies. The act also raises from 14 to 16 the age at which young offenders may be charged as adults for more serious crimes.

These laws reflect the trend in states to treat and rehabilitate youth in the juvenile justice system instead of sending them to the more punitive-oriented adult system.

### *Juvenile Competency*

Competency is an individual's cognitive ability to comprehend and participate in legal proceedings. Traditionally, competency was focused only on adults. During the past decade, however, juvenile competency has come to the forefront as policy-

## Enacted Legislation Restoring Juvenile Court Jurisdiction: 2001 – 2011



Source: NCSL, 2012.

makers digest the research on adolescent development and their emotional and psychological maturity. At least 10 states—**Arizona, Colorado, Florida, Georgia, Kansas, Minnesota, Nebraska, Texas, Virginia** and **Washington**—and the **District of Columbia** specifically address competency in their juvenile delinquency statutes.

Other state legislative actions have addressed competency and insanity determinations in the adjudicatory process. In 2005, **Oregon** legislation allowed a juvenile an affirmative defense of mental disease or defect constituting insanity, and in 2006, **Georgia** required that a juvenile be represented by an attorney when being evaluated for competency. Recent enactments in **California** and **Louisiana** provide that a juvenile transferred to adult court may seek a sanity hearing to determine competency, while **Maryland** and **Tennessee** require court-ordered mental health evaluations of a juvenile's competency to proceed. In 2010, **Iowa** required a proceeding to be suspended if the child was ordered

into a residential facility for treatment of a mental illness, and in 2011, **Idaho** lawmakers established standards for evaluating a juvenile's competency to proceed.

### Due Process and Procedural Issues

In the past decade, state legislatures have provided increased due process protection for juvenile offenders. Such measures have included providing legal services to juveniles who are facing proceedings and addressing the needs of indigent juvenile offenders.

#### *Legal Counsel and Other Procedural Issues*

Many states have addressed a juvenile's constitutional right to quality defense counsel during proceedings. In the past decade, at least nine states—**Kentucky, Louisiana, Maryland, Mississippi, North Dakota, Tennessee, Texas, Utah** and **Virginia**—enacted laws that require qualified counsel

be provided to juveniles at various stages of youth court proceedings. In addition, between 2004 and 2005, **Illinois**, **Louisiana** and **Maryland** prohibited juveniles from waiving their right to counsel. For juveniles who are appealing their case, **Utah** created an expedited process for appeals from juvenile court orders. Two 2012 laws in **Pennsylvania** provide that juvenile defendants must be represented by counsel and require the juvenile court judges to state in open court the reasoning behind their sentences.

### *Indigent Defense*

An “indigent defendant” is someone who has been arrested or charged with a crime punishable by imprisonment and who lacks sufficient resources to hire a lawyer without suffering undue hardship. The issue of indigent defense has received attention in recent years in the states. In at least one state—**Michigan**—the juvenile court must appoint an attorney to represent a youth, regardless of his or her indigence status. Most states appoint counsel to youths only upon determining that they qualify as indigent, and the application process for receiving counsel varies from state to state. Several states—including **Florida**, **Delaware**, **Georgia**, **Louisiana** and **Tennessee**—require administrative fees to submit an application. Once a state receives an application for juvenile indigent counsel, decision makers must evaluate either the parents’ or the child’s finances and other enumerated factors to make their ruling. In **Alabama**, the presiding judge determines indigence, while **Georgia** leaves it to the public defender’s office or any agency providing the service.

Other states have established commissions to help facilitate the process for determining indigence and providing services. In 2009, for example, **Maine** established a Commission on Indigent Legal Services to provide efficient, high-quality services to

indigent juvenile defendants. In 2010, **Louisiana** provided for appointment of counsel for indigent youth and set guidelines for admissibility of a child’s confession.

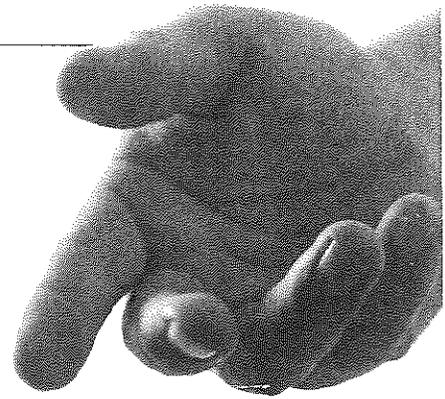
Such actions addressing juvenile defense, including indigence, reflect a trend to preserve the constitutional rights of youth who come into in the system.

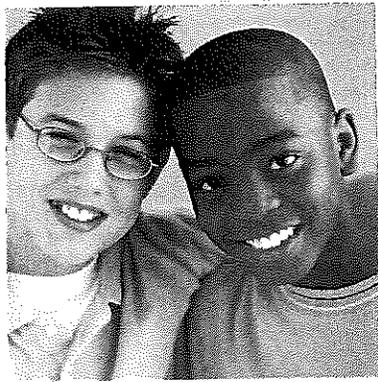
### **Prevention and Intervention**

In the past decade, state legislatures have enacted prevention statutes that increasingly incorporate risk and protective factors to provide intervention services for at-risk youth and establish diversion programs for non-violent offenders. States also have recognized that prevention policies must facilitate collaboration with the justice system, and other youth-serving agencies.

### *Evidence-Based Programs*

A recent trend in state juvenile justice policy has been adoption of evidence-based practices that provide treatment to youth and their families and seek to improve behavior and emotional functioning. Evidence-based programs or policies are supported by a rigorous outcome evaluation, that clearly demonstrate effectiveness. For example, multi-systemic therapy, family functional therapy and aggression replacement training are evidence-based interventions in place in juvenile justice systems today in at least eight states—**Connecticut**, **Florida**, **Hawaii**, **Mississippi**, **Oklahoma**, **Pennsylvania**, **Tennessee** and **Washington**. A 2011 **Vermont** law required its Center for Justice Research to evaluate innovative programs and research on evidence-based alternative programs for juvenile offenders.





### *Diversion and Investing in Community-Based Alternatives to Incarceration*

In recent years, state legislative actions also have diverted non-violent young offenders from juvenile or criminal justice systems through local community-based and pre-trial diversion programs. In 2004, major reform legislation was passed in **Illinois** to establish *Redeploy Illinois*, which has become a model for other states. *Redeploy* encouraged counties to develop community-based programs for juveniles rather than confine them in state correctional facilities. Savings from the reduced commitments are reallocated to the counties for development of community-based treatment programs. The now-permanent state program is expanding throughout the state.

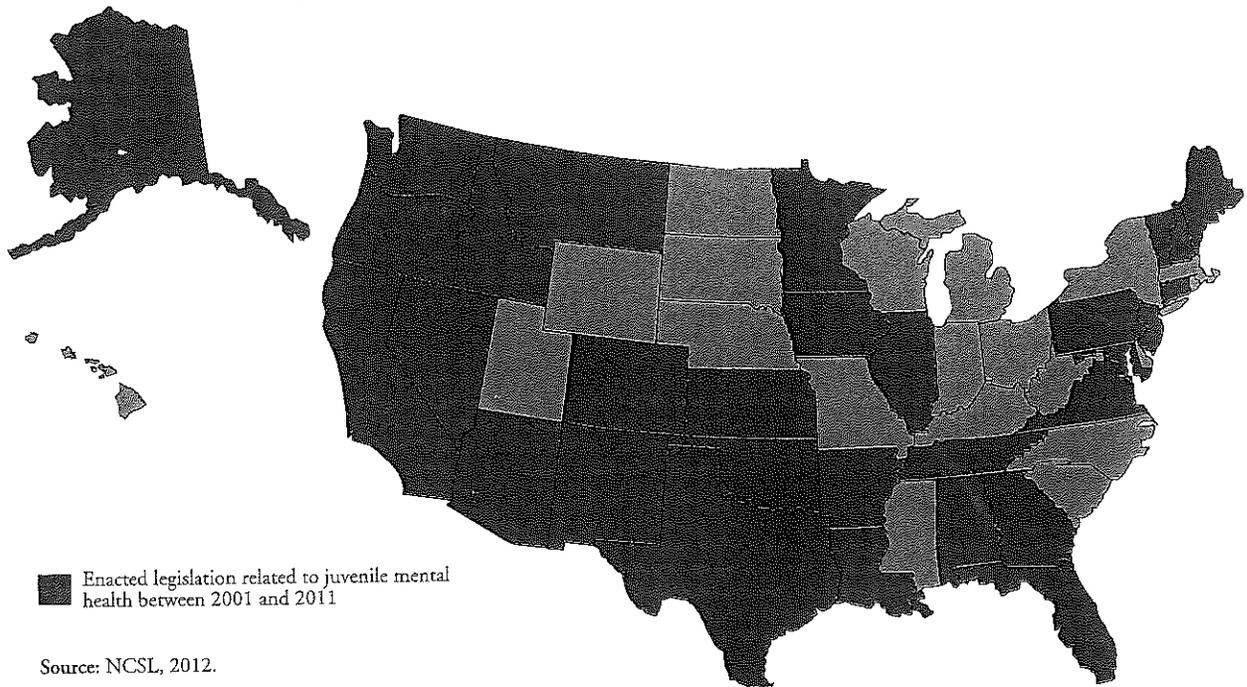
In at least half a dozen states today, other realignment strategies are moving fiscal resources from

state institutions to community-based services. In 2011, for example, comprehensive reform measures passed in **Ohio** and **Texas**. **Ohio's** law urged that 45 percent of savings from corrections facility closures be reinvested in community-based services. The **Texas** law combined the state Youth Commission with its Juvenile Probation Commission and tasked the new commission with increasing community-based programs for juveniles throughout the state.

### **Treating Mental Health Needs of Juvenile Offenders**

Between 65 percent and 70 percent of the 2 million youth arrested each year in the United States have some type of mental health disorder. Mental health needs of court-involved youth challenge juvenile justice systems to respond with effective evaluations and interventions. During the past decade, state policies have focused on providing proper screening, assessment and treatment services for young offenders who have mental health needs.

### **Enacted Legislation Related to Juvenile Mental Health: 2001 – 2011**



Source: NCSL, 2012.

Highlights include a 2005 omnibus state mental health law passed in **Washington** that expanded mental health services and addressed treatment gaps. It also encouraged criminal and juvenile justice diversion and treatment by authorizing counties to establish a 0.1 cent sales tax to establish therapeutic courts. The same year, an **Idaho** measure also created mental health courts to be incorporated into existing state drug courts. A similar **Colorado** law allowed a 90-day suspended sentence, during which treatment is provided to developmentally disabled or mentally ill juveniles. In 2009, **Texas** provided that mentally ill youth be eligible to receive continuity of care and treatment while in the juvenile justice system. And the same year, **Colorado** established a family advocacy program to work with the community to collaborate in providing services to young people with mental illnesses.

### *Screening and Assessment*

Screening and assessment are key to addressing mental health treatment needs of youth in the juvenile justice system. Recent state policies require proper screening and assessment to help determine juvenile risk, placement and treatment. **Minnesota** and **Nevada** have established statewide mental health screening for all youth in the juvenile justice system. A 2005 **Texas** act required juvenile probation departments to have youth complete the MAY-SI-2 screening instrument that identified potential mental health and substance abuse needs. **Idaho** allowed juvenile courts to order mental health assessment and treatment plans for juveniles. In 2009, acts in **North Dakota** and **Oregon** required alcohol and drug education, assessment and treatment for juveniles who commit alcohol violations.

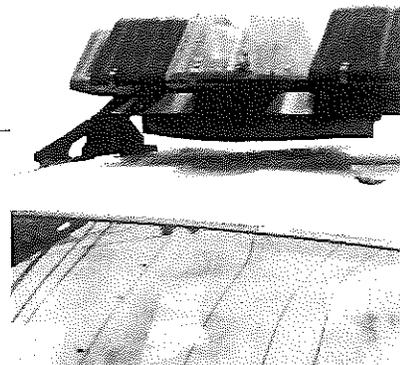
### **Disproportionate Minority Contact**

Minority youth come into contact with the juvenile justice system at every stage at a higher rate than

their white counterparts. Various explanations have emerged for the disproportionate treatment of minors, ranging from jurisdictional issues, certain police practices and pervasive crime in some urban areas. The past decade has seen state legislative actions to address complex problems of over-representation of minority youth.

Between 2005 and 2007, **Colorado, Indiana, Kansas** and **Tennessee** established committees or commissions to address and remedy overrepresentation of minorities in their juvenile justice systems, and continue to work on these issues today. In 2008, **Iowa** became the first state to require a “minority impact statement,” which is required for proposed legislation related to crimes, sentencing, parole and probation. **Connecticut** soon followed, requiring racial and ethnic impact statements for bills and amendments to increase or decrease the pretrial or sentenced population of state correctional facilities. Similar to fiscal impact statements, the new requirements seek to provide greater understanding of the implications of proposed laws for minorities.

A 2010 **Maryland** law requires cultural competency model training for all law enforcement officers assigned to public school buildings and grounds. In 2011, **Texas** established an interagency council to address the disproportionate involvement of minority children in the juvenile justice, child welfare and mental health systems. The same year, **Illinois** established a task force to create a standardized collection and analysis of data on the racial and ethnic identity of arrestees. **Connecticut** now requires judicial and executive entities to report to the legislature and governor every two years on progress in addressing disproportionate minority contact in the juvenile justice system.



*Highlights of Other Significant Juvenile Mental Health Laws*

**2001**

**Arizona** - Requires residential treatment if the court finds that the juvenile has psychological and mental health needs and requires the court to periodically review the progress of the treatment given.

**2003**

**Connecticut** - Authorizes the court to order a juvenile charged with cruelty to animals to undergo counseling or participation in an animal cruelty prevention and education program.

**2005**

**California** - Provides education on mental health and developmental disability issues affecting juveniles in delinquency proceedings to judicial officers, and other public officers and entities that may be involved in the arrest, evaluation, prosecution, defense, disposition and post-disposition or placement phases of delinquency proceedings.

**2006**

**Georgia** - Requires a full mental health evaluation if the juvenile is found not competent. Requires such juveniles to be treated in the least restrictive environment and that community-based treatment options be exhausted before treatment in a secure facility is considered.

**2007**

**New Jersey** - Requires suicide and mental health screening of juveniles in county detention centers. Requires every suicide gesture or attempt to be reported.

**2008**

**Colorado** - Permits the court to order mental health treatment or services as a part of the disposition.

**2009**

**Montana** - Provides children with mental health needs with in-state service alternatives to out of state placement. Establishes reporting requirements regarding high-risk children with multiagency service needs who are suffering from mental health disorders.

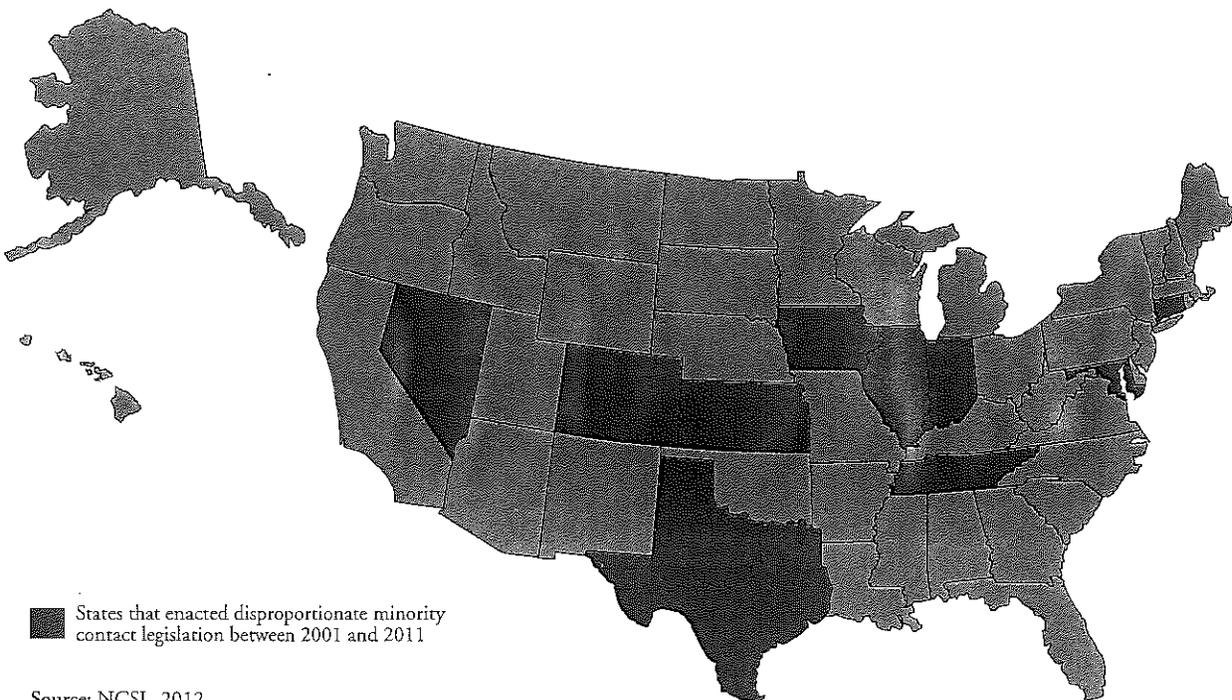
**2010**

**Tennessee** - Requires the state to pay for court ordered mental health evaluations of juveniles who have been charged with commission of an offense that would be a felony if committed by an adult.

**2011**

**Iowa** - Provides that if prior to the adjudicatory or dispositional hearing, the child is committed with a mental illness and ordered into a residential facility, institution or hospital for inpatient treatment, the delinquency proceeding be suspended until the juvenile court terminates the order or the child is released for purposes of receiving outpatient treatment.

## Enacted Disproportionate Minority Contact Legislation: 2001 – 2011



Source: NCSL, 2012.

## Detention and Corrections Reform

States legislative actions also have addressed juvenile detention issues. Confined juveniles include those in detention or reception centers and training schools, among others. Detention centers usually are used for juveniles who are awaiting a court appearance or disposition; stays generally are short, averaging 15 days or less.

In recent years, detention reform laws have shortened the length of time a juvenile remains in a detention center. Risk assessment instruments also were created and have been used at detention admission screenings to analyze an offender's level of risk, individual treatment needs and to determine who should be held in secure detention.

A 2006 **Mississippi** act mandated that youth be ordered only to detention centers that have certified educational services and adequate on-site medical

and mental health services. In 2007, **Colorado** established juvenile risk assessment instruments and required their use to determine whether a juvenile requires detention. The same year, **New Jersey** required suicide and mental health screening for juveniles in detention centers, in order to properly assess their needs. In 2010, **Virginia** allowed juveniles transferred to or charged in criminal courts to remain in juvenile, rather than adult, detention facilities.

In regard to shortening the length of time in detention, **Mississippi** law provided that first-time non-violent youth offenders may not be committed to detention centers for more than 10 days. In 2007, **Illinois** provided that minors under age 17 (instead of age 12) cannot be detained in a county jail or municipal lockup for more than six hours. A 2009 **Georgia** measure



decreased from 60 days to 30 the maximum time a court can order a juvenile to serve in a detention center. **North Dakota** now limits to four days in a one-year period the total detention period of a child who is participating in a juvenile drug court. And, a recent **Oregon** act authorized the court to release youth offenders from detention facilities when the county juvenile detention facility capacity is exceeded.

## Reentry/Aftercare

Each year, 100,000 juveniles are released from juvenile corrections facilities and other out-of-home placements into communities. In recent years, state lawmakers have focused attention on providing aftercare services to improve post-release supervision, services and supports to help juveniles make safe, successful transitions home.

A 2004 **Maryland** law required “step-down aftercare” to provide individualized rehabilitation and services to youths returning to their communities.

Access to mental health services upon release also is

an important part of aftercare. Two states—**Oklahoma** in 2004 and **Virginia** in 2005—implemented regulations for mental health, substance abuse and other therapeutic treatment services for juveniles who are returning to the community. Other states—**Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Oklahoma, Pennsylvania, South Carolina** and **Washington**—provided additional support services to such juvenile offenders.



**Illinois, Indiana, Oklahoma, Pennsylvania, South Carolina** and **Washington**—provided additional support services to such juvenile offenders.

## Gender-Responsive Programming

Although the overall juvenile crime rate has declined during the past decade, the female juvenile offender population is the largest growing segment in the juvenile justice system. Girls now represent 15 percent of those held in juvenile facilities and as much as 34 percent in some states. Lawmakers in **Connecticut, Florida, Hawaii, Minnesota** and **Oregon** have enacted legislation that requires gender-specific programming for juveniles. The laws generally require programs to help with prevention, treatment and rehabilitation needs of young people who are served by juvenile justice systems. And, in 2011, **New Mexico** lawmakers passed a measure asking the Department of Children, Youth and Families to develop a plan for gender-responsive services and programs for girls.

**California** and **Washington**, for example, eased health care accessibility for reentering youth. **Arizona, Colorado** and **Pennsylvania** made changes to their probation programs to enable successful reentry. And, a 2010 juvenile parole reform law in **Illinois** required the Illinois Juvenile Justice Commission to develop recommendations regarding due process protections for youth during parole and parole revocation proceedings. The bill also clarifies that the Prisoner Review Board has options other than re-incarceration for juvenile parolees who may violate a condition of parole.

Some aftercare laws have established community-based programs to help administer state services to juveniles. In 2006, **Indiana** established a Juvenile Reentry Court, and in 2007, **Mississippi** required that community-based services be provided for all youth leaving detention facilities. In 2008, **Colorado** legislation required use of an objective risk assessment to identify aftercare treatment and parole services for juveniles. While an **Ohio** act allowed representatives of faith-based organizations to provide reentry services to juveniles. The same year, **Connecticut** established a community-based pilot program to provide reentry services for youth.

### *Confidentiality of Juvenile Records and Expungement*

Protecting the confidentiality of juvenile records for education, employment and other transitions to adulthood are part of successfully reintegrating juveniles into society. State actions have included enacting expungement measures and other record confidentiality safeguards. Between 2007 and 2011, **Arkansas, Connecticut, Illinois, Kansas, Montana, New Mexico, New York, Texas, Virginia** and **Wisconsin** established safeguards to protect the confidentiality of juvenile records.

Expungement allows a minor who has committed delinquent acts to permanently erase his or her record. Between 2004 and 2011, **Colorado, Illinois, Ohio** and **Washington** created procedures for juveniles to request their individual records be sealed or expunged. Also during that time period, **Delaware, North Carolina, and Vermont** provided for automatic expungement of juvenile court records for non-violent felonies. In 2011, **Washington** required juvenile deferred disposition records to be

automatically sealed upon a juvenile's 18th birthday and prohibited consumer reporting agencies from disseminating personal information contained in juvenile records.



### **Conclusion**

States are not complacent about juvenile crime and remain interested in providing public safety, improved juvenile justice systems and positive results for youth. The legislative trends evidenced during the past decade reflect a new understanding of adolescent development and the value of cost-benefit analysis of existing data-driven research. Investing in community-based alternatives to incarceration and evidence-based intervention programs, as well as multi-system coordination and cross-systems collaboration are among the examples of how states now are better serving youth and addressing and preventing juvenile crime.

#### **About the Funder**

The John D. and Catherine T. MacArthur Foundation is one of the nation's largest independent foundations. Through the support it provides, the Foundation fosters the development of knowledge, nurtures individual creativity, strengthens institutions, helps improve public policy, and provides information to the public, primarily through support for public interest media.

#### *Models for Change*

The MacArthur Foundation's Models for Change initiative collaborates with selected states to advance juvenile justice reforms that effectively hold young people accountable for their actions, provide for their rehabilitation, protect them from harm, increase their life chances, and manage the risk they pose to themselves and to public safety.

## Appendix

### *Distinguishing Juvenile Offenders from Adults*

Maryland HB 294 (2001); Virginia HB 2795 (2001); Illinois HB 4129 (2002); Georgia HB 470 (2003); Oregon SB 69 (2003); Virginia HB 2276 (2003); Connecticut HB 5444 (2004); Connecticut HB 5215 (2005); Oregon SB 232 (2005); Colorado HB 1034 (2005); Washington HB 1187 (2005); Washington HB 2061 and 2064; Colorado HB 1315 (2006); Georgia HB 1145 (2006); New Hampshire HB 627 (2006); Arkansas HB 1475 (2007); Connecticut SB 1500 (2007); Rhode Island SB 1141 (2007); Virginia HB 3007 (2007); Colorado SB 66 (2008); Colorado HB 1016 (2008); Louisiana SB 38 (2008); Maine SB 691 (2008); Missouri HB 1550 (2008); Virginia HB 1207 (2008); California AB 1516 (2009); Colorado HB 1122 (2009); Illinois SB 2275 (2009); Mississippi SB 3115 (2009); Nevada SB 235 (2009); Nevada SB 235 (2009); Colorado HB 1413 (2010); Oklahoma HB 2313 (2010); Tennessee HB 459 (2010); Utah HB 14 (2010); Virginia SB 259 (2010); Arizona SB 1191 (2011); Idaho HB 140 (2011); Nevada AB 134 (2011); Colorado HB 1271 (2012).

### *Due Process and Procedural Issues*

Arkansas SB 108 (2001); Colorado HB 1187 (2001); Illinois SB 730 (2001); Texas HB 1118 (2001); Kentucky HB 146 (2002); Fla. Stat. Ann. §27.52 (2003); Ga. Code Ann. §17-12-24 (2003); Louisiana HB 1508 (2004); Maryland SB 163 (2004); Utah SB 179 (2004); Del. Fam. Ct. R. of Crim. P. 10. (2005); Illinois SB 1953 (2005); Virginia HB 2670 (2005); La. Child. Code art. 809 (2006); MI Rules MCR 6.937; Mississippi HB 199 (2006); Tennessee HB 3147 (2008); Ala. Code

§15-12-2 (2009); Maine SB 423 (2009); North Dakota HB 1108 (2009); Tenn. Code. Ann. §37-1-126 (2009); Louisiana HB 663 (2010); Illinois HB 6129 (2011); Pennsylvania SB 818 (2012) and SB 815 (2012).

### *Prevention and Intervention*

Connecticut HB 7013 (2001); Florida SB 2-A (2003); Washington HB 1028 (2003); Illinois HB 2545 (2004); Oklahoma SB 1799 (2006); Tennessee, T.C.A. 37-5-121 (2007); Mississippi SB 2246 (2008); Hawaii SB 932 Ohio HB 86 (2011); Texas SB 653(2011); Vermont SB 108 (2011).

### *Treating Mental Health Needs of Juvenile Offenders*

Arizona HB 2246 (2001); Texas HB 1071, 1901 and SB 1470 (2001); Alaska SB 302 (2002); Arizona SB 1059 (2002); California SB 1911 (2002); Illinois HB 5625 (2002); Connecticut HB 5530 (2003); Kansas HB 2015 (2003); Maine HB 1165 (2003); Texas HB 2895 (2003); Virginia HB 1599 (2003); Colorado SB 27 (2004); Arkansas HB 2095 (2005); California SB 570 (2005); Colorado HB 1034 (2004); Idaho SB 1165 (2005); Nevada AB 47 (2005); Oregon SB 1059 (2005); Virginia SB 843 (2005); Washington HB 5763, Chapter 504 laws of 2005. Sec. 101. (2005); Colorado SB 5 (2006); Georgia HB 1145 (2006); Louisiana HB 503 (2006); Maryland HB 1257 (2006); Colorado HB 1057 (2007); New Jersey AB 2281 (2007); Oregon SB 328 (2007); Colorado HB 1016 (2008); Florida HB 1429 (2008); Minnesota SB 3049 (2008); New Mexico HB 364 (2008); Oklahoma SB 2000 (2008); Vermont HB 615 (2008); Alabama HB 559 (2009); California AB 1516 (2009); Colorado HB 1022 (2009); Montana SB 399 (2009); Tennessee HB 2295 (2009); Texas HB 4451 (2009); Arizona HB 2471 (2010); Colorado SB 14 and 153 (2010); New Hampshire HB 621

(2010); Tennessee HB 459 (2010); Idaho HB 140 (2011); Iowa SB 327 (2011); Kansas HB 2104 (2011).

### *Disproportionate Minority Contact*

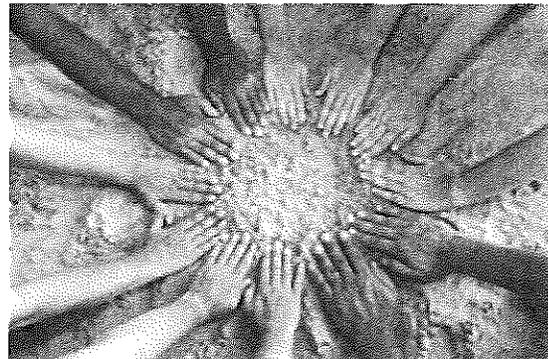
Tennessee HJR 890 (2005); Kansas SB 47 (2006); Indiana HB 1289 (2007); Colorado HB 1119 (2008); Connecticut HB 5933 (2008); Iowa Code Sec. 2.56; Sec. 8.11 (2008); Maryland SB 882 (2010); Connecticut HB 6634 (2011); Illinois SB 2271 (2011); Texas SB 501 (2011).

### *Detention and Corrections Reform*

Arizona HB 2282 (2001); Illinois HB 2088 (2001); Virginia HB 2631 (2001); Maryland HB 961 (2002); Mississippi HB 974 (2002); South Dakota HB 1253 (2002); Florida HB 5019 (2006); Georgia HB 245 (2009); North Dakota SB 2159 (2009); Oregon HB 2299 (2009); Florida SB 1012 (2011); New Mexico HB 40 (2011).

### *Reentry/Aftercare*

Colorado HB 1357 (2001); Illinois HB 4566 (2004); Maryland SB 767 (2004); Oklahoma SB 985 (2004); Washington HB 3078 (2004); Wisconsin AB 709 (2004); Delaware SB 52 (2005); Montana SB 426 (2005); Virginia HB 2657 (2005); Indiana SB 84 (2006); Ohio HB 137 (2006); Vermont SB 194 (2006); Arizona SB 1041 (2007); California AB 1300 (2007); Hawaii SB 1444 (2007); Illinois HB 615 (2007); New Mexico HB 738 (2007); New York SB 3092 (2007); Colorado HB 1156 (2008); Connecticut HB 5926 (2008); Ohio HB 113 (2008); Colorado HB 1044 (2009); Kansas HB 2642 (2008); Virginia HB 1258 (2008); Texas HB 2386 (2009); Washington HB 1954 (2009); Arkansas SB 339 (2011); Connecticut HB 6634 (2011); North Carolina SB 397 (2011).





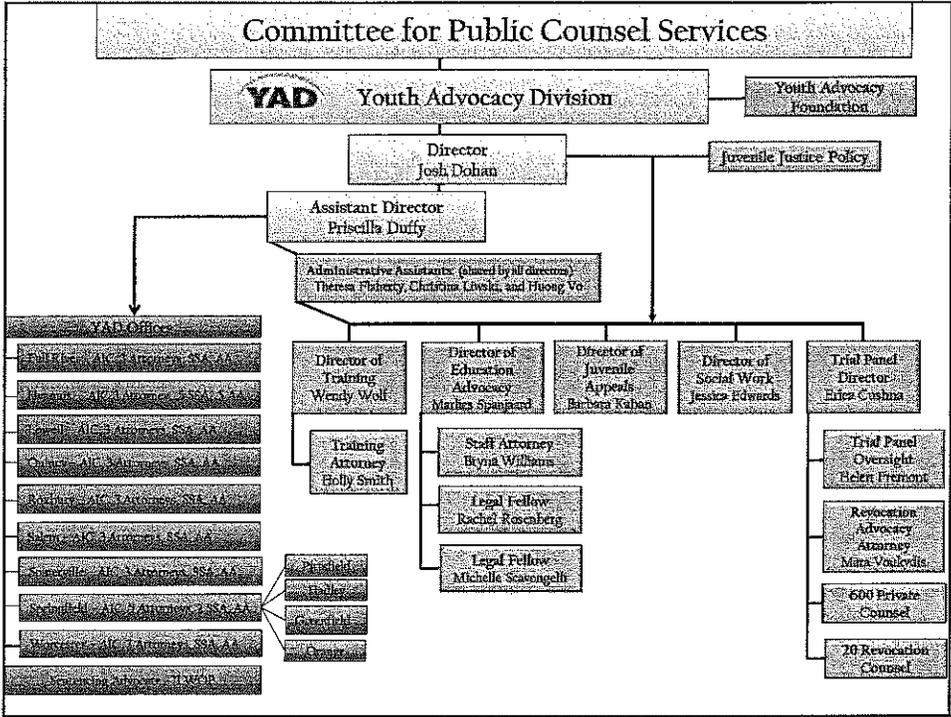
NATIONAL CONFERENCE  
*of* STATE LEGISLATURES  
*The Forum for America's Ideas*

## The Youth Advocacy Division

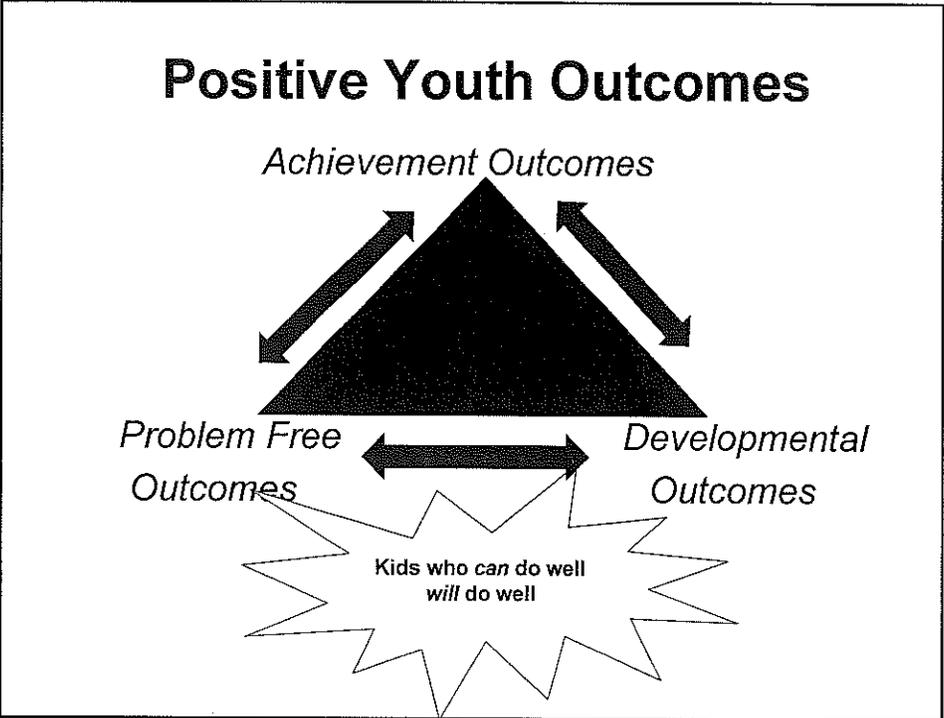
- The Challenge
  - High Stakes
  - Complicated Practice (law and social work)
  - Years of Neglect
  - Lack of prestige
- The Payoff
  - The Kids
  - The Community

## The Youth Advocacy Division

- Pilot to Division
  - Leadership
  - Training
  - Support
  - Oversight



# The Youth Development Approach to Zealous Advocacy

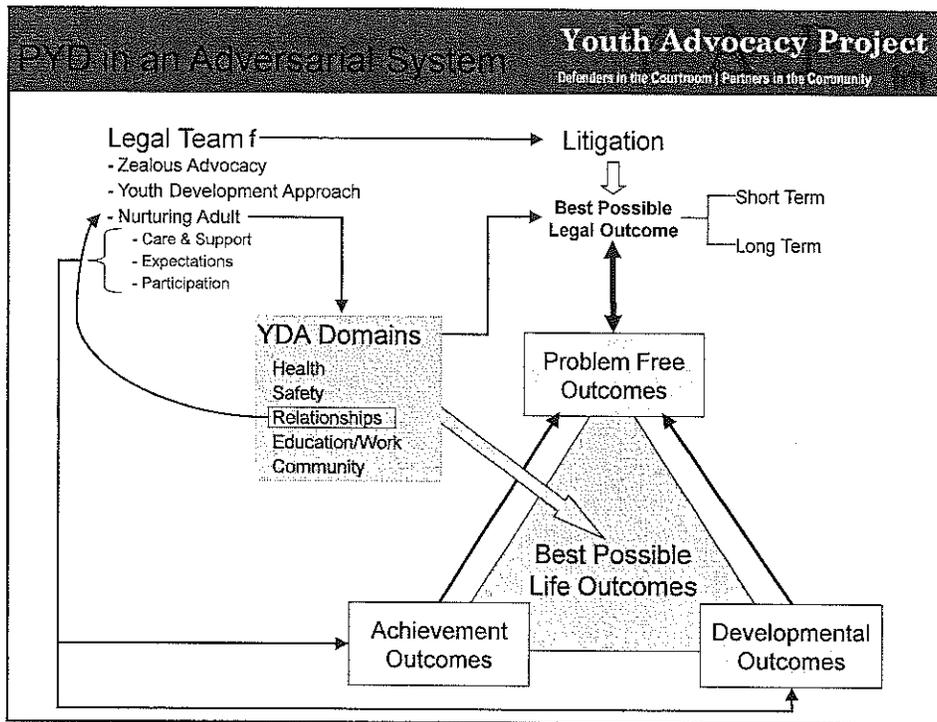


## Fairness

- [R]ecent studies... suggest that the appearance as well as the actuality of fairness, impartiality and orderliness -- in short, the essentials of due process -- may be a more impressive and more therapeutic attitude so far as the juvenile is concerned. For example, in a recent study, the sociologists Wheeler and Cottrell observe that, when the procedural laxness of the "*parens patriae*" attitude is followed by stern disciplining, the contrast may have an adverse effect upon the child, who feels that he has been deceived or enticed.
- In re Gault, 387 U.S. 1 (1967)

## Role of Defense Counsel

- Zealous Legal Advocacy
- Nurturing Adult
  - High Clear and Fair Expectations
  - Maximum Participation
  - Caring and supportive
  - Transitional and transformative
- Five Domains





COMMUNITY NOTEBOOK:

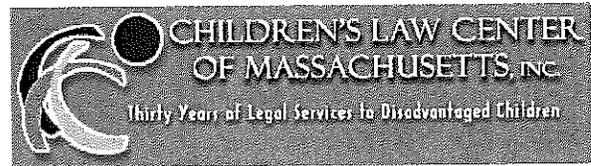
# Education Edition

Youth Advocacy Department and  
The Children's Law Center of Massachusetts

# TABLE OF CONTENTS

- 1 Letter of Introduction
- 2 The Elements of Massachusetts Secondary Education
- 7 Pathways to Graduation
- 9 No Child Left Behind Act
- 12 Special Education
- 19 Homeless Students
- 20 Discipline
- 25 English Language Learners
- 27 Advocacy/Family Resources

**EdLaw** PROJECT



Juvenile Indigent Defense  
**ActionNetwork** A Project of Model for Change



*Committee for Public Counsel Services*

# TO THE READER

Fall 2010

**Dear Parent, Teacher, Mentor, Youth Worker, and Child Advocate,**

The “School to Prison Pipeline” sucks in thousands of young children each year and spits out just as many adults who spend their lives in and out of prison, drug programs, and homeless shelters, and are unable to provide for themselves. School failure robs individuals of the opportunity to lead fulfilling lives and deprives society of productive, taxpaying citizens. The EdLaw Project, a partnership between the Youth Advocacy Department and the Children’s Law Center of Massachusetts, has put together this Education Community Notebook because we believe that with even a little support, thousands of children can be diverted from this pathway.

Children need thoughtful advocates to help them access the educational resources they need to thrive. This Notebook offers an in-depth overview of the key elements of the Commonwealth’s complex education system—from academic and testing standards to discipline guidelines. To support your advocacy efforts, we have included advocacy tips throughout the Notebook to highlight areas where your advocacy can mean the difference between school failure and academic engagement.

School failure is often ignored until a child presents problems with behavior and/or truancy, but the vast majority of behavior and truancy issues can be traced back to a lack of academic achievement. For the most part, kids who are performing well academically will behave well in the classroom, regardless of problems in the home or neighborhood. Poor children, especially children of color, are the most likely to have unmet educational needs. Academic failure is usually detectable early in the child’s academic career. Early intervention is almost always the cheapest and most effective strategy.

To make matters worse, many schools respond to behavior and truancy problems with harsh and knee jerk discipline practices and/or court referrals. While those are sometimes necessary, disciplinary approaches that push kids out of school and fail to address the underlying educational or psychosocial issues are ineffective and costly. Worse, they often exacerbate the behavior problems, lead to more time out of school, contribute to continued school failure, and dramatically increase the likelihood of life-long court involvement and incarceration.

We hope you find this Education Community Notebook to be a useful tool for helping children achieve greater academic, life, and legal success. If you have any questions about the Notebook or education advocacy, please feel free to contact The EdLaw Project in Roxbury at 617-989-8100 or by email at [mspanjaard@publiccounsel.net](mailto:mspanjaard@publiccounsel.net) or the Children’s Law Center in Lynn at 781-581-1977.

Marlies Spanjaard, JD, MSW  
Coordinator, The EdLaw Project

# THE ELEMENTS OF MASSACHUSETTS SECONDARY EDUCATION

## MASSACHUSETTS CURRICULUM FRAMEWORKS AND MCAS

All youth need to experience academic success. Many court-involved youth have been effectively denied an appropriate education from an early age. Good advocates need to understand the policies that define a quality education in Massachusetts. A quality education includes equal access to an enriched curriculum, effective teaching methods delivered by highly qualified instructors, and the presence of engaged, informed parents or guardians in order to stimulate students. Additionally, effective school systems must recognize the needs of the individual learner by affording a student every opportunity to meet grade promotion and graduation standards. The Massachusetts Education Reform Act of 1993 instituted sweeping reform, two provisions of which detail statewide curriculum standards and strict measures of student proficiency: the Massachusetts Curriculum Frameworks and the Massachusetts Comprehensive Assessment System (MCAS).

### MASSACHUSETTS CURRICULUM FRAMEWORKS

The Massachusetts Curriculum Frameworks are statewide standards that identify what students should know and be able to do in each content area at each grade level. The Curriculum Frameworks include standards for arts, English language arts, foreign languages, comprehensive health, mathematics, history and social science, science and technology/engineering, English Language Proficiency (LEP), and vocational technical education for each grade level. Local districts use the state curriculum frameworks to develop more specific curricula for their students.

View the current frameworks at [www.doe.mass.edu/frameworks/current.html](http://www.doe.mass.edu/frameworks/current.html)

### MASSACHUSETTS COMPREHENSIVE ASSESSMENT SYSTEM

Massachusetts is one of many states that uses “high stakes” testing to make critical decisions about a student, such as high school graduation and grade promotion. In Massachusetts, that test is the Massachusetts Comprehensive Assessment System. The MCAS has been criticized for many reasons including punishing students for the system’s failures to teach them what they need to know to pass; creating a “teaching to the test” environment; punishing students who do not test well; as well as increasing grade retention and dropout rates. Understanding MCAS, however, is essential for developing a complete picture of your client’s academic situation.

### WHAT IS MCAS?

The MCAS is a performance-measuring test administered to every student enrolled in a Massachusetts public school from the third to tenth grades. Based on the Massachusetts Curriculum Frameworks, the assessment tests a variety of subjects including English language arts, mathematics, science and technology/engineering, history, and social science. Individually, results help determine whether students are meeting the learning standards set by the state and can be used to identify those who may need additional support services or remediation. The assessment is a major element used in reporting the strengths and weaknesses in the curriculum of Massachusetts schools and districts. The Massachusetts Department of Elementary and Secondary Education (DESE) uses MCAS results to report on the Adequate Yearly Progress (AYP) of schools and districts in accordance with the federal No Child Left Behind Act (p. 9).

All students being educated through public funding are required to take the MCAS, including public school students, students with Limited English Proficiency, students with disabilities, and students in the custody of the Department of Children and Families and the Department of Youth Services. In addition, students who are receiving a publicly funded education in public charter schools, educational collaboratives, private schools, or institutional settings are required to take the exam. However, homeschooled students are neither required to take the MCAS nor have a right to take the exam. Students required to take the MCAS may use one of the following formats:

- Routine (standard) MCAS testing;
- MCAS testing using one or more test accommodation(s); or
- MCAS Alternate Assessment (p. 4)

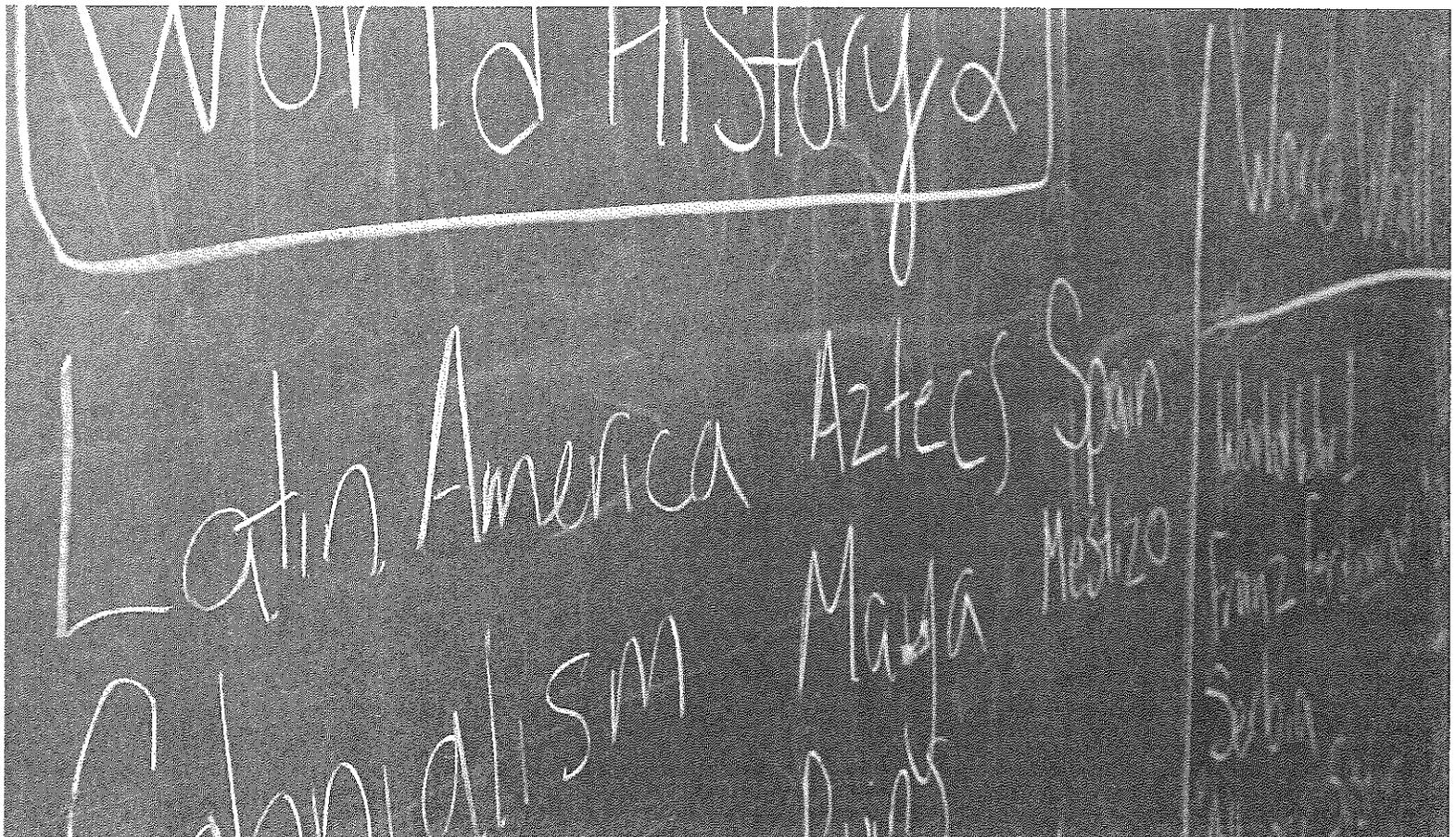
## STUDENTS WITH DISABILITIES

A student's special education team is responsible for determining how the student will participate in the MCAS exam. Accommodations may include changing the timing or scheduling of the test, the setting of the test, presentation of the test, and how the student responds to the test. Certain students may be found eligible for the MCAS Alternate Assessment. Any accommodations should be documented in the Individualized Education Plan or in the 504 plan (p. 18).

**ADVOCACY TIP**  
**MONITORING STUDENT PROGRESS**

For students with special needs, ensure that MCAS accommodations are documented and the student is made explicitly aware of them.

For specific standard and non-standard MCAS accommodations for students with disabilities, visit [www.doe.mass.edu/mcas/participation/sped.doc](http://www.doe.mass.edu/mcas/participation/sped.doc)



## MCAS ALTERNATE ASSESSMENT

A small number of students with significant disabilities who are unable to take the standard MCAS tests, even with accommodations, participate in the MCAS Alternate Assessment (MCAS-Alt) as determined by his or her Special Education Team. The MCAS-Alt is a review of a portfolio, compiled by the teacher, of specific materials based on the Curriculum Frameworks that demonstrates the skills and knowledge of the student. The portfolio may include work samples, instructional data, videotapes, previous work and assessments, and other supporting information. A student must earn a score of Needs Improvement or higher on the MCAS-Alt to achieve the state competency determination necessary to obtain a diploma.

## STUDENTS WITH LIMITED ENGLISH PROFICIENCY

With the exception of students who are in the first year of enrollment in a public school, students with Limited English Proficiency are required to take all the MCAS tests scheduled for their grade. The Massachusetts DESE defines a Limited English Proficiency student as “a student whose first language is a language other than English and who is unable to perform ordinary classwork in English.” LEP students in the first year are not required to take ELA or reading tests scheduled for their grade, but a school has the option of assessing the student in ELA and history and social science. Current or former LEP students are permitted to use approved bilingual word-to-word dictionaries on any MCAS test.

Tenth grade Spanish-speaking LEP students who have been in the United States for fewer than three years may receive additional accommodations. If the student can read and write at or near grade level in Spanish, he or she may be able to take the mathematics MCAS using an English/Spanish version. Students may write answers in English or Spanish. All students must take the English Language Arts tests in English.

In addition to participating in MCAS, LEP students must annually take the Massachusetts English Proficiency Assessment (MEPA) tests in reading, writing, speaking, and listening. Information on the MEPA is available at [www.doe.mass.edu/mcas/mepa](http://www.doe.mass.edu/mcas/mepa).

For specific standard and non-standard MCAS accommodations for LEP students, visit  
[www.doe.mass.edu/mcas/participation/lep.doc](http://www.doe.mass.edu/mcas/participation/lep.doc)

## COMPETENCY CRITERIA

All students must meet the Competency Determination requirement on the MCAS in order to receive a high school diploma. In order to meet the Competency Determination graduation requirement students must meet the following criteria:

- Earn a scaled score of at least 240 on the grade ten English language arts and mathematics tests

OR

- Earn a scaled score between 220 and 238 on these tests AND fulfill the requirements of an Educational Proficiency Plan (EPP)

AND

- Earn a scaled score of at least 220 on one of the high school MCAS Science and Technology/Engineering (STE) tests: Biology, Chemistry, Introductory Physics, or Technology/Engineering

# SCORING THE MCAS

Results are reported for individuals, schools, and districts with the following performance levels:

MCAS

Exit



**Advanced (grades 4-10):** Demonstrates a comprehensive and in-depth understanding of rigorous subject matter, and provides sophisticated solutions to complex problems

**Above Proficient (grade 3):** Demonstrates mastery of challenging subject matter and constructs solutions to challenging problems

**Proficient (grades 3-10):** Demonstrates a solid understanding of challenging subject matter and solves a wide variety of problems

**Needs Improvement (grades 3-10):** Demonstrates a partial understanding of subject matter and solves some simple problems

**Warning (grade 3) / Failing (grades 4-10):** Demonstrates a minimal understanding of subject matter and does not solve simple problems

## EDUCATIONAL PROFICIENCY PLANS

An Educational Proficiency Plan, or EPP, is a planning tool developed for students who did not score at least a 240, or “Proficient,” on the mathematics and/or English language arts MCAS grade ten tests or retests. An EPP consists of three elements:

- A review of a student’s strengths and weaknesses based on MCAS scores, coursework, and teacher/ advisor input
- A list of the courses the student must successfully complete in grades 11 and 12 in the relevant content area
- A description of the assessment the school will administer annually to determine the student’s progress toward proficiency in those areas

Students with EPPs must achieve the stipulations of the plan, in addition to scoring at least a 220 on the MCAS test in question, in order to receive a diploma.

## MCAS APPEALS

The MCAS appeals process allows students to demonstrate through course work that they have met or exceeded the English Language Arts and/or mathematics proficiency standards on the grade ten MCAS tests, even though they have repeatedly been unable to pass the tests.

In order to be eligible for an MCAS appeal a student must meet the following criteria:

- Must have taken the grade ten MCAS at least three times, or submitted at least two MCAS-Alt Assessment portfolios in the subject area of the appeal;
- Must have maintained at least a 95% attendance level during the school year prior to *and* the year of the appeal (with possibility of justified exemption);

**AND**

- Must have satisfactorily participated in tutoring and other academic support services under an individual student success plan (ISSP).

### ADVOCACY TIP APPEALING A DENIAL

If a superintendent refuses to file an MCAS appeal, the student's advocate should encourage the parents to appeal that decision to the school committee, and then to the Commissioner of the Department of Education.

The appeal must be filed by the Superintendent or a designee of the district in which the student is enrolled.



# PATHWAYS TO GRADUATION

## DIPLOMA

In Massachusetts, in order to earn a diploma from a public high school, a student must meet the state Competency Determination graduation requirement and meet all local district graduation requirements (p. 4). Competency Determination is met by earning a passing score on the tenth grade Massachusetts Comprehensive Assessment System (MCAS).

There are compelling reasons why students should complete high school and earn a diploma. According to Andy Sum, professor of economics and Director of the Center for Labor Market Studies at Northeastern University in Boston, the long term cost of not having a high school diploma includes lower employment over their working lives, considerably lower annual earnings, less access to employee benefits (including health insurance and pension coverage), and a significantly higher incidence of poverty. For society, losses include less real output, greater marital instability, lower federal, state, and local tax receipts, and much higher rates of incarceration in jails and prisons.

### ADVOCACY TIP MONITORING STUDENT PROGRESS

Advocates should encourage students to pursue and obtain a high school diploma. With the exception of youth with significant disabilities, students should be on a high school diploma track.

## CERTIFICATE OF ATTAINMENT

The Certificate of Attainment is a state-endorsed credential adopted by local school committees to promote access to educational, job training, and employment opportunities for students who have completed their high school program of study but have not passed the MCAS. Generally, to be eligible, students must have made a good faith effort to attain the standards on the MCAS English Language Arts and mathematics tests and must have completed all local graduation requirements, including attendance, course completion, and satisfactory grades.

There are options for those students wishing to earn a diploma who have fulfilled the local district requirements for obtaining a diploma but have not yet met the competency determination:

- Continue to take the MCAS retest even if the student does not attend high school
- Consider eligibility for MCAS performance appeals (p. 6)
- Request a special education team meeting to discuss further options for support (eligible special education students only)
- Explore school and community-based options for tutoring supports

### ADVOCACY TIP CERTIFICATE OF ATTAINMENT

The Certificate of Attainment is not a diploma and does not grant a student the same opportunities as a diploma, such as access to many four-year colleges. Often students are unaware that they are not on track to receive a diploma. Therefore, it is critical to be informed of credit status and MCAS scores.

## ABILITY TO BENEFIT TEST

Many post-secondary schools that accept applicants with a Certificate of Attainment will require that they demonstrate their “ability to benefit” (ATB) by passing an approved test to qualify for state and federal tuition aid. Though the specific content of these examinations can vary from one institution to another, they generally include reading comprehension, sentence skills, and arithmetic sections.

## POLICIES THAT CAN IMPACT STUDENT PROGRESS

A student's road to graduation is multi-faceted, and in Massachusetts there are many policies designed to evaluate and guide his or her progress. Understanding the breadth and depth of a student's full academic profile is an essential advocacy tool. Specific policies can vary between schools and districts and are found in a school district's handbook. Generally, student handbooks can be found on the website of the local school district, and it is a good idea to be familiar with the policies in your district. Below are the most common policies that effect a student's academic progress.

- Promotion policies
  - ◆ Retention
  - ◆ Social promotion
  - ◆ Grading
  - ◆ Academic warning notices
- Attendance policies
- District-specific learning standards (e.g., curriculum)
- District requirements for obtaining a diploma
  - ◆ Waivers for some course requirements
  - ◆ Alternatives for obtaining diploma
- District timetables for MCAS testing and retests
- Other district-wide benchmark standardized testing
- School transfers
- Opportunities for additional support services
  - ◆ Summer School requirements
  - ◆ Individual Student Success Plans (ISSP)
  - ◆ Tutoring

### ADVOCACY TIP

#### MONITORING STUDENT PROGRESS

Advocates should understand school requirements and request student records to ensure that students are on track to complete the local district requirements. Pay close attention to lab science and foreign language as these subjects can be difficult for those students to keep up with if held for extended periods of time in a DYS facility or hospital.

## ALTERNATIVE SCHOOLS

It is important to find out about the "alternative" schools in your district. The word "alternative" can be used to describe many different school environments. Some alternative schools provide a viable option for meaningful education, while others are little more than warehouses for children who have been suspended or expelled, and other times still, the word is used to describe a therapeutic special education school placement. Parents and advocates should research the academic reputation of the schools in their district before agreeing to send children there.



### OBTAINING STUDENT RECORDS

Requesting records is a vital first step in advocating on behalf of students. A review of these records can help a parent or advocate focus their support efforts. Obtaining student records can be done with written permission of the parent, guardian, or student (if over 18 years of age). At a minimum, be sure to ask for records of attendance, grades, standardized test scores, discipline records, special education records, and evaluations.

# NO CHILD LEFT BEHIND ACT

## STANDARDS, ACHIEVEMENT, AND ACCOUNTABILITY

**T**he No Child Left Behind Act of 2001 (NCLB) is a federal law aimed at increasing the academic achievement of students nationwide and raising the bar for accountability in public schools. Responsibility for complying with NCLB is primarily left to state and local education agencies. While NCLB does not create individual claims of actions, the law does allow parents some important rights and options regarding the education of their children.

### ADEQUATE YEARLY PROGRESS (AYP)

One of the main goals of NCLB is to assure that all students are “academically proficient” by the 2013-2014 school year. In order to achieve this goal, each school is required to meet Adequate Yearly Progress (AYP) as determined by participation rate and performance on a standardized test (in Massachusetts, the MCAS), an additional attendance or graduation requirement, and either the state's performance target or the group's own improvement target.

If a school fails to meet AYP two years in a row, the school is designated as being “in need of improvement” and must follow a required course of action to improve performance. A school or district's “Accountability Status” dictates that course of action.

### LEVELS OF ACCOUNTABILITY STATUS

**IMPROVEMENT** — If a school is not making progress after one year of “in need of improvement” then the school must allow parents of low-income students to obtain additional services from outside providers to supplement their schoolwork. These are called Supplemental Educational Services.

Visit [www.doe.mass.edu/ses](http://www.doe.mass.edu/ses) for a full state listing of approved educational service providers.

**CORRECTIVE ACTION** — If a school is not making progress after two years of being “in need of improvement” then, in addition to the above, the school may need to take additional corrective actions which may include staff replacement, curriculum reform, extending the school day or year, or seeking outside expert advice.

**RESTRUCTURING** — If the school is not making progress after three years of being “in need of improvement” the school is required to restructure. In the restructuring period, the school will still fund Supplemental Education Services and allow transfers, but additionally, it will be required to make plans for alternate governance. Restructuring can include reopening as a charter school, replacing staff relevant to the failure of achieving AYP, seeking outside management, or submitting to a state take-over.

To view past AYPs for Massachusetts, visit [www.doe.mass.edu/sda/ayp](http://www.doe.mass.edu/sda/ayp)

### ADVOCACY TIP

#### REQUESTING A TRANSFER UNDER NCLB

A student attending a school with an “In Need of Improvement” status may transfer to any school in the city that is not designated as “in need of improvement” as long as there are openings in that school. A transfer can be requested at any of the Family Resources Centers in your city. It is important to remember that just because a school is not listed as “in need of improvement” it may still be struggling. It is important to research and visit available schools prior to requesting a transfer.



Status designations of Improvement, Corrective Action, and Restructuring require schools to do the following:

- Develop and implement a school improvement plan to be developed jointly with parents
- Receive technical assistance from the district and/or state
- Provide students with options to transfer and be transported to another school that is making progress

## UNSAFE SCHOOLS

Schools are required to notify parents if the school has been identified as an unsafe school. For a school to be designated as "persistently dangerous," a school must meet either of the following criteria for three consecutive years beginning with the most recent enrollment data available to the Department of Elementary and Secondary Education as well as the prior two years:

- One or more students have been expelled for violation of the Federal Gun-Free Schools Act
- The number of students who have been permanently excluded or expelled from school for a period greater than 45 days under state law for weapons or physical assaults or for violent crimes exceeds 1.5% of the student enrollment based on yearly enrollment data submitted to the DESE.

Under NCLB's "unsafe schools" option, a parents may transfer a child to a safe school if the current school is identified as "persistently dangerous" or if the child is a victim of a violent crime at school. An individual student who is a victim of a violent criminal offense which takes place at school (includes the premises, on buses, or at school-sponsored event) must, to the extent feasible, be allowed to transfer immediately to another public school within the school district.

## TITLE I

Title I of the No Child Left Behind Act of 2001 provides federal funding to eligible schools to develop educational programs that enable low-income students to achieve the proficiency goals outlined by NCLB. Schools qualify based on demonstrating that the K-12, ages 5-17, membership has a sufficiently high percentage of economically disadvantaged students. Title I regulations require school districts to provide services to all schools where at least 75% of students qualify for free or reduced price meals. Schools and districts funded by Title I must develop a comprehensive plan outlining each program, plainly referencing its intended implementations and results, with garnered support from parents, teachers, and administrators alike. Outlined below are four important elements schools must provide in conjunction with school-wide programs.

### SCHOOL AND DISTRICT REPORT CARDS

Report cards must specifically state AYP designation of school and must include the following:

- **Assessment Information**—Comparing districts, grades, and subjects by MCAS performance level versus Massachusetts performance targets
- **Accountability Data**—Includes student attendance, Competency Determination rates, AYP history, and Accountability Status for each school and district
- **Teacher Quality Data**—Number of teachers in core academic areas, percentage of core academic teachers identified as “highly qualified,” and student/teacher ratio

### WHOLE SCHOOL IMPROVEMENT PLANS

The Whole School Improvement Plan (WSIP) is a detailed educational battle plan designed to guide teachers, inform parents, and state a plan to ensure a high promotion/graduation rate. The WSIP includes the following:

- Instructional goals and strategies (including educational reform, if necessary)
- An analysis of past student testing performance
- Notes on parental inclusion
- Professional development plan for all teachers
- Strategies to help struggling students

### SUPPLEMENTAL EDUCATIONAL SERVICES

If a school is not making AYP after three years, low-income students can receive Supplemental Educational Services (SES) approved by the Department of Education and provided outside the regular school day.

**NOTE: It is up to the parent to complete the paperwork to have services started.**

### PARENT INVOLVEMENT AND THE HOME/SCHOOL COMPACT

Individual schools and districts must facilitate parental involvement in developing a written “Parent Involvement Policy” covering three areas:

- Describe the school’s responsibility to provide quality curriculum and instruction to the students
- Describe how parents are responsible for supporting their student’s learning
- Address the importance of communication between teachers and parents

# SPECIAL EDUCATION

## RIGHTS, ELIGIBILITY, AND IMPLEMENTATION

**T**he Individuals with Disabilities Education Act (IDEA) of 2004 is the federal law ensuring services to students with disabilities. IDEA provides eligible students from ages three to 22 a free and appropriate public education. Assistance may include consultative or psychological services, transportation, speech or occupational therapy, and are provided at no cost to the student. Similar state protections are provided under Massachusetts General Law Chapter 71B. Associated federal regulations are at 34 C.F.R. 300 and 201, and state regulations are at 603 C.M.R. 28.00.

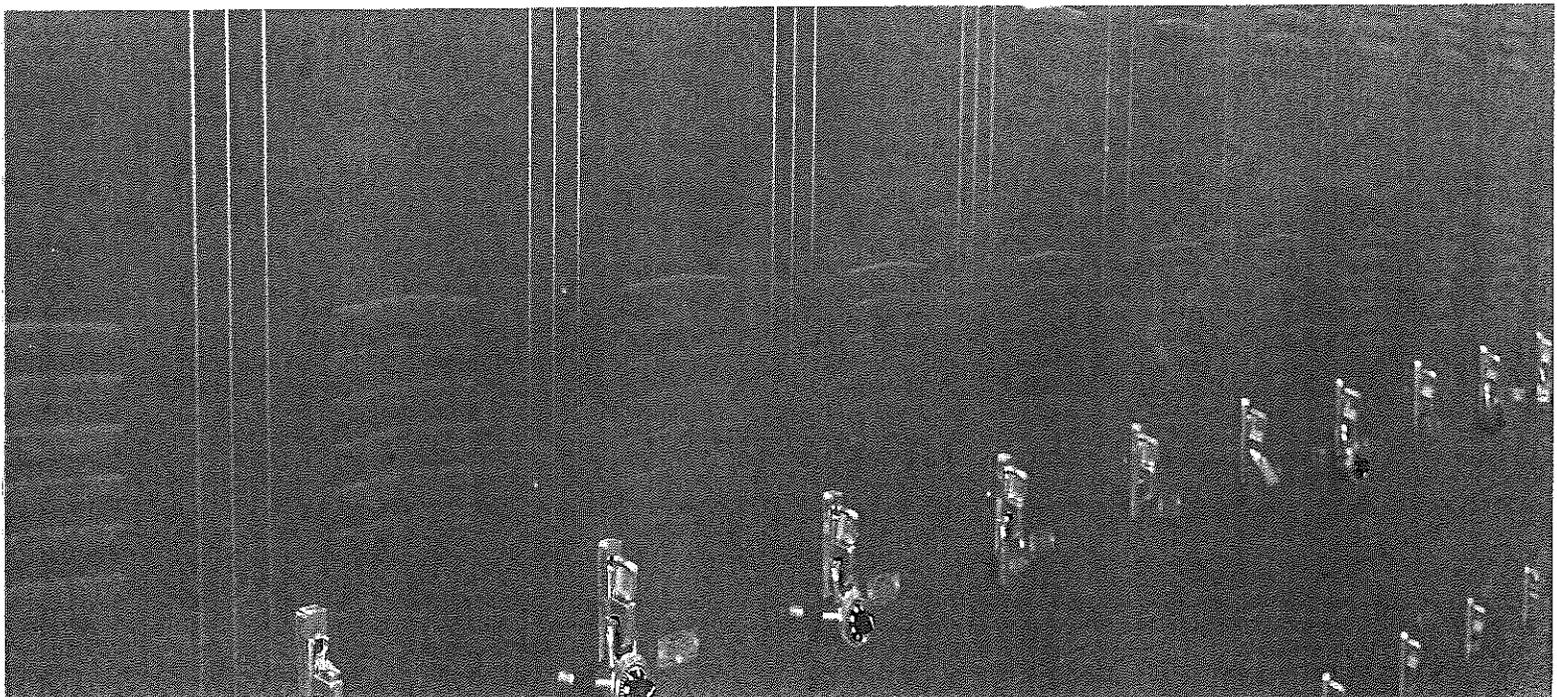
In Massachusetts, over eighty percent of the children involved in the busiest courts have unmet educational needs and nearly ninety percent have school discipline problems (Citizens for Juvenile Justice, *Special Education Reform*). Often behavior issues result from unmet educational needs. Identifying children who may be eligible for special education services based on their early school career is one more way to ensure their success.

Parents, youth serving professionals, and advocates need to be zealous in pushing for appropriate services at the first sign of academic difficulties. Special education services can be very expensive and school districts often have limited resources. Detecting and addressing educational needs early can reverse academic failure, reduce the need for future arduous interventions and ultimately bring a halt to a youth's progression through the school-to-prison pipeline.

### EVALUATION

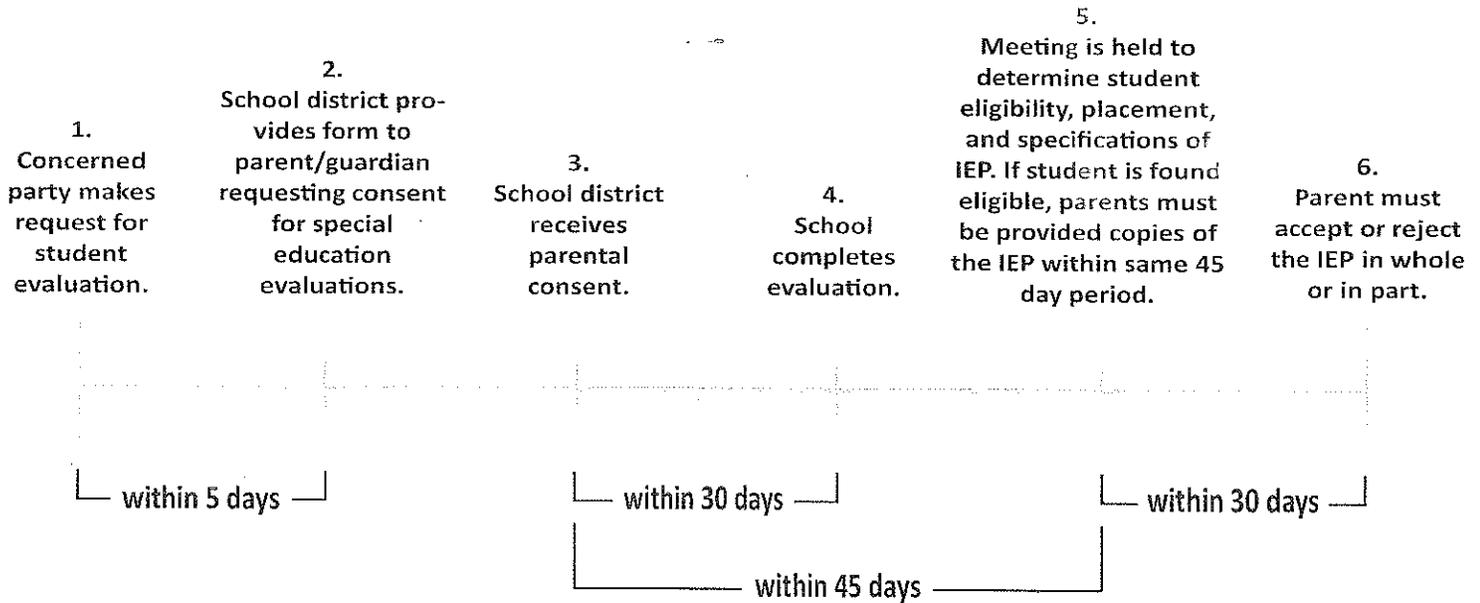
In order for a student to be evaluated for special education services, a parent, caregiver or youth-serving professional needs to request an evaluation referral. The request should be in writing, signed and dated, and copies should be retained by the parent. A student with these issues might benefit from an evaluation to determine whether he or she is eligible for special education or related services due to:

- a medical condition relating to the student's physical, mental, or emotional health/development that may affect his or her ability to progress in school
- failure to make progress in school
- a history of behavioral issues and/or frequent disciplinary action



# Special Education Timeline

Obtaining special services for an eligible student requires the cooperative involvement of both the school and parent/guardian. The initial request for an evaluation made by a concerned party (e.g., a parent, teacher, mentor, etc.) should be made in writing to the school. Once the school receives consent for an evaluation, the following timeline is set in motion.



## THE TEAM

The Team is responsible for determining whether the student is eligible for special education services. IDEA requires that a Team include the following individuals, each with an equal voice:

- The parent(s) or guardian of the student
- The student (if he or she is 14 years of age or older)
- At least one regular education teacher
- At least one special education teacher/provider
- An individual who can interpret the instructional implications of evaluation results
- A representative from the district who:
  - a. is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of individuals with special education needs
  - b. is knowledgeable about the general education curriculum
  - c. is knowledgeable about the availability of resources of the local educational agency

**ADVOCACY TIP**

**ATTENDING A TEAM MEETING**

Team meetings can often be overwhelming to parents. Though they are an equal member of the education team they can feel overruled by school staff when considering services for the student. Advocates can attend meetings to provide support to parents and express their opinions regarding services.

## TAKE NOTE

### INTERPRETOR SERVICES

A school district is required to provide an interpreter at every Team meeting for non-English speaking parents and/or students. Additionally, all written documents, such as the IEP and evaluations, must also be translated if a parent cannot read or write, or is visually or hearing impaired. The school must accommodate to those specific needs.

At the initial Team meeting, the team leader facilitates the members of the Team to complete the following agenda items:

- Discuss concerns about the student
- Review the results of all evaluations and provide the parent/guardian with written reports of these results (if requested, parents can get copies of these reports at least two days prior to the team meeting)
- Determine whether, based on these results, the student has a qualifying disability
- Determine the student's eligibility to receive special education and/or related services including quantity of services, type of accommodations, appropriate placement, and program location

To find a child eligible for special education services, the Team must find that the child meets the following criteria:

- Has a qualifying disability (i.e., mental retardation, hearing impairment, speech or language impairment, visual impairment, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, specific learning disability, or other health impairment)
- Is failing to progress in the general curriculum as a result of the disability
- Requires specialized instruction and related services in order to make progress in the general curriculum

## ADVOCACY TIP OUT-OF-SCHOOL

### PROVIDER RECOMMENDATIONS

Families working with outside providers, such as therapists, social workers, or youth workers should encourage them to come to the Team meeting to provide their support and information to the Team. If out-of-school providers are not able to attend Team meetings, parents should request written recommendations from them to present to the Team.

# Special Education Service Continuum

## Pull Out Services

Services administered to students outside the regular classroom, such as: counseling, speech and language therapy, or occupational/physical therapy.

## Separate Classrooms

Specialized instruction for all academic areas in a classroom of no more than 12 students. Common classrooms include those focused on learning disabilities or behavioral problems.

## Residential School

Privately run schools for the most disabled students who require 24-hour support in addition to specialized instruction and support in co-curricular areas.

## Resource Room

Specialized instruction in one or more academic areas in a classroom of no more than 12 students, most commonly for English or math.

## Day School

School specifically focused on children with disabilities who need special support in all academic and co-curricular areas. These schools can be private or public.

## THE INDIVIDUALIZED EDUCATION PLAN (IEP)

If the student is found eligible for special education services, the Team will develop the Individualized Education Plan (IEP). Development of the IEP occurs at the initial eligibility determination meeting. Changes to the IEP can occur at any team meeting including mandated annual reviews, three year evaluation meetings, or any other time the team meets in its official capacity.

An Individualized Education Plan must include the following components:

- The student's placement
- The student's program location
- The present levels of academic achievement
- Measurable annual goals
- All services and accommodations the school will provide

Different IEP services provide unique services. Some placements will provide students with specialized instruction within a regular classroom, some will be substantially separate from the regular classroom, and others will be in specialized schools that primarily serve students with disabilities. Regardless of the name or type of placement proposed, understanding how the services will be provided in the placement and by whom is key to understanding whether the placement and services are appropriate for an individual student.

It is important to ensure that a parent understands and agrees with the type of setting and services that the school district is proposing to provide to the student. A parent should visit the proposed placement before agreeing to fully accept an IEP.

As soon as the school district has received the signed IEP, it is required to immediately implement all services and accommodations which have been accepted.

### TAKE NOTE STUDENT INCLUSION

Under IDEA's inclusion initiative, a student must be placed in the Least Restrictive Environment (LRE) that will allow the student to make effective progress. This means that, to the maximum extent appropriate, a student should be educated in a regular educational environment with children who do not have disabilities.

### TAKE NOTE REJECTING AN IEP

Even if a parent accepts the IEP, it can later be rejected. A parent might choose to do this if, for example, the student does not seem to be making progress despite the services he or she is receiving. The parent can simply write a letter to the school withdrawing acceptance of the IEP stating the reasons why the IEP is being rejected in part or in full. When an IEP is rejected, the last agreed upon IEP stays in place until a new IEP is accepted. If a parent rejects an IEP they have previously accepted, the child's placement and services will remain the same until the dispute is settled.

### REJECTING THE IEP, FULL OR IN PART

The parent/guardian decision maker may:

- request another Team meeting to discuss the reasons for rejecting the IEP
- request a hearing/mediation with the Bureau of Special Education Appeals (BSEA)

A student continues to receive any accepted services and placement until new services or placement is agreed upon.

## INDEPENDENT EVALUATIONS

If dissatisfied with the school's evaluations, the parent may request an independent evaluation conducted by a qualified professional of the parent's choice. The request must be made within 16 months of the school's evaluations. The school district may be required to cover part or all of the cost of this evaluation, depending on a family's income level. However, publicly funded evaluations must meet state requirements for evaluator qualifications and follow set pay rates (603 CMR 28.04 (5)).

The testimony of the evaluator at a due process hearing may be necessary and families should take this into consideration when choosing an evaluator.

## STUDENT FOUND INELIGIBLE FOR SERVICES

Parental consent should be requested and a reevaluation completed before a stoppage of any services. If a parent disagrees with the determination, the parent can appeal the decision to the Bureau of Special Education Appeals. Parents should ask for a written document stating the decision regarding ineligibility as well as the reasons why.

## THE BUREAU OF SPECIAL EDUCATION APPEALS (BSEA)

The BSEA is an independent body and as of July, 1 2010 is a part of the Department of Administrative Law Appeals. It resolves disputes between school districts and students with disabilities regarding eligibility, evaluation, placement, IEP, provision of special education services pursuant to state and federal law, or procedural protections of state and federal law for students with disabilities.

A decision of the BSEA is a final agency decision. Generally, the decision of the BSEA shall be immediately implemented. However, the aggrieved party may file a complaint for review of the hearing officer's decision to state or federal district court. The review on appeal is governed by M.G.L. Chapter 30A, the Administrative Procedure Act.

A hearing at the BSEA is an administrative procedure before a hearing officer where a parent is not required to have an attorney. However, it is recommended that parents do seek counsel as school districts will almost always have an attorney.

### ADVOCACY TIP

#### INDEPENDENT EVALUATIONS

Families often do not know they have a right to request an independent evaluation or that the school district may be required to pay for it. Though independent evaluations can seem complicated because they are requested through the school, it is the parent's responsibility to find an evaluator with the appropriate qualifications. It may be helpful to check with the district's special education office, as many provide a list of previously approved evaluators.

### TAKE NOTE

#### HEARING REQUESTS

A school district cannot request a hearing to challenge a parent's failure or refusal to consent to an initial evaluation or initial placement of a student in a special education program.

A parent can request a hearing on any issue regarding the denial of a free appropriate public education pursuant to Section 504 of the Rehabilitation Act of 1973 and/or IDEA.

For BSEA hearing procedural rules visit [www.doe.mass.edu/bsea/forms/hearing\\_rules.pdf](http://www.doe.mass.edu/bsea/forms/hearing_rules.pdf)

## DISPUTE RESOLUTION OPTIONS

**Facilitated Team Meeting:** The parties to an IEP meeting can agree that the presence of a neutral third party would assist them in successfully drafting an IEP.

**Mediation:** A meeting can be facilitated by a neutral individual who is trained in special education law and in methods of negotiation. The mediator helps the parent and school district talk about their disagreement and reach an agreement that both sides can accept.

**Due Process Hearing:** These meetings are conducted by a hearing officer. At the hearing, each party has the opportunity to present evidence (through documents and the testimony of witnesses) to support its position. Also, the parties have the right to cross-examine witnesses and to submit rebuttal evidence. Hearing officers enter binding decisions.

**SpedEx:** Available after a hearing request has been filed. The process uses an independent, neutral education SpedEx consultant jointly agreed-upon by the family and school. The consultant assists parties to determine which program the child needs to ensure a free and appropriate public education in the least restrictive environment. The consultant's fee will be paid by the Department of Elementary and Secondary Education. Neither party is bound by the consultant's recommendations.

**Advisory Opinion:** Available to parties who have requested a due process hearing. Each party has one hour to give a presentation of its case to a hearing officer, after which the hearing officer issues a written, nonbinding opinion within an hour of the close of the presentations. Parties may agree to make the resulting opinion binding.

A full list of resolution options exists at [www.doe.mass.edu/bsea/default.html](http://www.doe.mass.edu/bsea/default.html)

## ANNUAL REVIEW MEETINGS AND THREE-YEAR REEVALUATIONS

A student's special education Team must meet at least once a year to discuss the student's progress, develop a new IEP, and consider the types of services, accommodations, and placement the student might benefit from. The parent must decide whether to accept, accept in part, or reject the new IEP. Although the Team must meet at least once a year, it can meet more frequently. A parent has the right to request a Team meeting at any time and the school district is required to accommodate a parent's request, within reason.

At least every three years, or earlier if warranted, a school must request parental consent to complete a reevaluation. All evaluations initially completed should be included in the reevaluation.

## TRANSITION SERVICES

The Individuals with Disabilities Education Act requires that transition planning must occur as part of the IEP process beginning at age 14 (or younger if determined by the Team) to ensure the student's goals and vision are taken into account. This may include preparation for post-secondary education, employment, vocational training, independent living, and/or other community experiences. Massachusetts has a planning process, the Chapter 688 Referral, which identifies the potential need for services from adult human services agencies for students with significant disabilities. The referral is made two years before graduation or two years before turning 22 years of age. Unlike special education, there is no guarantee adult services will be provided.

### ADVOCACY TIP FOLLOWING UP ON A MEETING REQUEST

Although a school must honor all requests for a Team meeting when called for by a parent, there is no mandated timeline they must follow. Advocates can support their clients in this situation by encouraging the parents to follow up about scheduling the meeting or following up with the school themselves.

## AGE OF MAJORITY

In Massachusetts, when a student reaches 18 years of age he or she is deemed eligible to make decisions regarding his or her education, unless there has been a formal court action giving guardianship to another adult. A student can share this responsibility with or delegate it to another adult. A student and parent must be notified of all the rights and responsibilities of the age of majority at least one year before the student turns 18. Even after a student turns 18, a parent can still have access to a student's records and continues to have the right to receive written notices.

## EDUCATIONAL DECISION MAKING RIGHTS

IDEA requires states to protect the rights of students entitled to special education services who are in the custody of a state agency or whose parent or guardian cannot be identified or located. An important aspect of protecting a student is knowing who has the educational decision making rights. In Massachusetts, the Special Education Surrogate Parent Program (SESPP) was created to fulfill this role and the Department of Elementary and Secondary Education makes the assignments upon application. A special education decision-maker must meet these criteria:

- Be over 18 years of age
- Have appropriate skills and knowledge to make the decisions for the student
- Not be an employee of a state agency involved in the care or education of the specific student
- Not have a conflicting interest in the student

It is important to be clear who has the decision-making rights of the child. Parents do not lose their right to be a child's decision maker because of inexperience or lack of knowledge. Log on to [www.espprogram.org](http://www.espprogram.org) to read more on recruiting and training special education decision-makers in Massachusetts.

## 504 PLANS

Section 504 of the Rehabilitation Act of 1973 is designed to protect people from discrimination on the basis of a disability in programs and activities, both public and private, that receive federal money. Some students with disabilities are able to make progress in school without the need for specialized instruction and related services but require supportive services or accommodations in order to participate fully. Like IDEA, Section 504 mandates that a student receive a free appropriate public education. In 2008, Congress passed amendments to the Americans with Disabilities Act (ADA) which dramatically expanded eligibility of K-12 students under 504.

A student is eligible for protection under 504 if he or she meets one of the following requirements:

- Has a physical or mental impairment that substantially limits one or more major life activities (e.g., walking, thinking, concentrating, sleeping, eating, seeing, hearing, speaking, breathing, learning, reading, writing, performing math calculations, working, caring for oneself, and/or performing manual tasks)
- Has a record or records of such an impairment
- Is regarded as having such an impairment

A student is evaluated by the school in order to determine whether he or she is eligible for a 504 plan and to develop a plan if found eligible. In contrast with IDEA, the school is only required to notify the parent of the evaluation, but is not required to receive parental consent. However, it is recommended that schools seek consent.

See [www.doe.mass.edu/sped/links/sec504.html](http://www.doe.mass.edu/sped/links/sec504.html) for more information on 504 Plans.

# HOMELESS STUDENTS

The McKinney-Vento Homeless Assistance Act is a federal law first enacted in 1987 to ensure educational rights and protections for homeless students. Historically, a homeless student would experience significant disruption of his or her education due to numerous school transfers. The act defines homeless students, outlines their rights, and requires that school districts assign a liaison to facilitate their enrollment in school. Liaisons are district staff members responsible for ensuring the identification, school enrollment, attendance, and opportunities for academic success of students in homeless situations. They serve as the point of contact at the district level for all issues regarding homeless students and as the coordinator for district compliance with McKinney-Vento. The homeless education liaison's primary responsibility is to reach out and find the homeless students in their district.

## WHO IS HOMELESS?

Children and youth who “lack a fixed, regular, and adequate nighttime residence” are considered homeless for educational purposes. Students in these situations are considered homeless:

- “Doubled up”—sharing the housing of friends or relatives due to the loss of housing, economic hardship, or a similar reason
- Living in motels, hotels, trailer parks, or camping grounds because of the lack of alternative adequate accommodations
- Living in emergency or transitional shelters
- Abandoned in hospitals
- Awaiting foster care placement
- Have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings
- Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings
- Migratory children who qualify as homeless because they are living in circumstances described above
- Unaccompanied youths—adolescents who are not in the physical custody of their parents

### TAKE NOTE

#### UNDERSTANDING HOMELESSNESS

The definition of 'homeless' is very broad and its manifestation is not always obvious. Contact the school district's homeless liaison to see what can be done to help your client if he or she does qualify.

## WHAT ARE THE RIGHTS OF HOMELESS STUDENTS?

- To maintain enrollment in their school of origin whenever feasible
  - ◆ The school of origin is either the school the student was attending prior to the loss of permanent housing or the last school the student attended
  - ◆ Homeless students also have the right to attend their local school—any public school that students living in the same attendance area have the right to attend
  - ◆ Homeless students should remain at the school of origin, unless it is against the wishes of the parent, guardian or student
  - ◆ Students are allowed to remain in their school of origin for the duration of their homelessness or if they secure permanent housing, the remainder of the school year
- To receive transportation between school and temporary living situation as needed
- To be immediately enrolled in school and permitted to attend class even if normally required documentation (i.e., immunization and proof of residency records) is missing
- To receive appropriate services such as special education services, preschool, and free or reduced lunch

# DISCIPLINE

**Z**ero tolerance policies push children out of school and hasten their entry into the juvenile and eventually the criminal justice system. Since the early 1990's, many school districts have adopted demonstrably ineffective responses to school code violations. The result has been a dramatic increase in the number of students suspended annually from school often for minor infractions. Additionally, there has been an increase in police presence in schools, as well as new laws that mandate referrals of students to law enforcement for school code violations.

While it may seem that removing students with behavioral issues is the "safe" thing to do, in fact the research shows that schools that suspend or expel at a lower rate have higher achievement and greater safety. Moreover, it is detrimental to students and communities for children to be unsupervised all day. Every day that a student spends out of school because of disciplinary action, means a day that he or she is not benefitting from educational instruction and another day that he or she will fall behind. Advocates need to do everything they can to keep kids in school and ensure that school systems provide appropriate services for them to succeed. Understanding the state laws regarding school discipline is critical for advocating for educational success for students. Below is an overview of the key Massachusetts laws pertaining to the discipline of public school students.

## STATE LAW PROVISIONS

### Massachusetts General Laws, chapter 76, section 17:

A school committee shall not permanently exclude a pupil from the public schools for alleged misconduct without first giving him or her and his or her parent or guardian an opportunity to be heard. The school committee is charged with determining the expulsion of a student in all circumstances other than those included in M.G.L. c. 71 sec. 37H and 37H1/2, which allows principals to determine expulsion or suspension in certain circumstances.

Each school district must develop its own code of discipline provisions that includes all standards and procedures for suspension, expulsion, and other disciplinary policies.

### Massachusetts General Laws, chapter 71, section 37H:

- Every school district must publish a Code of Discipline or Code of Conduct.
- Students may be expelled by the principal for possessing a weapon or drugs at school or at school sponsored events, or for assaulting school staff.
- Students must receive written notification that they may have a disciplinary hearing before the principal. The notice must include the right to be represented by an attorney and the right to present evidence and witnesses.
- Students have the right to appeal a suspension or expulsion to the Superintendent if requested within ten days of receiving written notice of the decision to suspend or expel.
- Students have the right to be represented by an attorney at an appeal hearing.

## TAKE NOTE

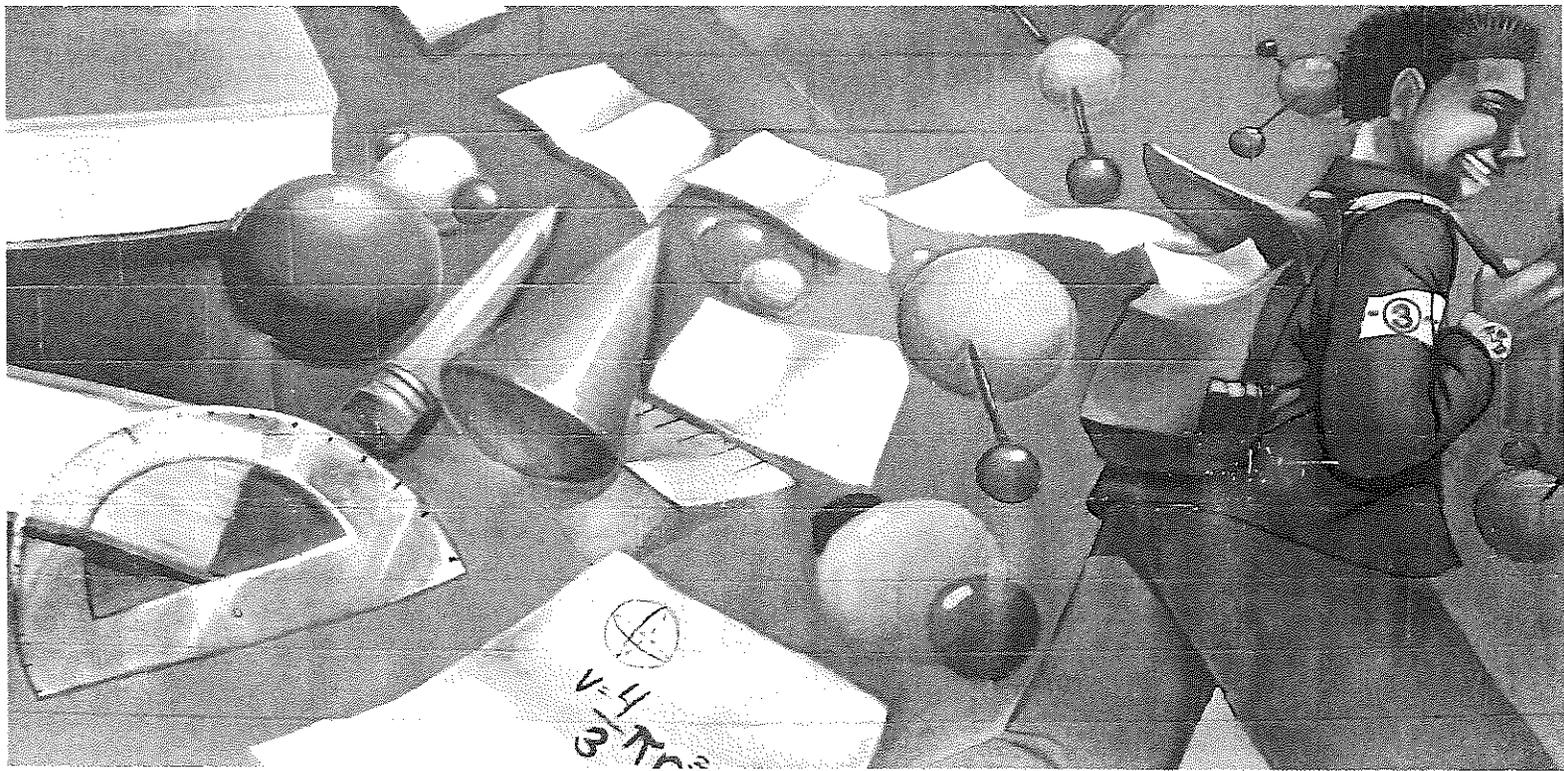
### DISCIPLINE HEARINGS

Your advocate may be able to represent their clients at school hearings if they are related to the case. Contact Helen Fremont at hfremont@publiccounsel.net

## TAKE NOTE

### APPEALING A 37H EXPULSION

The student may appeal the decision to the superintendent and request a hearing within ten days from the date of receiving written notice of the expulsion.



**Massachusetts General Laws, chapter 71, section 37H 1/2:**

This law allows principals to impose the following disciplinary sanctions:

- Suspend a student charged with a felony or upon felony charge of issuance of felony delinquency complaint up to the resolution of those charges in court
- Expel a student if convicted of, upon adjudication of, or admission in court of guilt of a felony or felony delinquency

In order to discipline a student under this law, the principal must also determine that the student's continued presence in school would have a substantially detrimental effect on the school's general welfare.

**TAKE NOTE**

APPEALING A 37H 1/2 EXCLUSION

Students have the right to appeal the decision by the Superintendent if requested in writing within five calendar days of the decision. The appeal hearing must be held within three calendar days of the request. At the hearing, the student has the right to counsel and the right to present oral and/or written testimony. A decision must be rendered within five days. The aggrieved party can file an action in state court.

**DISTRICT AND SCHOOL-BASED DISCIPLINE POLICIES TO KNOW AND UNDERSTAND**

Details of district and school discipline policies can generally be found in the school's student handbook, available either online or in hard copy. Speaking with school administrators or guidance counselors to learn more about the policies may also be necessary. Pay close attention to the following policies:

- Hearing procedures
- The specific consequences for specific infractions
- Alternatives to suspension or expulsion
- Alternatives that the school is required to have tried prior to suspension or expulsion
- How students can make up missed school work
- Procedure for returning to school
- Providing interpreters to parents for whom English is not their first language
- What administrator can preside over the disciplinary hearing
- Appeal rights

**ADVOCACY TIP**

MONITORING STUDENT PROGRESS

Ensure that students are on track academically to complete the local district requirements, specifically in lab science and foreign language, which can be difficult for those held for extended periods of time in a DYS facility or hospital.

## SUSPENSION AND EXPULSIONS

Each school district is responsible for defining suspension and expulsion and for delineating the behavior that can lead to each. In general, suspension is a short term exclusion from school. Expulsion usually indicates a long-term or permanent exclusion.

In Massachusetts, if a student is expelled, the school district is generally not obligated to provide educational services, with the exception of students with disabilities. However, some school districts have a policy of providing alternative education for students who have been expelled.

### ADVOCACY TIP SUSPENSIONS/EXPULSIONS:

If you are working with a student who has been disciplined, understand the following district policies:

- Making up missed school work
- Making up missed standardized tests (i.e. MCAS)
- Obtaining help with completing homework out of school
- Ensuring that the attendance record accurately reflects days out of school as disciplinary days and not absences
- Whether alternative education is provided to expelled students

## CLERKS HEARING OR SCHOOL-BASED ARRESTS

Criminal charges or a delinquency complaint stemming from an incident occurring at school can be brought by the school or individuals, including school personnel, depending on the circumstances. Sometimes, this can result in a clerk magistrate's hearing to determine whether or not actual charges will be brought or whether a delinquency complaint will issue. A student may bring a lawyer to this proceeding, but the court is not required to appoint a lawyer if the student is indigent.

Unfortunately, our over-burdened courts have limited resources for helping kids succeed in school. Furthermore, a criminal record makes life success much more difficult. Attorneys and parents must fight to avoid delinquency or criminal charges and resist the temptation of an easy end to court involvement through a plea or other means.

## DISCIPLINE OF STUDENTS WITH DISABILITIES

If a school is contemplating an expulsion or any exclusionary disciplinary action that would keep a special education student out of school for more than ten days, the student's special education team must hold a manifestation meeting. Students eligible for special education services have two important rights relevant to disciplinary processes:

- The right to "stay put" in his or her placement - A student may not be kept out of his or her placement as a result of a disciplinary sanction for more than ten cumulative days in one school year unless a manifestation determination review is held and the special education team determines that the student's behavior was not a manifestation of his or her disability.
- The right to continue to receive a free appropriate public education during any disciplinary period beyond ten days - special education students must still receive the educational services in his or her IEP during exclusions from school.

At the manifestation determination review, the special education team must answer two questions:

- Was the student's conduct caused by or directly related to his or her disability?
- Was the student's conduct the direct result of the school's failure to implement the IEP?

If the answer to either of these questions is yes, then the behavior is a manifestation of the disability and the school may not discipline the child for more than ten days. Instead, the school must conduct a Functional Behavioral Assessment and implement a Behavioral Intervention Plan or modify an existing plan in order to provide appropriate educational services. If the answer to both of these questions is no, then the behavior is not a manifestation of the disability and the student may be subject to discipline as a regular education student.

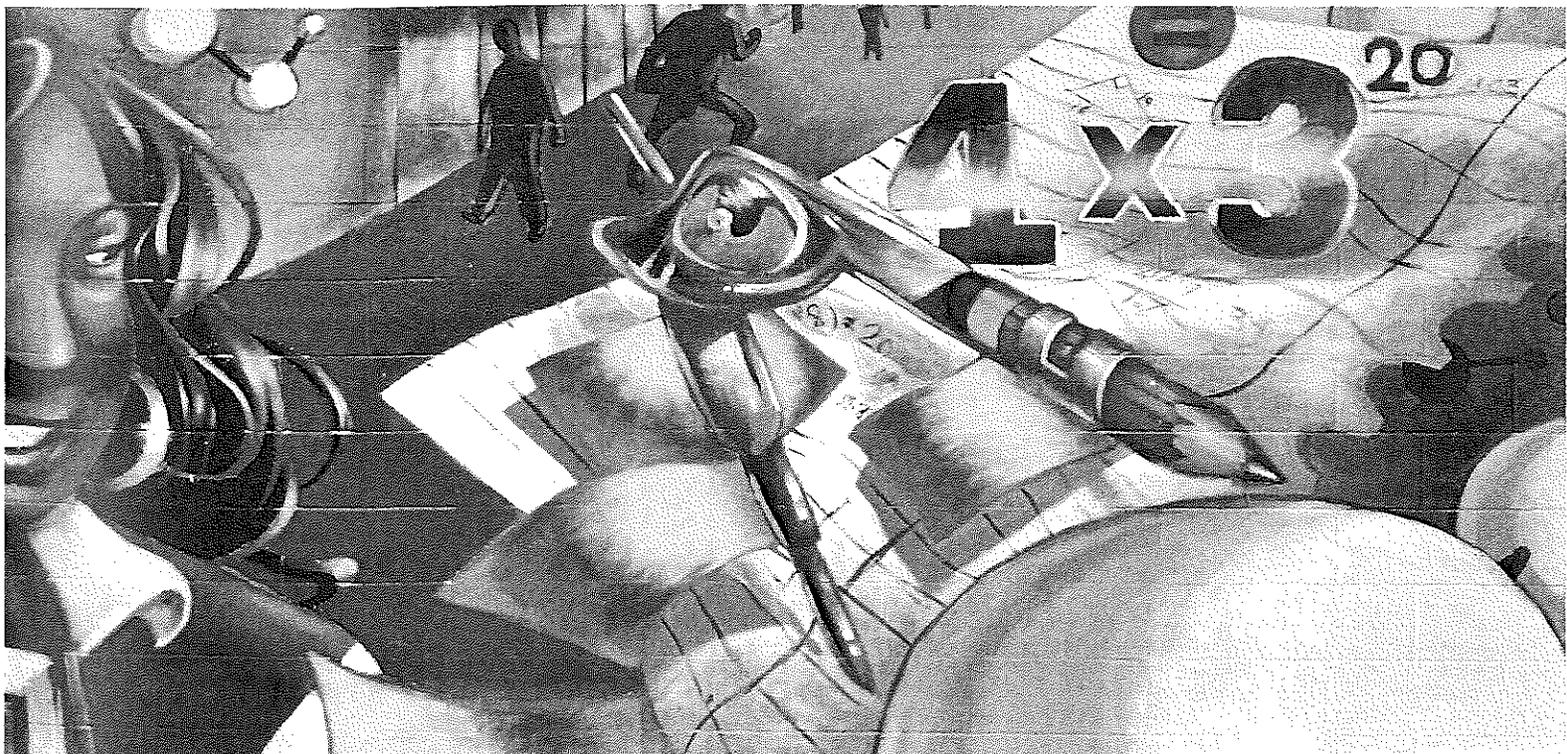
Students eligible for special education services can be moved to another school setting (Interim Alternative Education Setting) for up to 45 school days without a manifestation determination review **if** the incident leading to discipline can be categorized as one of the following situations:

- The possession of a weapon or possession or use of illegal drugs at school/school sponsored events; or
- The infliction of serious bodily injury upon another person while at school/school functions. Serious bodily injury means: substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily part or mental faculty.

Parents and school districts can otherwise agree to another placement.

A parent or other person with educational decision-making rights has the right to appeal the decision of the Team to the Bureau of Special Education Appeals (BSEA). During an appeal the student remains in a disciplinary placement or an interim alternative education setting until a decision is ordered or until the time period for placement expires. The hearing must be scheduled within 20 school days and a decision rendered within ten school days.

A school district may request a hearing at the BSEA to transfer a student to an Interim Alternative Education Setting for 45 school days if there is concern that keeping a student in his or her current special education placement is substantially likely to result in injury to that student or other students. A hearing must be scheduled within 20 school days and a decision rendered within ten school days of the hearing.



## STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION SERVICES

Students who have not been determined to be eligible for special education and related services and who have engaged in behavior that violates a school code of conduct may assert any protections provided for students already eligible if the school district "had knowledge" that the student may have a disability prior to the conduct.

The district "has knowledge" if one of the following situations exist:

- The teacher or other school personnel has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district
- The parent has expressed concern in writing to supervisory or administrative personnel of the school district, or teacher, that the student is in need of special education and/or related services
- The parent has requested an evaluation of the child for possible special education needs

### ADVOCACY TIP CALLING FOR AN EVALUATION

Parents may not realize they have a right to have their child evaluated for special education services. An advocate who notices that a client is performing poorly in school should discuss this option with the family and consider requesting an evaluation.

These protections do not apply if the parent has not allowed an evaluation or refused services, or if the student was evaluated and determined to be ineligible. If there is no basis of knowledge, the student is subject to disciplinary action as a regular education student who engaged in comparable behaviors.

If a request for an evaluation for special education needs is made during the period of disciplinary action, the evaluation should be expedited. If the student is found eligible for special education and/or related services, the services will be provided. Pending the evaluation, the student will remain in the placement determined by the school which can include a disciplinary placement.

## EDUCATIONAL SERVICES IN INSTITUTIONAL SETTINGS

The Department of Elementary and Secondary Education provides certain special education services to students in certain facilities operated by or under contract with the Department of Mental Health, the Department of Youth Services, County Houses of Corrections, or the Department of Public Health. The Department retains the discretion to determine based upon resources, the type and amount of special education and related services that it provides in such facilities. Where a student's IEP requires a type or amount of service that the facility does not provide, the school district where the father, mother or legal guardian resides remains responsible to implement the student's IEP by arranging and paying for the provision of such services.

### ADVOCACY TIP RIGHT TO EDUCATION

Many children in custody are not getting their full range of special education services. To assure that students are getting their services while in custody, parents and advocates should alert institutional staff as to the student's status as a student with special needs and provide them with the IEP if possible. Find out what services the institution will be providing and follow up with the sending school district to provide the additional services.

Local school districts also have responsibilities to students in institutional settings. Students in these settings remain the responsibility of the school district where the father, mother or legal guardian resides for referral, evaluation, and the provision of special education in accordance with state and federal law as students in public schools. The school district where the father, mother or legal guardian resides shall be responsible to coordinate with the Department of Elementary and Secondary Education to ensure that the student receives an evaluation, an annual review, and special education services as identified at a Team meeting convened by the parent's school district. A representative from DESE shall participate in Team meetings for students receiving special education services in an institutional setting.

# ENGLISH LANGUAGE LEARNERS

In 2002, Massachusetts voters affirmed a ballot initiative requiring that public school students be taught all subjects (with limited exceptions) in English and be placed in English Language classrooms. As a result districts had to change the way they educated students who are English Language Learners (ELL). Districts can support ELL students through Sheltered English Instruction (SEI) classrooms, two-way bilingual classrooms, or English Language acquisition services.

First through twelfth grade students who are English Language Learners (ELL) *must* be placed in an SEI classroom. There are two exceptions to this rule: If the student is in a two-way bilingual program or granted a waiver. Kindergarteners may be placed in SEI classroom, a two-way bilingual classroom, or in the mainstream classroom with assistance in English language.

If a student assigned to an SEI classroom is performing well academically and can understand English instruction, he or she can transition into a mainstream classroom with services. If the student is not ready to enter a mainstream classroom after a year, the school will make a recommendation for what they think is best for the student. This might be another year in a SEI classroom or entering a two-way bilingual program. If the parent/guardian objects and wants to appeal the recommendation, they may do so. There is no “cap” or maximum number of years a student can remain in the SEI program. Many students will be placed into a SEI program for only a year, but they may stay in the SEI program for longer if needed.

A parent may seek a waiver granting them permission for their child to not be placed into an SEI program. This is granted when the principal and staff believe that an alternative course of education would be better suited for the student’s academic progress and acquisition of English. In order to be granted a waiver, the parent must apply annually by visiting their child’s school and providing written informed consent.

- Students under the age of ten are eligible to apply for a waiver only after 30 days in an SEI classroom. The waiver must be approved by the principal *and* the superintendent.
- Students over the age of ten are eligible to apply for a waiver without having spent any time in an SEI classroom. The waiver needs to be approved by the principal.

Once a student has been granted a waiver, he or she may continue to receive language support services as needed.

## ELL DEFINITIONS

### **English Language Learner (ELL):**

A child who does not speak English or whose native language is not English, and who is not currently able to perform ordinary classroom work in English. A student is considered ELL until she or he can meaningfully participate in a mainstream classroom without language supports.

### **Limited English Proficient (LEP):**

Used interchangeably with *English Language Learner*.

### **Sheltered English Instruction (SEI):**

Program where all the materials and teaching is done in English with a curriculum designed for students who are English Language Learners.

### **Two-way Bilingual classroom:**

Classroom that provides instruction in English and a second language. Classrooms are composed of both native and non-native English speakers. Since instruction is in both languages, both groups of students become proficient in both languages.

A parent may decide to “opt-out” of the SEI program for their child even without the approval of school or district staff. To “opt out” of the program, districts may require parents to sign a consent form documenting their decision.

For more information about English Language Learner Education in Massachusetts, see

[http://www.doe.mass.edu/ell/chapter71A\\_faq.pdf](http://www.doe.mass.edu/ell/chapter71A_faq.pdf)

## ADVOCACY TIP

### NATIVE LANGUAGE ACCOMODATIONS

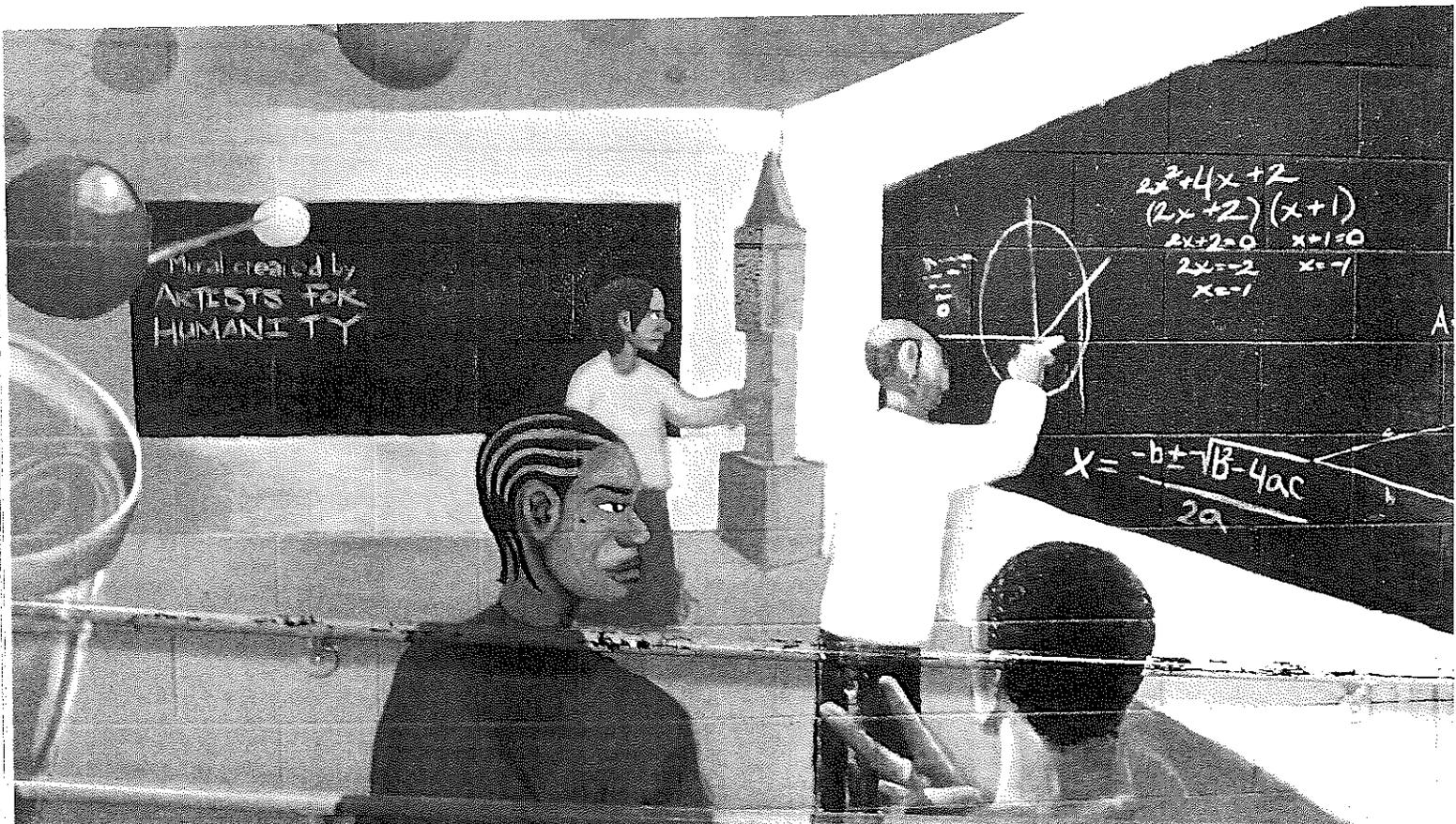
- Students should receive guidance and counseling in the student's primary language.
- School notices must be written in the primary language of the home (this includes disciplinary notices).
- Students and parents have a right to have an interpreter at disciplinary hearings as well as special education meetings.

## TAKE NOTE

### ASSESSMENTS FOR LEP STUDENTS

Federal and state laws require that LEP students be assessed annually to measure their proficiency in reading, writing, listening, and speaking English, as well as the progress they are making in learning English.

All student identified as LEP who attend Massachusetts public schools (grades K-12) are required to take the Massachusetts English Proficiency Assessment (MEPA) which measures reading and writing skills as well as the Massachusetts English Language Assessment-Oral (MELO) which measures listening and speaking skills.



# ONLINE RESOURCES

## MCAS

Massachusetts DOE Website for the MCAS  
[www.doe.mass.edu/mcas](http://www.doe.mass.edu/mcas)

Boston.com MCAS District/School Result Website  
[www.boston.com/news/education/k\\_12/mcas](http://www.boston.com/news/education/k_12/mcas)

## NO CHILD LEFT BEHIND

U.S. Department of Education Website for NCLB  
[www.ed.gov/nclb/landing.jhtml](http://www.ed.gov/nclb/landing.jhtml)

Massachusetts DOE Website for NCLB  
[www.doe.mass.edu/nclb](http://www.doe.mass.edu/nclb)

## SPECIAL EDUCATION

Massachusetts Association of 766 Approved Private Schools  
[www.spedschools.com](http://www.spedschools.com)

Wrightslaw Website for Special Education Law  
[www.wrightslaw.com](http://www.wrightslaw.com)

U.S. Department of Education  
Office of Special Education and Rehabilitative Services  
[www.ed.gov/about/offices/list/osers/osep/index.html](http://www.ed.gov/about/offices/list/osers/osep/index.html)

Massachusetts DOE Special Education Website  
[www.doe.mass.edu/sped](http://www.doe.mass.edu/sped)

Massachusetts Trial Court Law Libraries  
(for special education law)  
<http://www.lawlib.state.ma.us/index.html>

## DISCIPLINE

American Bar Association  
[www.abanet.org/youthatrisk](http://www.abanet.org/youthatrisk)

Wrightslaw Website with Resources  
for Behavior Problems and Discipline  
[www.wrightslaw.com/info/discipl.index.htm](http://www.wrightslaw.com/info/discipl.index.htm)

Mass. DOE Website for Education Laws and Regulations  
[www.doe.mass.edu/lawsregs/advisory/discipline/AOSD1.html](http://www.doe.mass.edu/lawsregs/advisory/discipline/AOSD1.html)

## HOMELESS STUDENTS

National Law Center on Homelessness and Poverty  
[www.nlchp.org](http://www.nlchp.org)

National Center for Homeless Education  
[www.serve.org/nche](http://www.serve.org/nche)

Massachusetts Coalition for the Homeless  
<http://www.mahomeless.org/>

National Association for the  
Education of Homeless Children and Youth  
[www.naehcy.org](http://www.naehcy.org)

## ENGLISH LANGUAGE LEARNERS

Massachusetts Department of Education Website for  
English Language Learners/Bilingual Education Advisory Council  
[www.doe.mass.edu/ell](http://www.doe.mass.edu/ell)

WestEd Website on Fostering Academic  
Success for English Language Learners  
[www.wested.org/policy/pubs/fostering](http://www.wested.org/policy/pubs/fostering)

U.S. DOE Office of English Language Acquisition  
[www.ed.gov/about/offices/list/oela/index.html](http://www.ed.gov/about/offices/list/oela/index.html)

## OTHER JUVENILE ADVOCACY GROUPS

National Center on Juvenile Justice  
[www.edjj.org](http://www.edjj.org)

National Center for Juvenile Justice  
[www.ncjj.org](http://www.ncjj.org)

Center for Juvenile Justice Reform  
[www.jlc.org](http://www.jlc.org)

National Juvenile Defender Center  
[www.njdc.info](http://www.njdc.info)

Citizens for Juvenile Justice  
[www.cfjj.org](http://www.cfjj.org)

# EDUCATION ADVOCACY ORGANIZATIONS

## **Center for Law and Education**

99 Chauncy Street, Suite 402  
Boston, MA 02111  
p: 617-451-0855  
e: kboundy@cleweb.org  
www.cleweb.org

## **Children's Law Center of Massachusetts, Inc.**

298 Union Street  
P.O. Box 710  
Lynn, MA 01903  
p: 781-581-1977  
www.clcm.org/community\_education.htm

## **Disability Law Center**

*Boston Office (Main)*  
11 Beacon Street, Suite 925  
Boston, MA 02108  
p: 617-723-8455  
e: mail@dlc-ma.org  
www.dlc-ma.org

## *Western Massachusetts Office*

32 Industrial Drive East  
Northampton, MA 01060  
p: 413-584-6337  
e: mail@dlc-ma.org  
www.dlc-ma.org

## **The EdLaw Project**

10 Malcolm X Boulevard  
Roxbury, MA 02119  
p: 617-989-8150  
e: mspanjaard@publiccounsel.net  
www.youthadvocacydepartment.org/edlaw

## **Federation for Children with Special Needs**

*Boston Office (Main)*  
1135 Tremont Street, Suite 420  
Boston, MA 02120  
p: 800-331-0688  
e: fcsninfo@fcsn.org  
www.fcsn.org

## *Western Massachusetts Office*

324 Old Springfield Road  
Belchertown, MA 01007  
p: 413-323-0681  
e: fcsninfo@fcsn.org

## **Juvenile Rights Advocacy Project**

Boston College Law School  
885 Centre Street  
Newton, MA 02459  
p: 617-552-2530  
e: sherman@bc.edu  
<http://www.bc.edu/schools/law/jrap/home.html>

## **Legal Assistance Corporation for Central Massachusetts**

405 Main Street, 4th Floor  
Worcester, MA 01608  
p: 508-752-3718  
www.laccm.org

## **Massachusetts Advocates for Children**

25 Kingston Street, 2nd Floor  
Boston, MA 02111  
p: 617-357-8431  
e: llockart@massadvocates.org  
www.massadvocates.org

## **Mental Health Legal Advisors**

399 Washington Street, 4th Floor  
Boston, MA 02108  
p: 617-338-2345  
e: mhlac@mhlac.org  
www.mass.gov/mhlac

## **The Special Education Clinic: Trauma and Learning Policy Initiative**

The WilmerHale Legal Services Center  
Harvard Law School  
122 Boylston St.  
Jamaica Plain, MA 02130  
p: 617-522-3003  
[www.law.harvard.edu/academics/clinical/lsc/clinics/specialed.htm](http://www.law.harvard.edu/academics/clinical/lsc/clinics/specialed.htm)

## **Suffolk University Education Advocacy Clinic**

45 Bromfield Street, 7th Floor  
Boston, MA 02108  
p: 617-305-3200  
e: iraskin@suffolk.edu  
[www.law.suffolk.edu/academic/clinical/edadvocacy.cfm](http://www.law.suffolk.edu/academic/clinical/edadvocacy.cfm)

**Parent/Professional Advocacy League**

*Boston Office*

45 Bromfield Street, 10th Floor  
Boston, MA 02108  
p: 617-542-7860  
www.ppal.net

*Worcester Office*

51 Union Street, Suite 308  
Worcester, MA 01608  
p: 508-767-9725  
www.ppal.net

**South Coastal Counties Legal Services**

*Boston Office (Main)*

11 Beacon St., Suite 925  
Boston, MA 02108  
p: 617-723-8455  
www.sccls.org

**Additional offices:**

*Brockton Law Office*

231 Main St., Suite 201  
Brockton, MA 02301  
p: 508-586-2110  
www.sccls.org

*Hyannis Law Office*

460 West Main St.  
Hyannis, MA 02601  
p: 508-775-7020  
www.sccls.org

*Fall River Law Office*

22 Bedford Street, 1st Floor  
Fall River, MA 02720  
p: 508-676-6265  
www.sccls.org

*New Bedford Law Office*

21 South Sixth St.  
New Bedford, MA 02740  
p: 508-979-7150  
www.sccls.org



Youth Advocacy Department  
Ten Malcolm X Boulevard  
Roxbury, MA 02119  
(617) 989-8100  
Fax: (617) 541-0904  
[youthadvocacydepartment.org](http://youthadvocacydepartment.org)

# Juvenile Public Defense in New Orleans and Louisiana



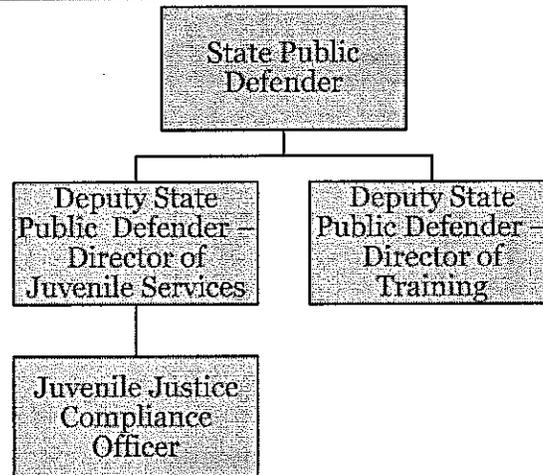
[www.laccr.org](http://www.laccr.org)



## THE STRUCTURE OF LOUISIANA'S JUVENILE JUSTICE SYSTEM

Louisiana Center for Children's Rights

## Louisiana Public Defender Board: Staffing Structure



## PUBLIC DEFENSE SERVICE DELIVERY IN LOUISIANA

- District defenders in each of 42 judicial districts decide how, and on what model, to operate their practice
- Most juvenile defense is provided by local public defenders through one of three systems:
  - Full-time public defenders (Lafayette, Lake Charles)
  - Contract counsel (Jefferson Parish)
  - Hybrid system (Plaquemines Parish)
- District defenders are only funded in part by the state – most districts receive most of their funding from local fines and fees
- 501(c)(3) contract programs for specialized cases:
  - Appeals
  - Capital
  - Innocence
  - Juvenile

## Juvenile Defense Service Provision in Louisiana

---

- State ensures juvenile defense is a priority through
  - State director of juvenile defender services
  - Standards
  - Compliance officer
  - Training
  - Funding a model juvenile defender office (LCCR)

Louisiana Center for Children's Rights



### **SOME ASPECTS OF THE RIGHT TO COUNSEL IN LOUISIANA'S JUVENILE JUSTICE SYSTEM**

Louisiana Center for Children's Rights

## **Presumption of Indigence**

---

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

– Louisiana Children’s Code Article 320(A)  
(2010 Louisiana Acts 593)

## **Right to Counsel**

---

“At every stage of proceedings under this Title, the accused child shall be entitled to the assistance of counsel at state expense.”

– Louisiana Children’s Code Article 809(A)  
(2010 Louisiana Acts 593)

## Waiver of Counsel, Part I

---

- A. The court may allow a child to waive the assistance of counsel if the court determines that all of the following exists:
- (1) The child has consulted with an attorney, parent, or, if no parent, a caretaker as defined in Children's Code Article 728.
  - (2) ) That both the child and the adult consulting with the child as provided in Subparagraph (A)(1) of this Article have been instructed by the court about the child's rights and the possible consequences of waiver.
  - (3) That the child is competent and is knowingly and voluntarily waiving his right to counsel.
- Louisiana Children's Code Article 810(A)

## Waiver of Counsel, Part II

---

- D. The child shall not be permitted to waive assistance of counsel in the following circumstances:
- (1) In proceedings in which it has been recommended to the court that the child be placed in a mental hospital, psychiatric unit, or substance abuse facility, nor in proceedings to modify said dispositions.
  - (2) ) In proceedings in which he is charged with a felony-grade delinquent act.
  - (3) In probation or parole revocation proceedings.
- Louisiana Children's Code Article 810(A)



## **THE LOUISIANA CENTER FOR CHILDREN'S RIGHTS**

Louisiana Center for Children's Rights

### **Mission**

---

We defend the right of every child in Louisiana's juvenile justice system to fairness, dignity, and opportunity.

Louisiana Center for Children's Rights

## **How Do We Do It: Strategies**

---

- Our holistic legal representation helps young people achieve their goals in court and in life;
- We provide resources and training for juvenile public defenders statewide; and
- We advocate for a juvenile justice system that is fair, compassionate, and supportive of positive youth development.

Louisiana Center for Children's Rights

## **What Are We?**

---

- Independent, 501(c)(3) nonprofit law office
- Founded in 2006; contracted with the Louisiana Public Defender Board since 2012
- Only independent juvenile public defender in Louisiana
- Only specialized delinquency defender in the country

Louisiana Center for Children's Rights

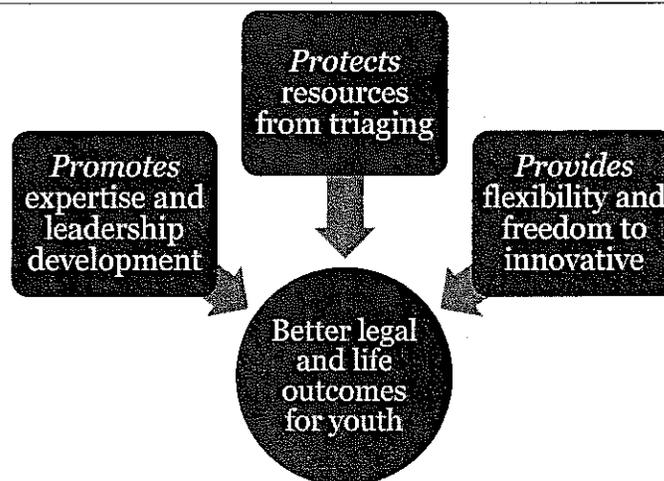
## Children's Defense Team

---

- Juvenile public defender in New Orleans
- Represents over 90% of youth prosecuted in Orleans Parish
- Model:
  - Holistic
  - Cross-disciplinary
  - Community-oriented
  - Client-directed

## Why Independence and Specialization?

---

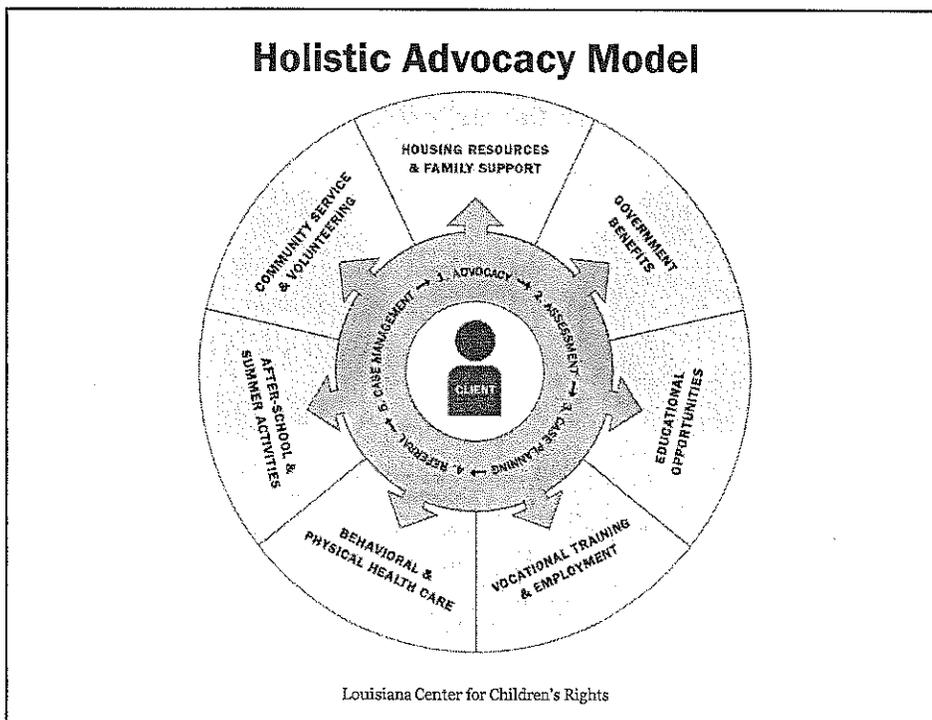


**Children's Defense Team:**  
**HOLISTIC ADVOCACY**

---

- What we do:
  - Help clients meet their **legal** and **life** goals
- How we do it:
  - Integrate **positive youth development principles** with **legal advocacy**
  - Stand up for the rights that every child has – from the right to equal justice to the right to a great education
- Why it works:
  - Access (= Reach + Relationships)
  - Expertise
  - Partnerships and Collaborations

Louisiana Center for Children's Rights



**Children's Defense Team:  
HOLISTIC ADVOCACY**

---



**Right to a  
life of  
learning and  
a future of  
opportunity**





**Educational  
& Economic  
Opportunity**

---

<b>Advocate...</b>	<b>Connect...</b>
<i>Expulsion hearing representation</i>	<i>Educational enrollment assistance</i>
<i>IEPs and other learning supports</i>	<i>Vocational training</i>
<i>Jail-to-School transitional assistance</i>	<i>Jobs and internship opportunities</i>

---

© 2013 Children's Defense Fund

**Children's Defense Team:  
HOLISTIC ADVOCACY**

---



**Right to a  
healthy  
start**





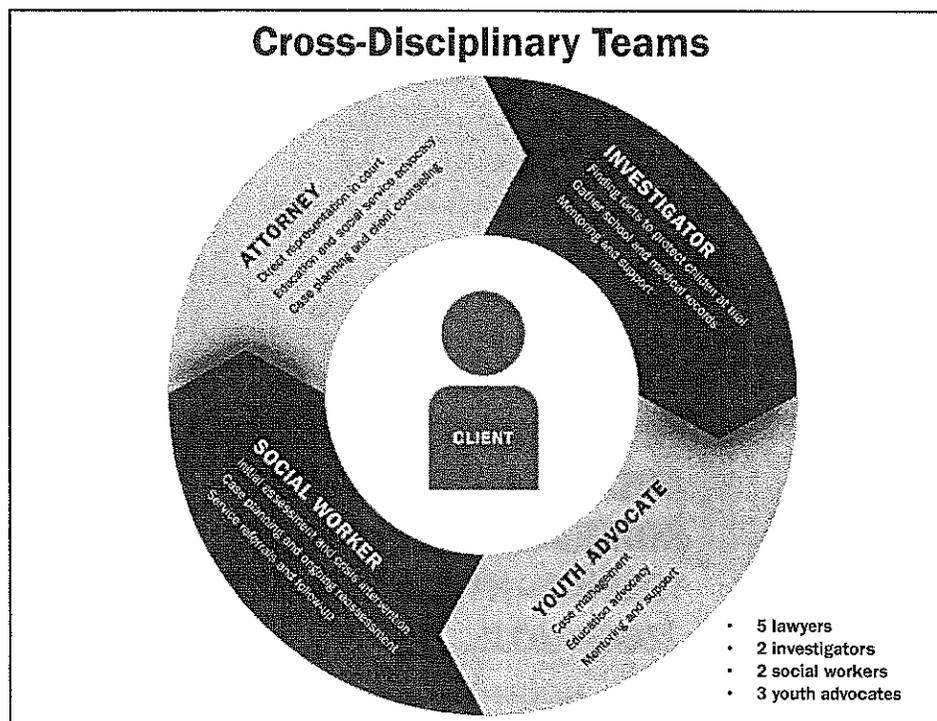
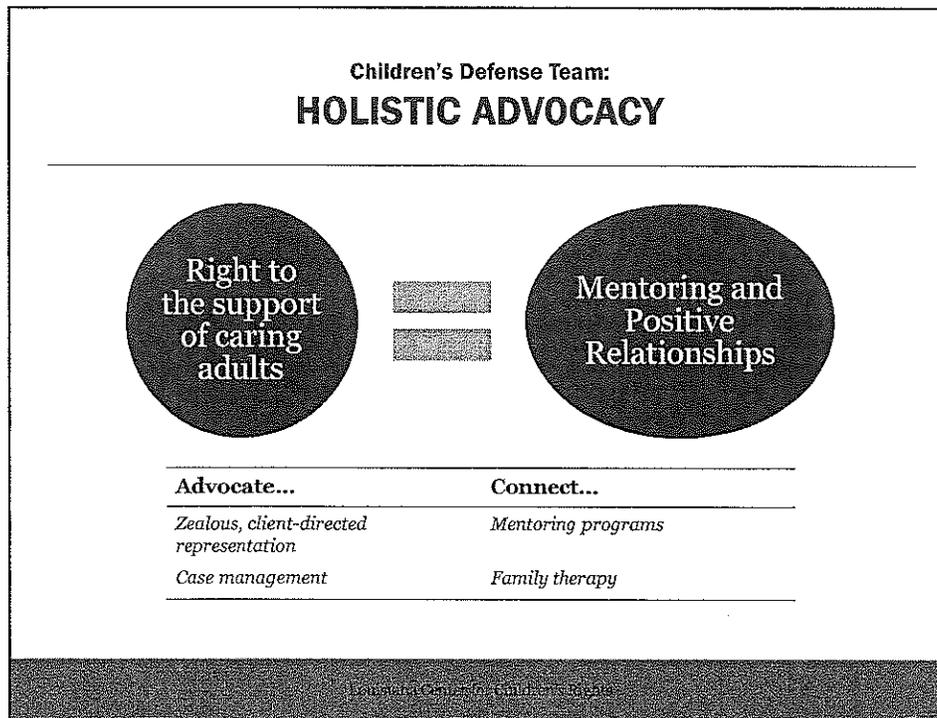
**Physical  
and  
Mental  
Health**

---

<b>Advocate...</b>	<b>Connect...</b>
<i>Competency to stand trial</i>	<i>Mental health rehab</i>
<i>Eligibility for government services and benefits</i>	<i>Primary care</i>
<i>Conditions of confinement</i>	<i>Substance abuse treatment</i>

---

© 2013 Children's Defense Fund



Children's Defense Team:

## **Community-Oriented Defense**

---

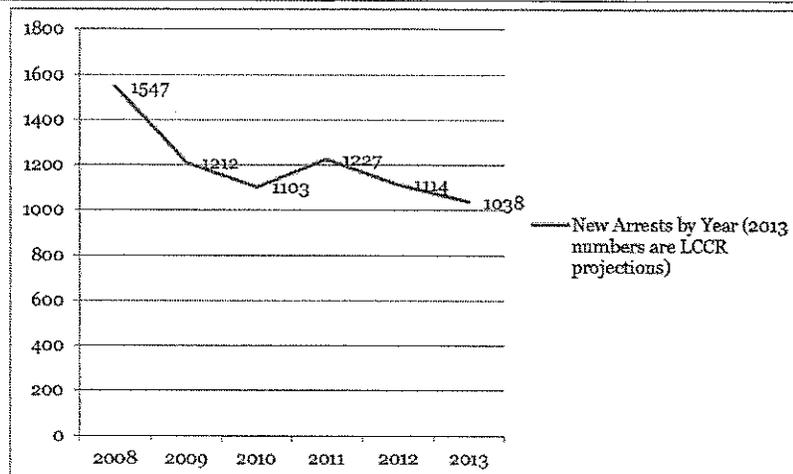
- Assessment-and-referral model requires strong community partnerships
  - Service provider database
  - MOUs
  - Collaborations and collective impact
- Principle: Children should grow up and thrive in healthy families and communities
  - not in the justice system



## **WHAT ABOUT PUBLIC SAFETY AND PUBLIC DOLLARS? SOME JUVENILE JUSTICE TRENDS IN NEW ORLEANS, 2008-2012**

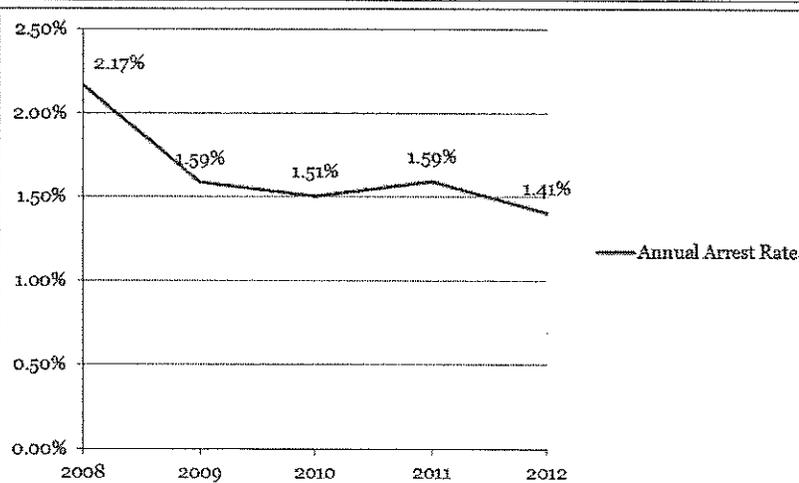
Louisiana Center for Children's Rights

### Annual Delinquency Arrests in Orleans Parish



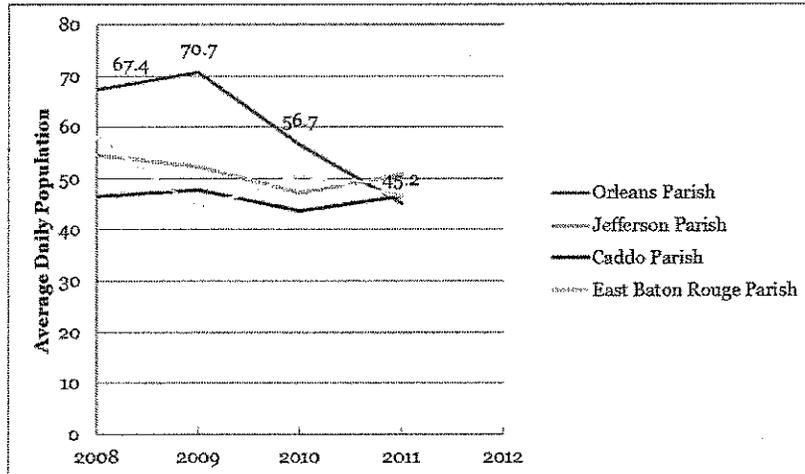
Louisiana Center for Children's Rights

### Annual Orleans Parish Delinquency Arrests per Child 0-17



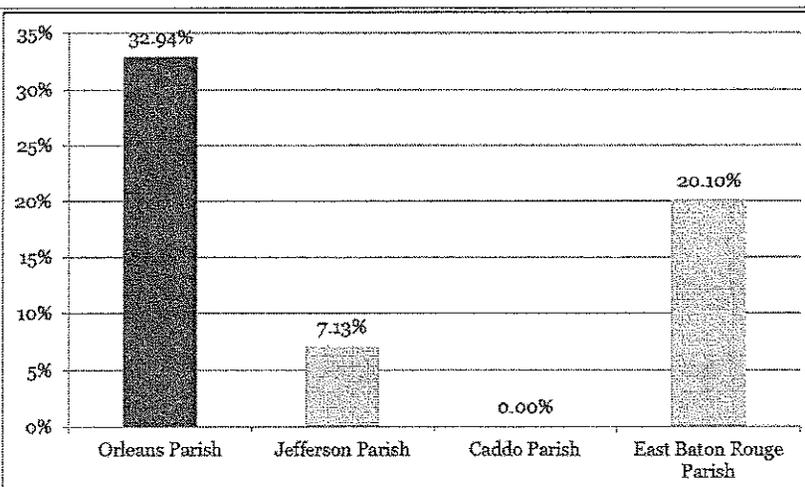
Louisiana Center for Children's Rights

### Average Daily Population of Youth in Secure Custody by Parish



Louisiana Center for Children, Inc.

### Percent Improvement in Secure Custody Rates by Parish, 2008-11



Louisiana Center for Children, Inc.

## Conclusions

---

- *Many possible causes:* It isn't possible to say how much credit public defense should get, but
- *At worst, public safety didn't suffer:* The public safety numbers in New Orleans show that, at very least, best-practices juvenile defense is *consistent* with improving public safety

Louisiana Center for Children's Rights



**LOUISIANA CENTER FOR  
CHILDREN'S RIGHTS**

**WWW.LACCR.ORG**

**WWW.JUVENILEDEFENDERS.ORG**





**ModelsforChange**  
Systems Reform in Juvenile Justice

## Special Counsel for Enhancing Juvenile Indigent Defense

### The John D. and Catherine T. MacArthur Foundation's Models for Change Initiative

The MacArthur Foundation launched the Models for Change (MfC) initiative in Washington in an effort to create successful and replicable models of juvenile justice reform through targeted investments. Washington was selected as one of the four Models for Change states in recognition of its commitment to and support of juvenile justice system reforms incorporating evidence-based practices. The Models for Change initiative seeks to accelerate movement toward a more rational, fair, effective, and developmentally appropriate juvenile justice system. The Models for Change Initiative imparts the following vision for the Juvenile Justice System:

*"A model system would safeguard the procedural and substantive rights of all youth who come into conflict with the law. Meaningful access to legal counsel would be available as soon as possible after a youth's arrest, and comprehensive representation would continue until the youth's case was closed. Defense attorneys would have limited caseloads and adequate training and oversight, as well as access to investigators, experts, social workers, and support staff. Their compensation would be adequate, and they would work in an environment that encouraged and supported their responsibilities to their young clients." See [www.modelsforchange.net](http://www.modelsforchange.net)*

### TeamChild Awarded Grant for a Special Counsel to Enhance Juvenile Indigent Defense

The MacArthur Foundation awarded TeamChild a grant to create a Special Counsel position to assist in statewide efforts to enhance juvenile defense in Washington. TeamChild's advocacy model grew out of the need identified by public defenders for holistic legal representation aimed at addressing the underlying causes of juvenile delinquency. In partnership with defenders, TeamChild brings the perspective of youth who need legal advocacy not only in juvenile court but also in securing the education, health care, housing and other community support they need to achieve positive outcomes in their lives. TeamChild and the Special Counsel work with the juvenile defense community on activities to increase the access to counsel and:

- Improve juvenile defender's access to training, mentoring and technical assistance;
- Coordinate and build models of high quality holistic defense practices, and
- Increase juvenile defender's leadership and participation in system reform efforts.

### TeamChild Named State Site Leader for Juvenile Indigent Defense Action Network

In the fall of 2008 the MacArthur Foundation through the National Juvenile Defender Center awarded TeamChild a planning grant to participate in a national campaign to improve access to and quality of counsel representing youth in delinquency proceedings. The JIDAN goals are:

- Develop model juvenile defense contracts incorporating best practice standards
- Develop model colloquies for judges to better explain court requirements to offenders
- Establish an initial appearance demonstration project in Yakima County

**Offices in King ♦ Pierce ♦ Snohomish ♦ Spokane ♦ Yakima Counties**

1225 South Weller, Suite 420, Seattle, WA 98144 ♦ Phone (206) 322-2444 ♦ Fax (206) 381-1742 ♦ [www.teamchild.org](http://www.teamchild.org)



## **Special Counsel Activities and Updates**

### **Development of Statewide Training Resources**

The TeamChild Special Counsel works with the juvenile defense community to identify training needs of attorneys handling juvenile cases. This process informed the development of a progressive training curriculum that builds basic to advanced practice skills for juvenile defenders. Defenders are helping to identify the specific resource materials and manuals that would assist juvenile defense attorneys in all aspects of their practice, including pretrial investigation, discovery and motions, case negotiations, fact-findings, dispositions and post conviction relief. Project goals include:

- Making resources readily available to practitioners statewide that can be adopted as part of a regular, ongoing resource for juvenile defenders,
- Introducing emerging social science and forensic research and its practical applications and relevance to juvenile defense, and
- Developing tools for experienced practitioners to effectively assist and train attorneys new to juvenile defense.

In the first two years of the project, Special Counsel surveyed over 100 juvenile defenders to determine training needs and co-sponsored over 20 CLE's, incorporating juvenile issues. These Trainings took place throughout the State, and at the WDA annual conference in Sun Mountain.

### **Opportunities for Leadership and Advocacy**

The TeamChild Special Counsel serves as a facilitator to bring together juvenile defense practitioners who are interested in playing a leadership role in enhancing juvenile defense. Leadership activities may include:

- improving the conditions under which juvenile defenders are practicing, including reasonable caseload standards and uniform contract provisions,
- changing the statutory barriers to achieving community-based, therapeutic interventions for youth,
- shaping model practice or court policies to ensure fairness, and
- increasing the presence and effective participation of the juvenile defense community in system reform discussions at the local, state and national level.

Defenders have joined together to form work groups addressing several court practices to improve outcomes for youth: shackling, alternative dispositions, immunity for evaluations

### **Technical Assistance and Case Support**

The TeamChild Special Counsel provides support and technical assistance for juvenile defenders and facilitates connections between experienced defense attorneys to assist in mentorship of newer juvenile defenders and staffing of case specific issues. Special Counsel has fielded hundreds of inquiries for referrals and technical assistance.

For more information, contact George Yeannakis  
[george.yeannakis@teamchild.org](mailto:george.yeannakis@teamchild.org) (206) 322-2444 x 107.

Offices in King ♦ Pierce ♦ Snohomish ♦ Spokane ♦ Yakima Counties

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF \_\_\_\_\_  
JUVENILE COURT**

STATE OF WASHINGTON v. \_\_\_\_\_  
D.O.B.: \_\_\_\_\_ Respondent.

NO:  
**WAIVER OF  
RIGHT TO COUNSEL**

1. My true name is: \_\_\_\_\_  
I am also known as: \_\_\_\_\_
2. My age is \_\_\_\_\_. Date of birth: \_\_\_\_\_
3. I have completed the \_\_\_\_\_ grade in school.
4. I understand that I am accused of:  
Count I, the offense of: \_\_\_\_\_  
Count II, the offense of: \_\_\_\_\_  
Count III, the offense of: \_\_\_\_\_  
Additional counts: \_\_\_\_\_

The Standard Disposition Ranges for the offenses are as follows:

Local Sanctions:

COUNT	SUPERVISION	COMMUNITY RESTITUTION	FINE	DETENTION	CVC	RESTITUTION
<input type="checkbox"/> 1	0 to 12 months	0 to 150 hours	\$0 to \$500	0 to 30 Days	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____
<input type="checkbox"/> 2	0 to 12 months	0 to 150 hours	\$0 to \$500	0 to 30 Days	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____
<input type="checkbox"/> 3	0 to 12 months	0 to 150 hours	\$0 to \$500	0 to 30 Days	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____

Juvenile Rehabilitation Administration (JRA) Commitment:

COUNT	WEEKS AT JUVENILE REHABILITATION ADMINISTRATION (JRA) FACILITY	CVC	RESTITUTION
<input type="checkbox"/> 1	<input type="checkbox"/> 15 to 36 <input type="checkbox"/> 30 to 40 <input type="checkbox"/> 52 to 65 <input type="checkbox"/> 80 to 100 <input type="checkbox"/> 103 to 129 <input type="checkbox"/> 180 to Age 21	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____
<input type="checkbox"/> 2	<input type="checkbox"/> 15 to 36 <input type="checkbox"/> 30 to 40 <input type="checkbox"/> 52 to 65 <input type="checkbox"/> 80 to 100 <input type="checkbox"/> 103 to 129 <input type="checkbox"/> 180 to Age 21	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____
<input type="checkbox"/> 3	<input type="checkbox"/> 15 to 36 <input type="checkbox"/> 30 to 40 <input type="checkbox"/> 52 to 65 <input type="checkbox"/> 80 to 100 <input type="checkbox"/> 103 to 129 <input type="checkbox"/> 180 to Age 21	\$75/\$100	<input type="checkbox"/> As required <input type="checkbox"/> _____

**RULE JuCR 7.15**  
**WAIVER OF RIGHT TO COUNSEL**

- (a) A juvenile who is entitled to representation of counsel in a juvenile court proceeding may waive his or her right to counsel in the proceeding only after:
- (1) the juvenile has been advised regarding the right to counsel by a lawyer who has been appointed by the court or retained;
  - (2) a written waiver in the form prescribed in section (c), signed by both the juvenile and the juvenile's lawyer, is filed with the court; and
  - (3) a hearing is held on the record where the advising lawyer appears and the court, after engaging the juvenile in a colloquy, finds the waiver was knowingly, intelligently, and voluntarily made and not unduly influenced by the interests of others, including the parent(s) or guardian(s) of the juvenile.
- (b) This rule does not apply to diversion proceedings. See JuCR 6.2 and 6.3
- (c) Before a waiver can be accepted by the court, an attorney or the juvenile shall file a written waiver of the right to counsel in substantially the following form:

(Adopted effective September 1, 2008.)

The maximum possible punishment that can be imposed by Juvenile Court is \_\_\_\_\_ years or commitment to JRA to age 21, whichever is less. I also understand that there may be lasting consequences even after I turn eighteen, if I am found guilty, including: employment disqualification, loss of my right to possess a firearm, suspension of ability to keep or obtain a driver's license, and school notification.

5. I understand that I have the right to be represented by a lawyer. If I cannot afford to pay for a lawyer, the court will appoint one to represent me at no cost to me
  
6. I understand that an attorney would:
  - Represent me and speak on my behalf in court.
  - Advise me about my legal rights and options.
  - Explain and assist me with legal and court procedures.
  - Investigate and explore possible defenses that I may not know about.
  - Prepare and conduct my defense at any court hearing or trial.
  
7. I understand that if I represent myself:
  - The judge cannot be my attorney and cannot give me any legal advice.
  - The prosecuting attorney cannot be my attorney and cannot give me any legal advice.
  - The judge, prosecuting attorney and court personnel are not required to explain court procedures or the law.
  - I will be required to follow all legal rules and procedures, including the rules of evidence.
  - It may be difficult for me to do as good a job as an attorney.
  - If I represent myself, the judge is not required to provide me with an attorney as a legal advisor or standby counsel.
  - If I later change my mind and decide that I want an attorney to represent me, the judge may require me to continue to represent myself without a lawyer.
  
8. I am making this decision to represent myself knowingly, intelligently, and voluntarily. No one has made any promises or threats to me, and no one has used any influence, pressure or force of any kind to get me to waive my right to an attorney.
  
- 9.. I have read, or have had read to me, this entire document. I want to give up my right to an attorney. I want to represent myself in this case.

Dated: \_\_\_\_\_  
RESPONDENT

\_\_\_\_\_  
ATTORNEY FOR RESPONDENT

\_\_\_\_\_  
Type or Print Name/Bar Number

COURT'S CERTIFICATE

After engaging the respondent in a colloquy in open court, I find that the respondent has knowingly, intelligently, and voluntarily waived his or her right to counsel.

\_\_\_\_\_  
COMMISSIONER/PRO TEM

DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE /COURT

# GR 9 COVER SHEET

## Suggested Amendment JUVENILE COURT RULES

### New Rule JuCR 7.15 – Waiver of Right to Counsel

Submitted by the Washington State Bar Association

---

#### (A) Identity of Proponents

The Washington State Bar Association  
2101 Fourth Avenue – Suite 400  
Seattle, WA 98121-2330  
Staff Contact: Douglass Ende, Assistant General Counsel  
(206) 733-5917

#### (B) Spokespersons

##### **For the Washington State Bar Association:**

*Jon Ostlund*, Chair, Committee on Public Defense  
*George Yeannakis*, Chair, Sub-committee on Juvenile Representation  
*David D. Swartling*, Chair, Court Rules and Procedures Committee

#### (C) Purpose

Suggested new Juvenile Court Rule 7.15 is intended to establish a uniform process by which juveniles may waive their constitutional and statutory rights to be represented by counsel in all juvenile offense proceedings. The suggested rule addresses the significant problem of juveniles appearing in court without representation by counsel. This practice was criticized by the *Washington State Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (American Bar Association Juvenile Justice Center, National Juvenile Defender Center, Northwest Juvenile Defender Center, 2003) and resulted in one of the core recommendations of this national report: "Washington law should be changed to conform to national standards prohibiting children from waiving the right to counsel." While the suggested rule does not go so far as prohibiting all waiver of counsel in juvenile proceedings as

several state legislatures and courts have done<sup>1</sup>, it would set forth minimum protections to ensure that all children brought before juvenile courts in Washington understand the serious consequences that can flow from proceeding in juvenile court matters without the assistance of counsel.

RCW 13.40.140(2)<sup>2</sup> and JuCR 9.2(d) provide that juveniles must have access to counsel in juvenile court offense proceedings unless it is waived. These provisions codify the U.S. Supreme Court's landmark ruling in *In re Gault*, 387 U.S. 1 (1967), holding that the "juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it." Today, the protections guaranteed by *Gault* are even more critical since juvenile convictions result in criminal history which is easily accessible to the public even after the youth reaches adulthood and can be used against the juvenile in any future adult criminal proceeding. Young people in juvenile court face not only incarceration, legal financial obligations and community supervision – they face collateral consequences such as loss of employment, housing and educational opportunities which can impact them for the rest of their lives.

Although there is a criminal court rule which sets forth the procedure for waiver of counsel prior to an adult criminal arraignment, CrR 4.1(d), and there is a juvenile court rule establishes the requirements for accepting a waiver of counsel in a juvenile diversion matter, JuCR 6.3 there is currently no court rule which establishes a standard procedure for accepting a waiver of counsel in a

---

<sup>1</sup> See Iowa Code Ann. § 232.11 (2); Illinois, 705 ILCS 405/5-170; Texas Family Code Ann. § 51.10(b) (1996)

<sup>2</sup> RCW 13.40.140(1-2)

(1) A juvenile shall be advised of his or her rights when appearing before the court.

(2) A juvenile and his or her parent, guardian, or custodian shall be advised by the court or its representative that the juvenile has a right to be represented by counsel at all critical stages of the proceedings. Unless waived, counsel shall be provided to a juvenile who is financially unable to obtain counsel without causing substantial hardship to himself or herself or the juvenile's family, in any proceeding where the juvenile may be subject to transfer for criminal prosecution, or in any proceeding where the juvenile may be in danger of confinement. The ability to pay part of the cost of counsel does not preclude assignment. In no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay therefor. The juvenile shall be fully advised of his or her right to an attorney and of the relevant services an attorney can provide.

juvenile offender matter. As a result of this lack of uniform procedure, courts around Washington state can and do allow children to proceed to a finding of guilt without assistance of counsel, sometimes as early as the first appearance hearing. This can happen with minimal inquiry into the young person's ability to understand the significant ramifications of the decision to proceed *pro se*. While this practice might appear expedient to some courts and even to some parents, such expedience comes at a tremendous cost to juveniles and to the public's confidence in the fairness of the juvenile justice system.

Suggested JuCR 3.15 provides for a standard procedure for the court to determine whether a juvenile is knowingly and voluntarily waiving his or her right to counsel. While it does not go so far as some national standards which recommend prohibition of waiver of counsel for juveniles, the rule takes a balanced approach consistent with the recommendations of the National Council of Juvenile and Family Court Judges and the American Bar Association ("waiver of counsel should only be accepted after the youth has consulted with an attorney about the decision and continues to desire to waive the right," National Council of Juvenile and Family Court Judges (NCJDCJ), *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (2005) at 25.)

The suggested rule sets forth a straightforward procedure for the court to determine, on the record, whether a young person understands the right to representation by counsel and the consequences of waiving that right. Young people in juvenile court are often encountering the legal system for the first time and are unaware of the gravity of their decisions. The suggested rule requires that the juvenile consult with an attorney prior to making the significant decision to forego counsel in order to ensure that the juvenile understands the role of the attorney and the consequences of the decision to proceed without an attorney's assistance. This suggested procedure is not unduly cumbersome but provides a meaningful safeguard to ensure that every child in Washington State has equal access to justice in the juvenile court system.

**(D) Hearing**

A hearing is not requested.

**(E) Expedited Consideration**

Expedited consideration is not requested.

**(F) Supporting Information**

1. *Washington State Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (American Bar Association Juvenile Justice Center, National Juvenile Defender Center, Northwest Juvenile Defender Center, 2003). <http://www.wsba.org/jjstudy.pdf>

2. Youth in the Criminal Justice System: AN ABA Task Force Report (2002). <http://www.abanet.org/crimjust/juvjus/jjpolicies/YCJSReport.pdf>

3. Letter from WSBA Committee on Public Defense (June, 2006)

4. Charter for Committee on Public Defense (2006)

<http://www.wsba.org/lawyers/groups/committeeonpublicdefense.htm>

### III. The Grant County Juvenile Court Pilot

In Grant County, OPD contracted with private attorneys to provide representation in the juvenile offender and BECCA<sup>6</sup> cases. Funds from the OPD were allocated in several ways:

- Funding one-half of the salary of two full-time contract attorneys.
- Contracting for the services of one part-time social worker and one part-time office assistant.
- Attorney mentoring and staff development services. OPD Pilot managers initially observed less experienced attorneys in court, provided feedback and, on an ongoing basis, made themselves available for case consultation. OPD also conducted formal training sessions that were made available to all Pilot defense attorneys.

#### Pilot Results

**1. Improved and Expanded Representation.** Many of the changes evident in the adult courts were evident in the juvenile Pilot site as well. Legal representation was improved for juveniles in Grant County in the following ways.

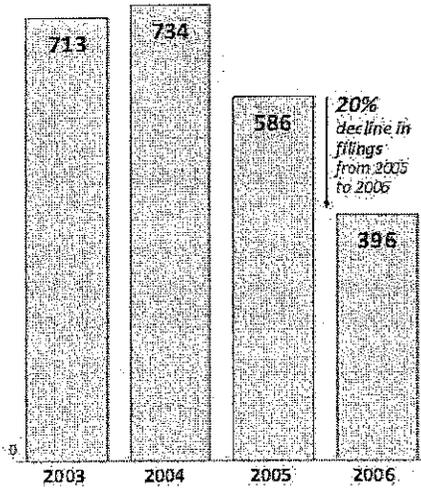
- ***Representation at arraignment and first appearance calendars.*** Interview data confirmed that the common practice of holding a first appearance/arraignment without providing access to a public defender ended during the first months of the Pilot. Pleas without the benefit of counsel were accepted practice prior to the Pilot, with almost one-fifth (20 percent) of all charges resolved by the court accepting guilty pleas without counsel for the respondent. The practice of scheduling first appearance/arraignments for out-of-custody respondents prior to appointment of counsel was eliminated in February 2006. The presence of defense attorneys at arraignment was seen as a positive development for several reasons. First, most interviewees concurred that providing access to a defense attorney early on ensured that the constitutional rights of the accused were preserved. Second, many felt that having an attorney present at all arraignment calendars was important in that it prevented the appearance of unfairness and increased respondents' confidence in the court as an institution. Third, the presence of public defenders at arraignment had a positive impact on one or more aspects of the larger court system and/or on case processing.
- ***Improved communications with clients.*** Interview data showed that communication between attorneys and clients improved substantially. Contrary to the pre-Pilot situation, attorneys were available for face-to-face meetings with clients and by telephone. In addition, clients were contacted prior to arraignment to remind them of upcoming proceedings. A number of interviewees felt that this practice reduced the number of failure to appear warrants during the Pilot. Also, attorneys visited clients in custody prior to all court hearings.
- ***Improved motions.*** Much like the two adult sites, interviewees noted improvements in the motions submitted by defense attorneys in Grant County Juvenile Court.
- ***Reduction in case filings.*** The assertion of constitutional rights by juveniles led to the adoption of more rigorous filing standards by the county prosecutor resulting in more cases being referred for diversion rather than formal court processing (see Figures 8-11)<sup>7</sup>.

---

<sup>6</sup> BECCA cases are non-criminal status offenses, At-Risk Youth, Children in Need of Services and truancy contempt.

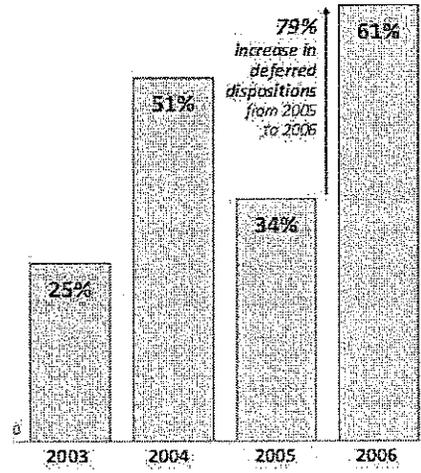
Juvenile Offender Cases Filed in Grant County  
Juvenile Court  
2003 - 2006

Figure 8



Juvenile Offender Deferred Dispositions in Grant County  
Juvenile Court  
2003 - 2006

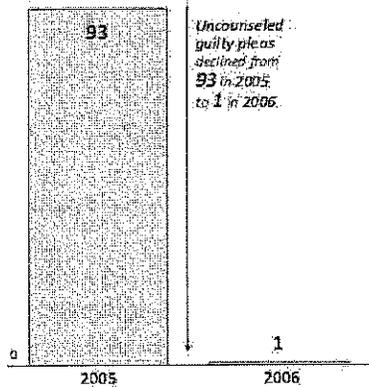
Figure 9



## 2. Improved Case Outcomes during the Pilot

Guilty Pleas without Counsel, Grant County Juvenile Court  
2005 - 2006

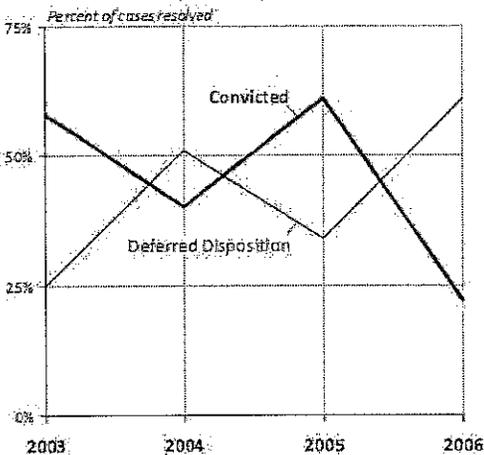
Figure 10



A decline in guilty pleas without the Benefit of Counsel. In 2005, the year prior to the Pilot, 93 juveniles pled guilty to charges without legal representation. That situation was nearly eliminated during the Pilot. In 2006, only one juvenile made an uncounseled guilty plea.

Cases Resolutions in Grant County Juvenile Court  
2003 - 2006. After an adjudicatory hearing

Figure 11

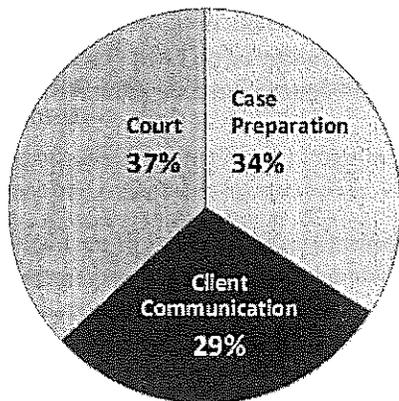


A higher rate of deferred dispositions and a lower rate of convictions. Over the course of the Pilot, these changes brought case outcomes in Grant County Juvenile Court more into line with outcomes in all Washington State Juvenile Courts.

<sup>5</sup> Results from the first year of the pilot are reported here. During the second year and one-half, case filings dropped significantly so that by the end of the second year the pilot attorneys' yearly caseloads were significantly lower than the 250-case standard.

3. Caseloads During the Pilot.<sup>8</sup> Caseload guidelines from the Washington State Bar Association recommend 250 juvenile offender cases per year per attorney. Over the course of 2006, OPD paid for 2.1 FTE attorneys who had a total caseload of 528, or 251 per attorney.

Figure 12. Percent of Time Spent on Case Activities, Grant County Juvenile Court



*How attorneys spent their time.* In 2006, Pilot attorneys allotted their time in three primary ways, time in court, communicating with clients and preparing their cases. Across all their cases, 37 percent of their time was spent in court and 34 percent was spent on case preparation. Twenty-nine percent of their time was spent communicating with their clients.

While there is no similar data before the Pilot, a common complaint was that a lack of communication and case preparation hindered public defense. During the Pilot, nearly two thirds of all attorney time was spent on these tasks.

Note: average attorney time spent per case = 6.8 hrs, average annual caseload = 250.

In addition to standard contract requirements setting caseload and compensation, the Pilot contracts incorporated the *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems*.<sup>9</sup> These principles required the Pilot attorneys to provide a more holistic representation model consistent with the research-based practices adopted by the juvenile court services throughout the State.

<sup>8</sup> SOURCE: OPD Case Disposition forms and records from the Washington State Judicial Information System (JIS). JIS records were used to identify cases where representation was provided but no OPD Disposition form was submitted.

<sup>9</sup> The *Principles* were developed through a collaborative venture between the National Juvenile Defender Center and National Legal Aid and Defender Association in 2004.

## IV. Conclusion and Recommendations

The Public Defense Pilot Projects were successful in instituting significant changes in public defender practices and attitudes at all three Pilot sites, including reducing caseloads, extending public defender resources to arraignments, increasing the quality and quantity of client communication and improving investigation, case analysis and motion work. Both “old” and “new” attorneys (that is, those brought in to the sites through Pilot resources) embraced these changes.

### Challenges in Introducing New Support Services

The one area of practice that was less consistently implemented was utilization of new support staff resources (investigator, social worker and paralegal). While use of these support services substantially increased in the first months of their availability, they were unevenly utilized both within and across sites. Interview data suggests that many factors could be affecting utilization, including the skills of the support staff (or lack thereof), as well as attitudes, knowledge and experiences of the attorney. Site supervisors also may need to provide additional structure or guidance in the use of investigators and social workers. Finally, individual attorneys and public defender offices as a whole may require more time to integrate additional staff resources into their practice, particularly after adapting so many other changes in office practice in a relatively short period of time.

## TECHNICAL NOTES

### Data Sources and Methods

**Interviews.** Three layers of interviews were conducted: First, background interviews with OPD management staff were conducted during the summer of 2006. These semi-structured in-person and telephone interviews were used to develop background context and identify potential program issues, strengths and accomplishments. Second, the evaluator interviewed Pilot site staff and other key stakeholders at each of the three sites. OPD staff assisted the evaluator in identifying and contacting all public defender attorneys/staff, prosecutors, judicial officers, and administrative court staff who might be influenced by or have observations of the Pilot. During the period September through October 2006 the evaluator visited all three sites and conducted pre-scheduled, in-person interviews. Individuals who were not available for an in-person interview participated in a telephone interview. All interviews used a semi-structured format, which encouraged interviewees to respond in narrative form to open-ended questions. Most interviews ranged between 45 and 65 minutes. A third layer of interviews consisted of follow-up questions for OPD management staff to clarify and fill in information gaps. On average, five interviews were conducted at each site.

**Document Review.** In addition to interviews, the evaluator gathered and reviewed a range of documents pertaining to the Pilot Projects. Documents included:

- Pilot contract materials
- Newspaper articles related to general public defense issues and site specific issues prior to the Pilot Projects
- Data collection forms developed by OPD
- Examples of data summaries and data output used at each of the sites
- OPD website
- Washington State Bar Association standards for public defense
- Legislation authorizing the Public Defense Pilot Projects
- New indigency screening form (Thurston County District Court)

**Electronic Court Data.** Electronic records from four sources were used in this evaluation.

1. Case disposition forms, completed by public defenders at each Pilot site, containing information on case characteristics and time spent on various tasks. Data was initially collected on paper forms and later entered into an Access database by OPD staff.
2. Records from the Washington State Administrative Office of the Courts (AOC) for each case filed in the adult courts. These records included information on charges filed, filing and disposition dates and the identity of the defense attorney.
3. Case assignment records from Bellingham Assigned Counsel, the contracted provider of public defense for the Bellingham Municipal Court. These records detailed the public defender assigned to the case along with assignment dates. These data were used for determining caseloads in that court.
4. AOC Caseload Reports: published annually by the AOC containing aggregate data for each court in the state with information on cases filed, hearings held and dispositions.



SPECIAL POINTS OF INTEREST

- Article highlights your work on the auto decline.
- Article that highlights your point of interest here.
- Every week highlight your point of interest here.
- Article highlights your point of interest here.

INSIDE THIS ISSUE

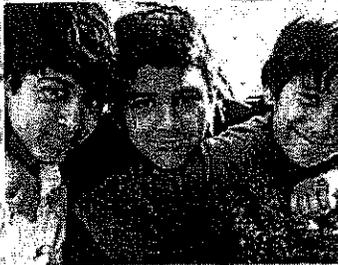
- Introductory 2
- Inside Story 2
- Inside Story 2
- Inside Story 3
- Inside Story 4
- Inside Story 5
- Inside Story 6

### Automatic Adult Court Jurisdiction (AACJ)

Legislation proposing to repeal the auto decline provisions of RCW 13.04.030 will be reintroduced this year by Representative Mary Lou Dickerson. Gavin Thornton of the Institutions Project of Columbia Legal Services is working closely with legislative staff to coordinate the Automatic Adult Court Jurisdiction workgroup support for this legislation.

Many of you have been contacted by investigative reporters to share stories about your former clients who have been swept into the adult justice system without the benefit of judicial review. These stories will be used to demonstrate the adverse or unintended consequences caused by the auto decline provisions.

Columbia Legal Services published a monograph in 2009 called A Reexamination of Youth Involvement in the Adult Criminal Justice



System in Washington, to first bring attention to the flawed practice of allowing a prosecutor rather than a judge determine whether a youth should be tried and sentenced as an adult. The article points out the difficulty of even determining

the extent of the use of the practice in Washington. Gavin has also collected state and national research studies that dispel the myths put forth by prosecutors as to the effectiveness of this practice.

These studies along with the adolescent development research spearheaded by the MacArthur Foundation, and adopted by the Supreme Court in Roper, Graham and most recently in JDB will provide strong support to repeal the auto decline provisions in Washington State.

**Next AACJ Meeting:**

### Consequences of Adjudication

The COA workgroup has focused on addressing the deficiencies in the record sealing process in Washington. The legislature recognized last session that the record sealing provisions of the juvenile code were not adequately protecting former offenders and

non-offenders from harmful and unintended consequences of their juvenile record. To address this problem the Legislature established a Joint Legislative Committee to find a cost effective way to automatically seal juvenile re-

ords. In addition to six legislators, the 20 member committee was composed of individuals representing the judges, prosecutors, juvenile courts, county clerks, and our defense representatives. Katie Hufley (Juvenile Law Section

# Consequences of Adjudication (cont'd)



ACT AS IF WHAT YOU DO MAKES A DIFFERENCE.

IT DOES

Ensuring  
Excellence in  
Juvenile  
Defense and  
Promoting  
Justice for All  
Children

ACT AS IF WHAT YOU DO MAKES A DIFFERENCE.



IT DOES

Laurie Magan

Group 7 Director

of the WSBA) and Kim Ambrose (Washington Defender Association). Four meetings were held in Olympia throughout the summer and fall that allowed public input on the issue. Despite overwhelming criticism of sealing any court record, the committee determined that the only way to accomplish the goal of truly sealing a juvenile's record was to make all

juvenile records confidential. Confidential records could not be sold, published on the internet or otherwise publicly distributed by the court or any other state agency that keeps juvenile records. Currently there are several other types of court records that are confidential and not distributed including: dependency, adoption and mental illness proceedings.

The final report of the committee is due by December 15. Although the final report proposing to make juvenile records confidential has not been adopted by the committee, we are hopeful that the Committee will forward the recommendation to make juvenile records confidential to the legislature.

## National Juvenile Defender Leadership Summit

Seattle played host to this year's National Juvenile Defender Leadership Summit. Over four hundred juvenile defenders from around the country filled the conference rooms of the Sheraton hotel. 50 Washington Defenders from around the state participated in the training and workshops sponsored by the National Juvenile Defender Center in Washington D.C.

The Western Juvenile Defender Center opened up the

conference with a training on "Obtaining and Using Psychological Evaluations".

In the three days of the conference there were 40 different break out sessions, 6 plenary sessions and every region center had the opportunity to meet.

On Friday Robin Steinberg from the Bronx Defenders keynote speech addressed the "Transformative Role of the Public Defender" and set the tone for the rest of the confer-

ence. J.D.B. Roper and Graham were highlighted. Attorney's received practice tips in light of these Supreme Court rulings.

Michelle LaVigne gave an information packed presentation on "The prevalence and Impact of Language Impairment in Juvenile Court". Her presentation is timely in that it reinforces the work that members of the WJDLN have been engaged in with the Judicial Colloquies in Washington state.

## Gang Update

The ACLU continues to convene Washington State stakeholders meetings to discuss the various approaches to the "gang problem and to coordinate efforts and resources to address the issues of gangs around the state.

The last meeting took place on

November 15th, 2011 at the ACLU office in Seattle. More than 20 stakeholders came to the table and strategized ways to approach gang intervention with lawmakers and community members.

# Shackling



This story can fit 150-200 words. One benefit of using your newsletter as a promotional tool is that you can reuse content from other marketing materials, such as press releases, market studies, and re-

ports. While your main goal of distributing a newsletter might be to sell your product or service, the key to a successful newsletter is making it useful to your readers. A great way to add useful content to your newsletter is to develop and write your own articles, or include a calendar of upcoming events or a special offer that promotes a new product. You can also research articles or find "filler" articles by accessing the

World Wide Web. You can write about a variety of topics but try to keep your articles short. Much of the content you put in your newsletter can also be used for your Web site. Microsoft Publisher offers a simple way to convert your newsletter to a Web publication. So, when you're finished writing your newsletter, convert it to a Web site and post it.

*"To catch the reader's attention, place an interesting sentence or quote from the story here."*

## Standards for Representation

This story can fit 100-150 words. The subject matter that appears in newsletters is virtually endless. You can include stories that focus on current technologies or innovations in your field. You may also want to note business or economic trends, or make predictions for your customers or clients.

If the newsletter is distributed internally, you might comment upon new procedures or improvements to the business. Sales figures or earnings will show how your business is growing. Some newsletters include a column that is updated every issue, for instance, an advice column, a book review, a letter from the president, or an editorial. You can also profile

new employees or top customers or vendors.

## Standards cntn'd



**Caption describing picture or graphic.**

## What is the Washington Juvenile Defender Leadership Network

Washington juvenile defenders are leaders in addressing systemic problems that effect youthful offenders. These leaders are promoting positive policy changes for youth involved in the juvenile justice system. The Washington Juvenile Defender Leadership Network (WJDLN) grew out of the *Washington State Juvenile Defense Leadership Summit* that was held in October, 2010 in Leavenworth, WA. The Summit brought together thirty juvenile defense attorneys from around the state to identify the most pressing needs and issues effecting youth in the juvenile justice system and the provision of defense services to those youth. The summit energized a strong network of defenders who have come together to advance defense-initiated solutions to systemic problems in the juvenile justice system. Juvenile defenders have organized workgroups and are taking measures to realize justice for juveniles in Washington State. By working together in the leadership network we believe that we can start to break down legal and systemic barriers that often hinder positive outcomes for youth in Washington.

**Nobody Can do Everything  
But Everybody Can Do  
Something**



**Do you want to help realize justice for juveniles?**

**CONTACT US:**

[rosa.peralta@teamchild.org](mailto:rosa.peralta@teamchild.org)

Phone: 206-322-2444

Fax: 206-381-1742

Website: [www.teamchild.org](http://www.teamchild.org)

This work is in part supported and inspire by:

**Models for Change**  
Systems Reform in Juvenile Justice



# WASHINGTON

## An Assessment of the Right to Counsel and Quality of Representation in Juvenile Offender Matters

### Statutory Right to Counsel

- Washington law grants juveniles the right to be represented by counsel at all "critical stages" of juvenile court proceedings regardless of juveniles' or their families' financial ability to secure an attorney
- The law states that counsel must be provided "in any proceeding where the juvenile may be subject to transfer for criminal prosecution or in any proceeding where the juvenile may be in danger of confinement" (RCW 13.40.140)

### Structure of Juvenile Indigent Defense System

- Counties fund public defense systems and independently choose their methods of providing counsel for indigent defendants
- Methods of appointment include: county-based public defenders, non-profit corporations, individual private defenders/private firms, and appointed attorneys (assigned counsel panels)

### Key Findings

#### *The Attorney/Client Relationship*

- There is confusion and disagreement about the role of juvenile defenders. As a result, important opportunities to effectively counsel and represent the interests of the child are lost
- Defenders often do not have the time or training to effectively ensure that their juvenile clients understand or are informed about their cases

#### *Participation of Counsel in Juvenile Court Proceedings*

- In direct conflict with national standards, Washington law permits children to waive their right to counsel
- In some Washington counties, juveniles regularly proceed without the assistance of counsel in important hearings

#### *Inadequate Assistance of Counsel*

- Defenders often do not meet with juveniles before their first appearance at court, so they miss important opportunities to advocate for their clients
- Although in some counties defenders are perceived by judges and others as well-prepared for court, in many counties motions and trials are rarely brought, independent investigation of cases is rare and only takes place in more serious cases, and defenders are not fully prepared for sentencing (disposition) hearings
- Defense counsel assume no post-sentencing role, losing the chance to help clients with whom they have built relationships obtain treatment or other services that would address the root causes of the criminal behavior

#### *Caseloads and Assignment*

- Defenders working full-time reported an average of close to 400 cases annually, roughly 62% more cases than the standards endorsed by the Washington State Bar Association
- Juvenile justice professionals across the spectrum consistently perceive defense attorneys as "overwhelmed" by their caseloads
- Because caseloads are too big, many defenders are unable to spend sufficient time with their clients and are not properly prepared for court

#### *Insufficient standards and oversight for defenders*

- Most counties provide juvenile defenders with little or no training on court procedure or in dealing with troubled youth
- Many counties have no qualification standards for juvenile defenders, no system of personnel review, and no supervision of legal work performed by defenders

#### *The Juvenile System as a Dumping Ground*

- Children with mental health problems, learning disabilities, behavioral problems and addiction issues are not getting the help they need in their communities, so they often end up in the juvenile court system
- Juveniles with mental health problems often receive punishment instead of treatment; a February 2003 study found that 58% of youth incarcerated in Washington's juvenile facilities met the criteria for having a "serious mental health disorder"

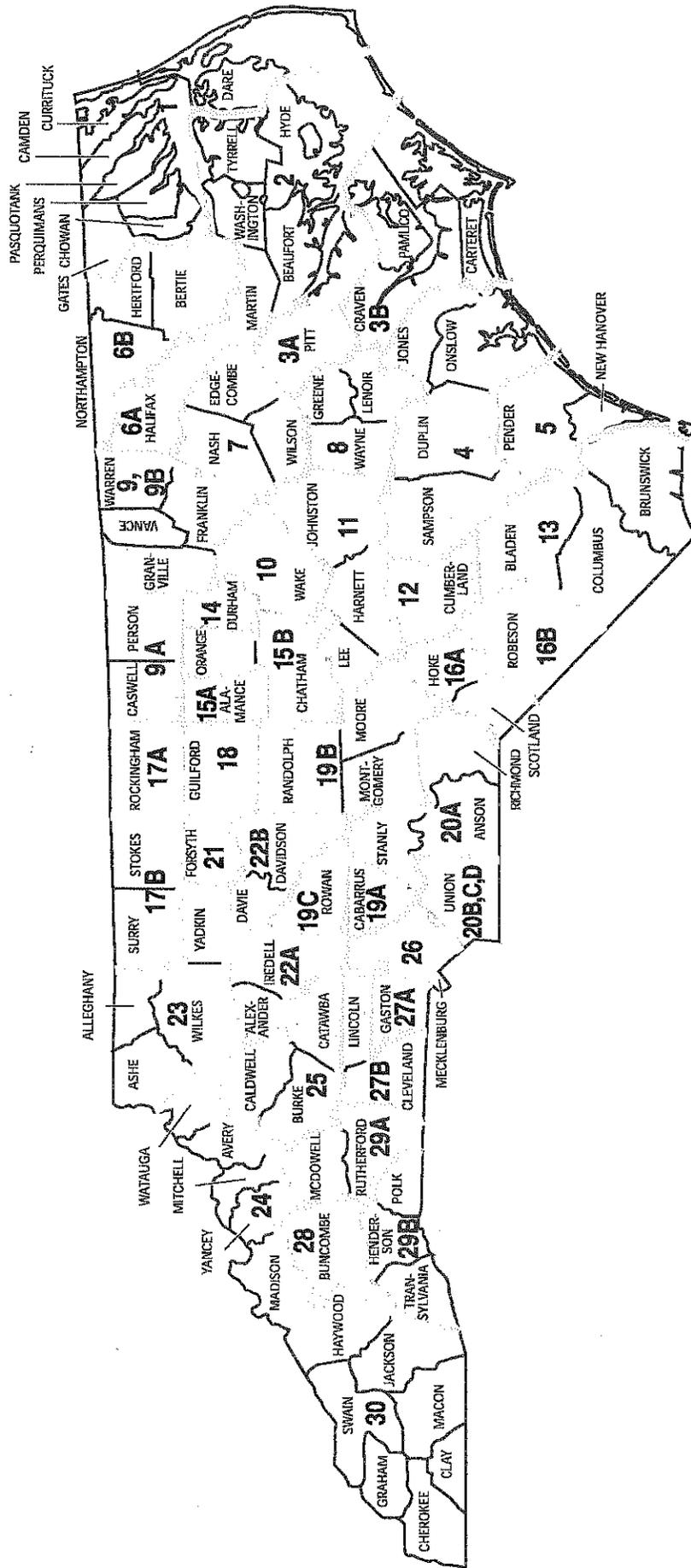
#### *Racial Disproportionality*

- Minorities are overrepresented in juvenile court offense referrals and incarceration at both the local and state levels; further study should be undertaken on what role defenders can play in reducing disproportionality



# North Carolina District Court Districts

Effective January 15, 2009



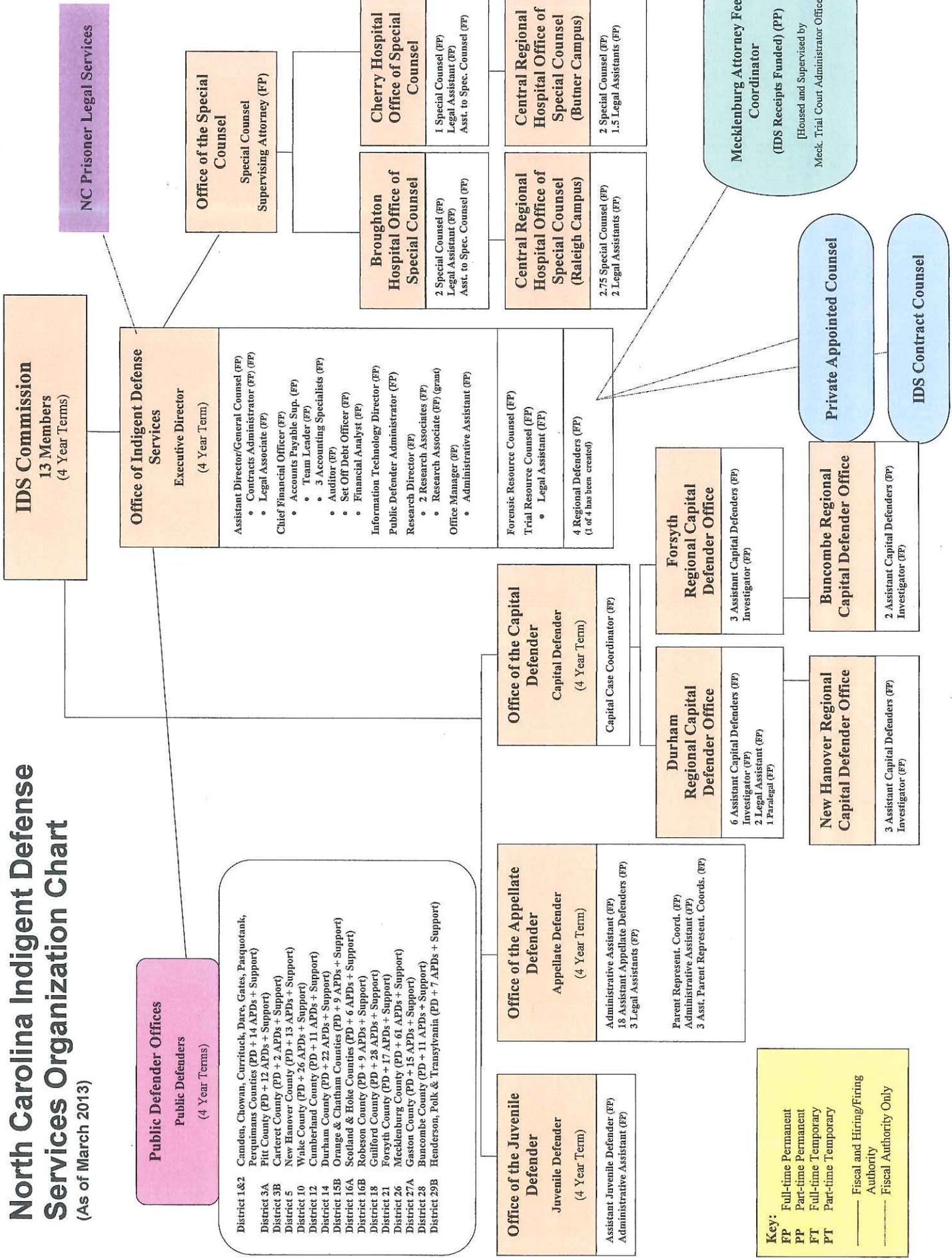
Note: Districts 9 and 9B, and districts 20B, 20C, and 20D are districts for electoral purposes only. They are combined for administrative purposes.

Copyright © 2009  
School of Government  
The University of North Carolina at Chapel Hill



# North Carolina Indigent Defense Services Organization Chart

(As of March 2013)



**Public Defender Offices**  
Public Defenders  
(4 Year Terms)

- District 1&2 Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans Counties (PD + 14 APDs + Support)
- District 3A Pitt County (PD + 12 APDs + Support)
- District 3B Carteret County (PD + 2 APDs + Support)
- District 5 New Hanover County (PD + 13 APDs + Support)
- District 10 Wake County (PD + 26 APDs + Support)
- District 12 Cumberland County (PD + 11 APDs + Support)
- District 14 Durham County (PD + 22 APDs + Support)
- District 15B Orange & Chatham Counties (PD + 9 APDs + Support)
- District 16A Scotland & Hoke Counties (PD + 6 APDs + Support)
- District 16B Robeson County (PD + 9 APDs + Support)
- District 18 Guilford County (PD + 28 APDs + Support)
- District 21 Forsyth County (PD + 17 APDs + Support)
- District 26 Mecklenburg County (PD + 61 APDs + Support)
- District 27A Gaston County (PD + 15 APDs + Support)
- District 28 Buncombe County (PD + 11 APDs + Support)
- District 29B Henderson, Polk & Transylvania (PD + 7 APDs + Support)

**Key:**  
 FP Full-time Permanent  
 PP Part-time Permanent  
 FT Full-time Temporary  
 PT Part-time Temporary  
 — Fiscal and Hiring/Firing Authority  
 - - - Fiscal Authority Only



## JUVENILE DEFENSE SERVICES IN NORTH CAROLINA

DISTRICT	COUNTIES	JUVENILE DEFENSE SERVICES
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	Assistant Public Defenders, Privately assigned counsel
2	Beaufort, Hyde, Martin, Tyrell, Washington	Privately assigned counsel
3A	Pitt	Assistant Public Defenders, Privately assigned counsel
3B	Carteret, Craven, Pamlico	Assistant Public Defenders (Carteret), Privately assigned counsel
4	Duplin, Jones, Onslow, Sampson	Privately assigned counsel
5	New Hanover, Pender	Assistant Public Defenders (New Hanover), Privately assigned counsel
6A	Halifax	Privately assigned counsel
6B	Bertie, Hertford, Northampton	Privately assigned counsel
7	Edgecombe, Nash, Wilson	Privately assigned counsel
8	Greene, Lenoir, Wayne	Privately assigned counsel
9A	Caswell, Person	Privately assigned counsel
9B	Franklin, Granville, Vance, Warren	Privately assigned counsel
10	Wake	Assistant Public Defenders, Privately assigned counsel
11	Harnett, Johnston, Lee	Contract attorneys (4) (Harnett, Johnston), Privately assigned counsel
12	Cumberland	Privately assigned counsel
13	Bladen, Brunswick, Columbus	Privately assigned counsel
14	Durham	Assistant Public Defenders, UNC Law Clinic, NCCU Law Clinic, Privately assigned counsel
15A	Alamance	Privately assigned counsel
15B	Chatham, Orange	Assistant Public Defenders, UNC Law Clinic (Orange), Privately assigned counsel
16A	Hoke, Scotland	Assistant Public Defenders, Privately assigned counsel
16B	Robeson	Assistant Public Defenders, Privately assigned counsel
17A	Rockingham	Privately assigned counsel
17B	Stokes, Surry	Privately assigned counsel

Primary source of representation is listed first.

Shaded rows indicates a public defender district. Unless otherwise noted, in the public defender districts which handle delinquency cases, the public defender handles all delinquency cases except in cases of conflict.

## JUVENILE DEFENSE SERVICES IN NORTH CAROLINA

DISTRICT	COUNTIES	JUVENILE DEFENSE SERVICES
18	Guilford	Greensboro: Assistant Public Defenders, Privately assigned counsel High Point: Contract attorneys (2), Privately assigned counsel
19A	Cabarrus	Privately assigned counsel
19B	Montgomery, Moore, Randolph	Privately assigned counsel
19C	Rowan	Contract attorneys (2), Privately assigned counsel
20	Anson, Richmond, Stanley	Contract attorneys (1) (Stanly County), Privately assigned counsel
20B	Union	Privately assigned counsel
21	Forsyth	Contract attorneys (2), Assistant Public Defenders, Privately assigned counsel
22	Alexander, Davidson, Davie, Iredell	Contract attorneys (3) (Alexander, Davie, Iredell Counties) Privately assigned counsel
23	Alleghany, Ashe, Wilkes, Yadkin	Contract attorney (Yadkin), Privately assigned counsel
24	Avery, Madison, Mitchell, Watauga, Yancey	Contract attorneys (6), Privately assigned counsel
25	Burke, Caldwell, Catawba	Privately assigned counsel
26	Mecklenburg	Center for Children's Defense (Contract attorneys (5)), Privately assigned counsel
27A	Gaston	Assistant Public Defenders, Privately assigned counsel
27B	Cleveland, Lincoln	Privately assigned counsel
28	Buncombe	Assistant Public Defenders, Privately assigned counsel
29A	McDowell, Rutherford	Privately assigned counsel
29B	Henderson, Polk, Transylvania	Privately assigned counsel
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	Privately assigned counsel

Primary source of representation is listed first.

Shaded rows indicates a public defender district. Unless otherwise noted, in the public defender districts which handle delinquency cases, the public defender handles all delinquency cases except in cases of conflict.

**Office of the  
Juvenile Defender**

**A Look Back and A  
Vision for the Future**

**A Review of OJD's Impact on  
Juvenile Defense in North Carolina**

**April 2013**

## OVERVIEW

Nearly a decade ago, the American Bar Association, Southern Juvenile Defender Center, and National Juvenile Defender Center (NJDC) released an assessment identifying deficiencies in North Carolina's quality of juvenile delinquency representation.

To address the deficiencies noted, the North Carolina Office of Indigent Defense Services (IDS) formed a Juvenile Committee that advocated the creation of the Office of the Juvenile Defender (OJD) and made recommendations to enhance delinquency representation. Since its inception in 2005, OJD has worked with local and national stakeholders to improve the quality of juvenile defense.

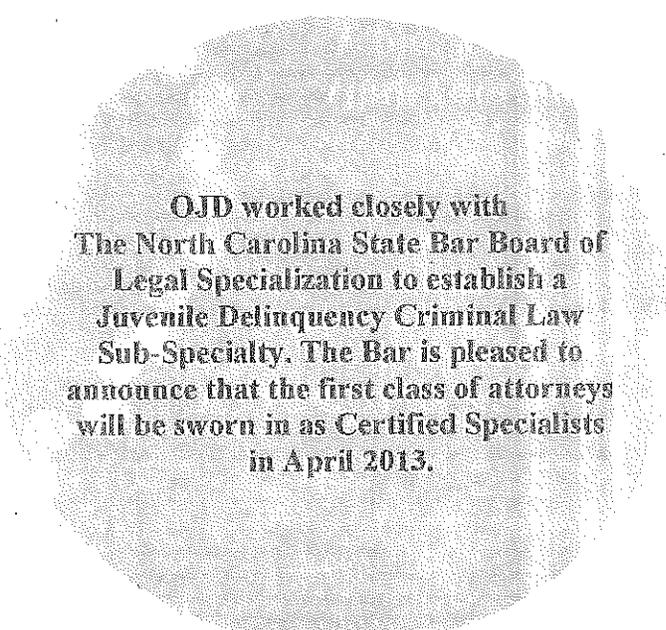
In 2012, OJD engaged in a strategic planning effort to assess the progress and impact of the office, to evaluate juvenile defense representation, and to prepare a plan for the future. First, the office's progress in implementing the Juvenile Committee's recommendations was assessed. Next, information was gathered from various "user groups," including juvenile defense counsel, judges, prosecutors, and juvenile justice officials. Surveys, focus groups, and individual interviews were used to evaluate the current state of juvenile defense representation and the effectiveness of OJD.

What follows here is a summary of OJD's efforts and a direction for a path forward.

### **Mission**

OJD's mission can be described in four parts:

- (1) to provide services and support to juvenile defense attorneys,
- (2) to evaluate the current system of representation and make recommendations as needed,
- (3) to elevate the stature of juvenile delinquency representation, and
- (4) to work with juvenile justice advocates to promote positive change in the juvenile justice system.



**OJD worked closely with  
The North Carolina State Bar Board of  
Legal Specialization to establish a  
Juvenile Delinquency Criminal Law  
Sub-Specialty. The Bar is pleased to  
announce that the first class of attorneys  
will be sworn in as Certified Specialists  
in April 2013.**

## MILESTONES

OJD has accomplished many of the recommendations of the IDS Juvenile Committee, such as:

### **Serving as a Central Resource and Juvenile Defense Consultant**

To better serve as a resource, OJD identified juvenile defenders by surveying 800 known juvenile defense counsel and creating a roster for regular updates. OJD also assisted with creating a listserv to ensure that pertinent information is provided to juvenile defenders in a timely manner and to provide a means for juvenile defenders to communicate with one another. Over the years, OJD has built liaisons with several juvenile justice groups and collaborated to achieve common goals and juvenile justice reform. OJD has consulted with appellate attorneys in hundreds of cases, some of which yielded favorable results for juveniles. Of particular interest is the U.S. Supreme Court case

*J.D.B. v. North Carolina*,  
363 N.C. 664, 686 S.E.2d 135  
(2011)

### **Evaluation of the System of Juvenile Defense**

To date, OJD has visited more than 80 counties to observe court, speak with court officials, and make recommendations to IDS to improve the quality of representation. In 16 jurisdictions, OJD identified the strongest juvenile defenders and assisted IDS with entering into contracts in hopes of establishing a network of experienced and dedicated juvenile defenders.

### **Creation of Training Programs and Materials for Juvenile Defense Counsel**

Utilizing surveys and interviews, OJD, in collaboration with the University of North Carolina School of Government (SOG), established a training plan involving an annual one-day conference on general and specific topics, a biennial three-day new juvenile defender training, and other regional and local trainings as requested. SOG, with assistance from OJD, developed a practice manual for juvenile defense counsel that includes an overview of statutory law, practice suggestions, and model forms and motions.

### **Development and Implementation of Juvenile Defense Polices and Guidelines**

With the assistance of its advisory board and other juvenile justice stakeholders, OJD created a *Role of Counsel* statement, which was designed to help focus juvenile defense counsel and to set the foundation for training, and developed the *Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level* and other initiatives. Thereafter, OJD developed model qualification standards for practice in juvenile delinquency court.

In 2009 OJD released the *Youth Development Center Commitment Project Report*.

The report addressed errors affecting juveniles in commitment facilities and provided an impetus for training, form revision, more legal challenges, and the creation of two projects providing juveniles with representation post disposition.

## KEY FINDINGS

Through surveys, interviews, and focus groups with juvenile defense counsel, prosecutors, judges, and the Division of Juvenile Justice (DJJ) officials and staff, OJD received feedback on the quality of juvenile delinquency representation.

### Juvenile Delinquency Representation

Regarding origination of the cases, over 75% of juvenile defense counsel responding to the survey believed that at least a quarter of their juvenile delinquency cases originated in the school system. More than 70% of the juvenile defenders who responded to the survey also expressed that at least one-half of their delinquency cases ended in admissions. However, over 50% of the defenders reported that, of the admissions made by their juvenile clients, between 50% and 100% of those cases resulted in an admission to a lesser-included offense. There was not a clear trend among juvenile defenders responding to the survey regarding what percentage of their cases ended in adjudicatory hearings. However, a majority of those surveyed agreed that over half of their cases proceeded immediately from adjudication to disposition.

### Challenges and Improvements to Enhance Juvenile Delinquency Representation

In general, of those responding to the survey, there was a consensus that there was an opportunity for improvement in juvenile delinquency representation in their counties. Those surveyed indicated that the most significant factors that hindered their ability to provide full representation to juvenile clients were difficulty in meeting with clients, “boilerplate” recommendations from the court, and complex family situations. Consequently, juvenile defenders reported that the changes that would most improve the quality of defense services were earlier access to court information (e.g., disposition and Department of Social Services’ reports), improved relations with school systems (resulting in reduced school-based offenses coming to court), and collaboration or cross training with other juvenile justice stakeholders (e.g., judges, prosecutors, and court counselors.)

### Training and Resources Utilized by Juvenile Defense Counsel

Sixty-eight percent of those surveyed reported that they had attended juvenile defender trainings in the past. Of those who had attended trainings, more than 75% attended the annual juvenile defender conferences and 36% participated in new juvenile defender training programs. In regard to future trainings, surveyed juvenile defense counsel reported an interest in sessions discussing school searches and seizures, motions and writs, school system interaction, and appeals and transfer hearings.

OJD has developed a series of guides for attorneys *Representing Special Populations of Youth*. The guides provide insight regarding special considerations when representing special populations, including communication techniques, trial strategies, and suggestions for appropriate dispositional alternatives.

## RECOMMENDATIONS OF THE JUVENILE DEFENDER ADVISORY COMMITTEE

After analyzing the results of the evaluation, OJD established a Juvenile Defender Advisory Committee (JDAC) of practicing attorneys and other defense counsel experts to determine: (1) if any of the IDS Juvenile Committee's original recommendations should be revisited; (2) which practice performance issues OJD should focus on and how they should be prioritized; and (3) which juvenile justice reform matters OJD should focus on and how they should be prioritized.

### **Training**

In partnership with superior court practitioners, OJD should continue providing training on filing motions in juvenile delinquency court in an effort to improve representation. The collaboration with superior court practitioners and exposure to felony cases could provide more insight for juvenile defense counsel as they file and work on appeals.

Additionally, OJD should emphasize that juvenile delinquency practice is a specialized practice and implement more focused training for juvenile defense counsel, such as new felony defender training and advanced juvenile defender training for seasoned juvenile defense counsel.

### **Policy**

To further the goals of serving as a central resource and contact for existing statewide and juvenile defense committees and associations, the JDAC noted that OJD should continue to collaborate with committees and associations to address specifically: (1) raising the age of juvenile jurisdiction; and (2) working to prevent the enactment of the Adam Walsh Act/Sex Offender Registration Notification Act.

### **Outreach**

The JDAC recognized that, under the future system of contractual services, it may be difficult for new attorneys to become juvenile defenders. OJD should develop means by which new attorneys can be better prepared to enter this practice area by collaborating with local law schools to encourage substantive and practical education and should explore the possibility of establishing mentorships with current contractors. Finally, OJD should also explore potential fellowship opportunities, such as the Equal Justice Public Defender Corps (now known as Gideon's Promise).

OJD worked with the Youth  
Accountability Task Force to develop  
an implementation plan for raising the  
age of juvenile jurisdiction.  
The final report of the Youth  
Accountability Task Force was  
released in 2011.

## **FUTURE GOALS and OBJECTIVES**

Based on the results of the evaluation and the feedback of the JDAC, OJD hopes to further its mission by pursuing the following initiatives:

### **Work with IDS to develop an appropriate infrastructure that effectively supports delinquency representation**

Representation will be primarily provided by one of three methods: contracts through requests for proposals; individually negotiated contracts; and Public Defender Offices

Key duties will include identifying potential contractors, providing effective support and oversight for all attorneys, and creating a system for recruitment (see below)

OJD will also work with the Public Defender Administrator to improve the support of delinquency assistant public defenders

### **Continue efforts to provide introductory, intermediate, and advanced training**

OJD will work with SOG and the National Juvenile Defender Center on opportunities and resources

Resources will focus on the “front end” and “back end” of representation, namely:

timely meeting with clients, establishing communication and rapport, and early investigation  
dispositional planning and advocacy, post-disposition representation, and appeals

### **Enhance outreach efforts to further elevate the stature of juvenile delinquency representation by providing a juvenile defense viewpoint to various stakeholders: “constituents, clients, community”**

Provide more information to attorneys through technology

Work more closely with the IDS Juvenile Committee and the IDS Commission

Develop a model for soliciting feedback from clients and/or parents and guardians

Share updates and information with other juvenile justice actors, build alliances, and cross-train

### **Continue to monitor issues that impact delinquency representation, and collaborate and advocate for solutions**

Age of juvenile jurisdiction

Disproportionate minority contact

School to prison pipeline

Sex Offender Registration and Notification Act

### **Establish a means for recruiting attorneys interested in practicing delinquency law**

Create a “classroom to courtroom pipeline” through encouragement and mentorship at the high school level

working with law schools to provide substantive education, practical training, and post-graduate opportunities

exploring funding for fellowships/scholarships

working with juvenile defenders to provide mentorships/apprenticeships

To read the full report, please visit  
<http://www.ncids.org/JuvenileDefender/History/StrategicPlanReport.pdf>

Article 20.

Basic Rights.

§ 7B-2000. Juvenile's right to counsel; presumption of indigence.

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

(b) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency. (1979, c. 815, s. 1; 1998-202, s. 6; 2000-144, s. 22.)



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

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

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

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

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

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

Jurisdiction	%	N
County	48%	7,307
District	52%	7,858
<b>Total</b>	<b>100%</b>	<b>15,165</b>

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

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

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

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

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

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

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

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

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

### **Appointment of Counsel and Indigence Determinations:**

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

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

### **Waiver of Counsel:**

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

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

#### **Defense Delivery System:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

	<p>Counsel automatically appointed if juvenile in jeopardy of being removed from the home and no parent/guardian is present or there is a conflict with the parent/guardian. Otherwise juvenile must request counsel and indigence determined before appointment. Tenn. Code § 37-1-126. <u>In Shelby County, the Juvenile Defenders Unit of the Office of the Public Defender, is responsible for juvenile defense.</u></p>	<p>No presumption of indigence. Unsure of process. Tenn. Code § 37-1-126(b)</p>	<p>Must consult with " a knowledgeable adult with no adverse interests to the juvenile" (not necessarily an attorney). Waiver must be knowing and voluntary, in writing, and the court must determine that the juvenile comprehends the right to an attorney and the consequences of waiving. Tenn. R. Juv. P. 30</p>
<p>Tennessee*</p>	<p>Counsel appointed if juvenile has not retained private counsel, is indigent, and/or has not or cannot waive counsel. Tex. Fam. Code § 51.10. <u>Dedicated juvenile defense offices are responsible for representation in Travis and Dallas Counties.</u></p>	<p>No presumption of indigence. Court determines if indigent. If not indigent, court may order parent/guardian to retain counsel for juvenile. Tex. Fam. Code § 51.10; Tex. Fam. Code § 51.102(b)(1)(A)</p>	<p>Cannot waive at: transfer hearing to adult court; adjudication hearing; disposition hearing; commitment hearing; or if juvenile has a mental or developmental disability. Otherwise, <u>waiver must be made by juvenile and his attorney</u>, it must be in writing or recorded, and found to be voluntary. Tex. Fam. Code § 51.10; Tex. Fam. Code § 51.09</p>
<p>Texas</p>	<p>Juveniles must request counsel and indigence determined before appointment. Utah Code Ann. § 78A-6-1111</p>	<p>No presumption of indigence. Juvenile and parent/guardian must complete affidavit and court determines if indigent. Utah Code Ann. § 78A-6-1111; Utah Code Ann. § 77-32-202</p>	<p>Waiver must be knowing and voluntary. If under 14 cannot waive without a parent/guardian present. Utah Code Ann. § 78A-6-1111; Utah Juv. P. R. 26(e)</p>
<p>Utah</p>			

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

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

^ indicates recent reforms

\* indicates reforms that are pending or recent as of 2013

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

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

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

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

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



## MEMORANDUM

**TO:** Interim Committee to Study Juvenile Defense

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

**DATE:** September 25, 2013

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

---

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

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

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

---

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

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

<sup>3</sup> *In re Gault*, 387 U.S. 1, 13 (1967).

<sup>4</sup> *Id.* at 19-20.

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

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

## **1. Timing of Appointment of Counsel**

### *A. Goal*

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

### *B. Current Statute*

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

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

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

---

<sup>5</sup> Colo. Rev. Stat. § 21-1-104(1).

<sup>6</sup> Colo. Rev. Stat. § 19-2-706.

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

### C. Argument

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

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

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

---

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

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

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

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

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

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

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

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

<sup>12</sup> NCJFCJ GUIDELINES, *supra* note 5, at 221-22.

<sup>13</sup> NCJFCJ GUIDELINES, *supra* note 5, at 78, 90-91.

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

<sup>15</sup> NCJFCJ GUIDELINES, *supra* note 5, at 77, 90.

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

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

<sup>18</sup> NATIONAL JUVENILE DEFENDER CENTER, ENCOURAGING JUDGES TO SUPPORT ZEALOUS DEFENSE ADVOCACY FROM DETENTION TO POST-DISPOSITION: AN OVERVIEW OF THE JUVENILE DELINQUENCY GUIDELINES OF THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES 4 (2006), *available at* [www.njdc.info/pdf/NCJFCJ\\_Fact\\_Sheet\\_Reprint\\_Fall\\_2012.pdf](http://www.njdc.info/pdf/NCJFCJ_Fact_Sheet_Reprint_Fall_2012.pdf).

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

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

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

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

<sup>23</sup> *Id.* at 61 (emphasis added).

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

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

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

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

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

### Model Language

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

---

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

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

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

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

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

Iowa:

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

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

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

c. A waiver hearing as required by section 232.45.

d. An adjudicatory hearing required by section 232.47.

e. A dispositional hearing as required by section 232.50.

f. Hearings to review and modify a dispositional order as required by section 232.54.<sup>29</sup>

Indiana:

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

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

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

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

Louisiana:

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

<sup>29</sup> Iowa Code §232.11 (2013).

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

<sup>31</sup> La. Child. Code art. 809(A).

Virginia:

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

## 2. **Presumption of Indigence**

### A. *Goal*

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

### B. *Current Statute*

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

### C. *Argument*

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

<sup>32</sup> Va. Code § 16.1-266(B).

<sup>33</sup> Colo. Rev. Stat. § 19-2-706.

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

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

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

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

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

#### D. *Model Language*

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

*Louisiana:*

**For purposes of the appointment of counsel, children are presumed to be indigent.**<sup>40</sup>

*North Carolina:*

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

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

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

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

<sup>38</sup> See NJDC, Standards, *supra* note 32, at 156.

<sup>39</sup> See *id.*

<sup>40</sup> La. Child. Code art. 320(A).

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

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

*Pennsylvania:*

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

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

*Virginia:*

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

### 3. **Waiver of Counsel**

#### A. *Goal*

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

<sup>41</sup> N.C. Gen. Stat. § 7B-2000.

<sup>42</sup> Pa. R. Juv. Ct. P. No. 151.

<sup>43</sup> 42 Pa. Cons. Stat. § 6337.1.

<sup>44</sup> Va. Code § 16.1-266(B).

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

## B. Current Statute

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

## C. Argument

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

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

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

---

<sup>46</sup> Colo. R. Juv. P. 3.

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

<sup>48</sup> *J.F.C.*, 660 P.2d at 9.

<sup>49</sup> *Id.*

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

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

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

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

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

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

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

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

#### D. Model Language

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

---

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

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

<sup>56</sup> GRISSO, *supra* note 10, at 193-194.

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

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

<sup>59</sup> NCJFCJ GUIDELINES, *supra* note 5, at 25.

<sup>60</sup> *Id.*

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

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

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

*Alaska:*

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

*Florida:*

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

*Kentucky:*

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

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

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

---

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

<sup>64</sup> Alaska Stat. § 47.12.090.

<sup>65</sup> Fla. R. Juv. P. 8.165(a).

<sup>66</sup> Ky. Rev. Stat. Ann § 610.060(2).

*Louisiana:*

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

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

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

...

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

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

*Maryland:*

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

---

<sup>67</sup> La. Child. Code art. 810.

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

*Minnesota:*

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

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

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

<sup>69</sup> Minn. R. Juv. Delinq. P. 3.04.

<sup>70</sup> *Id.* 3.02.

*New Jersey:*

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

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

*Ohio:*

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

<sup>71</sup> N.J. Stat. Ann. § 2A:4A-39(b).

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

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

*Pennsylvania:*

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

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

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

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

*Vermont:*

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

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

<sup>72</sup> Ohio Juv. R. 3.

<sup>73</sup> Pa. R. J. C. P. 152.

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

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

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

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

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

*Virginia:*

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

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

<sup>74</sup> Vt. Fam. P. R. 6(d)(3)-(4).

<sup>75</sup> Va. Code § 16.1-266(C)(3).

*West Virginia:*

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

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

---

<sup>76</sup> W. Va. Code § 49-5-9(a)(2).

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

# **Kids Without Counsel**

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



**A Report by the Colorado Juvenile Defender Coalition**

**Fall 2013**



## INTRODUCTION

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

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

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

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

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

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

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

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

## STATISTICS

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

### Percentage of Kids Without Counsel in 2012

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

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

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

## COLORADO COURT WATCHING

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

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

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

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

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

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

## THE ABSENCE OF A JUVENILE DEFENDER IN THE COURTROOM

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

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

### First Appearances

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



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

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

## Detention Hearings

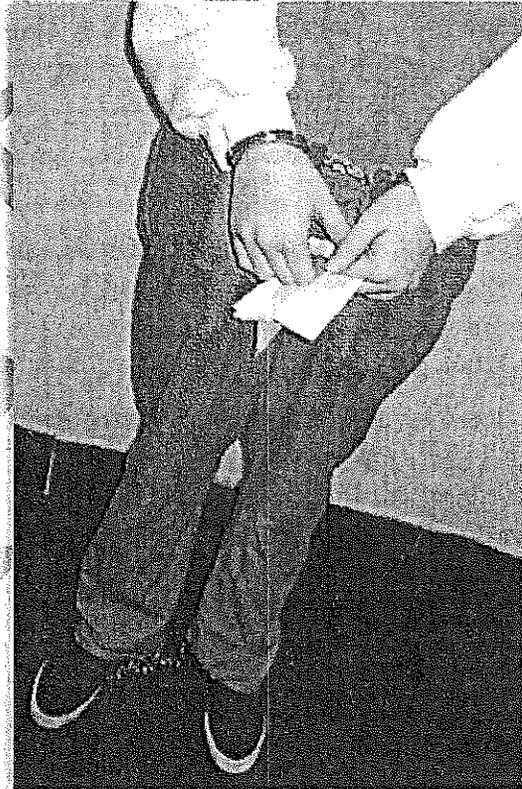
When a child is arrested, handcuffed, and taken to a detention center, the child's first court date is called a detention hearing. At the detention hearing the child comes to court in a jumpsuit, handcuffed (and sometimes the handcuffs are attached to a chain around their waist), and in many places the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

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

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

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

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



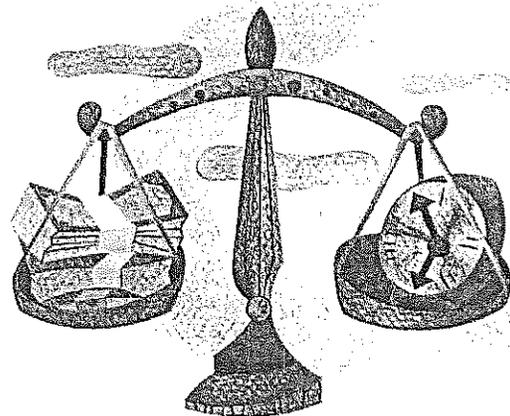
## **THE PUBLIC DEFENDER APPLICATION PROCESS**

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

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

### **Indigence Determinations**

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



### **Delayed Proceedings**

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

## WAIVING COUNSEL WITHOUT COUNSEL WHILE PLEADING GUILTY

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

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

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

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

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

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

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

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

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

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

## **APPOINTMENT OF GAL INSTEAD OF DEFENSE COUNSEL**

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

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

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

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

## **CONCLUSION**

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

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

## ACKNOWLEDGEMENTS

CJDC thanks the many volunteers who gave their time to travel, sit in juvenile court, and record their observations so we could better understand kids without counsel in Colorado:

Anne Bingert  
Kameryn Brill  
Eric Charney  
Kim Dvorchak  
Amber Haggerty

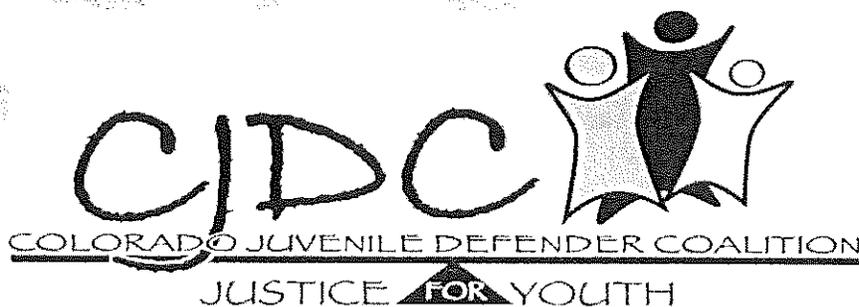
Theresa Higgins  
Dennis Jackson  
Erin Kincaid  
Martha Lindsley  
Amy Maas

DeAnn Major  
Bill Meade  
Jackie Pena  
Kate Wilson

*Special thanks to Anne Bingert who designed and coordinated CJDC's court watching program, and contributed greatly to the writing of this report!*

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

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



**Colorado Juvenile Defender Coalition**  
**670 Santa Fe Drive**  
**Denver, Colorado 80204**

Website: [www.cjdc.org](http://www.cjdc.org)

Phone: 303-825-0194

Email: [info@cjdc.org](mailto:info@cjdc.org)





**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](http://www.colorado.gov/lcs)  
 E-mail: [lcs.ga@state.co.us](mailto:lcs.ga@state.co.us)

**MEMORANDUM**

September 16, 2013

**TO:** Juvenile Defense Attorney Interim Committee

**FROM:** Hillary Smith, Senior Research Analyst, 303-866-3277

**SUBJECT:** Overview of State Law and Recent Legislation Concerning Truancy Proceedings

**Summary**

This memorandum provides an overview of state law and recent legislation concerning court proceedings filed against truant children. Data on the number of truancy filings in district courts from FY 2007-08 through FY 2011-12 is included. The memorandum also provides information concerning the percentage of truancy cases in which children were represented by an attorney, the percentage of truancy cases in which a guardian ad litem was assigned to a truancy case, and the number of times a child involved in a truancy case was admitted to detention.

**Colorado School Attendance Law of 1963**

The Colorado School Attendance Law of 1963 guarantees a free public education for Colorado residents between the ages of 6 and 21 and establishes compulsory attendance requirements for children between the ages of 6 and 17.<sup>1</sup> Language within the law expresses the General Assembly's declaration that "two of the most important factors in ensuring a child's educational development are parental involvement and parental responsibility. The General Assembly further declares that it is the obligation of every parent to ensure that every child under such parent's care and supervision receives adequate education and training. Therefore, every parent of a child [between the ages of 6 and 17 must] ensure that such child attends the public school in which such child is enrolled in compliance with this section."<sup>2</sup> The law recognizes exceptions for children enrolled in independent, parochial, or home-school options.

The most recent amendments to the School Attendance Law of 1963 were enacted by House Bill 13-1021, which was passed during the 2013 legislative session. In the sections that

<sup>1</sup>Section 22-33-101, *et seq.*, C.R.S.

<sup>2</sup>Section 22-33-104 (5), C.R.S.

follow, the provisions of HB 13-1021 are incorporated into the explanation of state law. The bill took effect on August 7, 2013.

**Habitually truant students.** State law defines "habitually truant" to mean a child who is between the ages of 6 and 17 and who has four unexcused absences from public school in any one month or ten unexcused absences from public school during any school year.<sup>3</sup> Each school district is required to adopt and implement policies and procedures concerning elementary and secondary school attendance, including policies to work with habitually truant students. The polices must include the development of a plan with the goal of assisting the child to remain in school.

On an annual basis, each school district is required to report to the Colorado Department of Education (CDE) the number of children identified as habitually truant in the preceding academic year. The CDE is required to post this information online. The federal No Child Left Behind Act of 2001 also requires the CDE to publish truancy rates on a school-by-school basis, but the rates are based on "unexcused days absent," rather than on the number of truant children.<sup>4</sup> These rates are published at: [www.cde.state.co.us/cdereval/truancystatistics.htm](http://www.cde.state.co.us/cdereval/truancystatistics.htm). In addition, the CDE provided a document titled "Truancy Update 2012," which contains information on truancy laws and statistics related to habitually truant children (Attachment A).

HB 13-1021 also requires each school district to establish attendance procedures for identifying children who are chronically absent and to implement best practices and research-based strategies to improve the attendance of those children.

**Judicial enforcement.** Court proceedings may be initiated to compel compliance with compulsory attendance laws, but state law, as amended by HB 13-1021, expresses the intent of the General Assembly that, in enforcing the school attendance requirements, a school district is required to employ best practices and research-based strategies to minimize the need for court action and the risk that a court will issue detention orders against a child or parent.<sup>5</sup> A school district may only initiate court proceedings to compel a child and his or her parent to comply with attendance requirements as a last-resort approach 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. All proceedings must be commenced in the judicial district in which a child resides or is present.

Under the Colorado School Attendance Law, each school district is required to adopt an attendance policy that provides for excused absences and specifies the maximum number of unexcused absences a child may incur before judicial proceedings are initiated.<sup>6</sup> The district is also required to designate a district attendance officer, who may be an employee of the school district or the probation officer of a court of record within the district's county.<sup>7</sup> The attendance officer is required to consult with children and parents, investigate the causes of nonattendance, and report to the school district to enforce attendance laws. The attendance officer or, upon his or her request, the local school board, its attorney, or another employee designated by the school district, is required to initiate proceedings for the enforcement of attendance laws.<sup>8</sup>

---

<sup>3</sup>Section 22-33-107 (3), C.R.S.

<sup>4</sup>PL 107-110, Title V, Part A, Sec 4112, (c) (3)

<sup>5</sup>Section 22-33-108, C.R.S.

<sup>6</sup>Section 22-33-104 (4), C.R.S.

<sup>7</sup>Section 22-33-107 (1), C.R.S.

<sup>8</sup>Section 22-33-108, C.R.S.

Before initiating court proceedings, the school district is required to give the child and his or her parent written notice that proceedings will be initiated if the child does not comply with attendance requirements. The school district is permitted to combine such notice with a summons to appear in court. If combined, the petition must state the date on which proceedings will be initiated, which must not be less than five days after the date of the notice and summons. The notice is required to state the provisions of the attendance law that a child has violated and that the proceedings will not be initiated if the child complies with that provision prior to filing.

If a school district initiates court proceedings, it must, at a minimum, submit to the court evidence of:

- the child's attendance record prior to and after the point at which the child was identified as habitually truant;
- whether the child was identified as chronically absent and, if so, the strategies the school district used to improve the child's attendance;
- the interventions and strategies used to improve the child's attendance before the school or school district created the child's plan; and
- the child's plan and the efforts of the child, the child's parent, and school or school district personnel to implement the plan.

At its discretion, the court may issue an order against a child, his or her parent, or both compelling the child to attend school or compelling the parent to take reasonable steps to ensure the child's attendance. The order must require the child and parent to cooperate with the school district in complying with the attendance plan created for the child. If the child does not comply with the order, the court may order that an assessment for neglect be conducted and that the child or parent show cause why he or she should not be held in contempt of court.

After a finding of contempt against a child, the court may impose sanctions including: community service; participation in supervised activities; services for at-risk students; and other activities. In addition, after a finding of contempt and that the child has refused to comply with his or her attendance plan, the court may impose a sentence of detention for no more than five days in a juvenile detention facility operated by or under contract with the Colorado Department of Human Services (DHS).<sup>9</sup> After a finding of contempt against a parent, the court may impose a fine of up to \$25 per day or confine the parent in the county jail until the order is complied with.

## **State Data Concerning Truancy Filings**

**Truancy filings.** Table 1 summarizes the number of truancy filings in district courts from FY 2007-08 through FY 2011-12, the most recent year for which data is available. The table provides the number of filings in each judicial district, the percentage change in filings in each district from FY 2007-08 through FY 2011-12, and the total number of truancy filings in the state as a percentage of total juvenile filings. Appendix A to the memorandum contains information about the counties within each judicial district. It should be noted that the Colorado Judicial Branch's annual statistical reports separate juvenile filings from juvenile delinquency filings. Juvenile filings include truancy cases, paternity orders, dependency and neglect cases, expungement proceedings, and other similar matters. Juvenile delinquency filings concern offenses alleged to have been committed by juveniles, such as arson, assault, and theft.

---

<sup>9</sup> In 1991, the Colorado Supreme Court found that a statute precluding the court from incarcerating a child in a secure facility for contempt in a compulsory school attendance case violated the separation of powers doctrine of the Colorado Constitution by impermissibly abrogating the judiciary's power to incarcerate juveniles for contempt of court orders, *In Interest of J.E.S.*, 817 P.2d 508 (Colo. 1991).

As illustrated in Table 1, over the past five years, truancy filings have represented about 10 percent of the total juvenile filings in the state and have declined by 17.2 percent over this time period. The judicial district with the largest decline over the five-year period is the 7th Judicial District (Delta, Gunnison, Hinsdale, Montrose, Ouray, and San Miguel Counties), which went from 61 truancy filings in FY 2007-08 to 0 in FY 2011-12 (a 100 percent change) with a large decrease from 65 filings in FY 2008-09 to 1 filing in FY 2009-10. The judicial district with the largest increase over the five-year period is the 3rd Judicial District (Huerfano and Las Animas Counties), which went from 6 truancy filings in FY 2007-08 to 24 truancy filings in FY 2011-12 (a 300 percent change). However, it should be noted that the judicial districts with the highest and lowest percentage change over the time period both had few filings overall. The average number of filings across all 22 judicial districts ranged from 145 per district in FY 2007-08 to 120 per district in FY 2011-12.

**Table 1**  
**Number of Truancy Cases Filed in Each Judicial District from FY 2007-08 through**  
**FY 2011-12**

Judicial District	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	Percentage Change from FY 2007-08 to FY 2011-12
1	432	532	362	433	254	-41.2%
2	444	461	408	270	269	-39.4%
3	6	25	17	11	24	300%
4	422	482	484	494	619	46.7%
5	2	9	2	4	3	50.0%
6	0	3	18	12	2	200%
7	61	65	1	10	0	-100%
8	54	50	20	16	10	-81.5%
9	11	23	18	7	2	-81.8%
10	398	222	232	177	98	-75.4%
11	54	28	22	27	36	-33.3%
12	19	23	29	10	12	-36.8%
13	38	50	49	31	44	15.8%
14	0	1	8	4	6	600%
15	6	1	26	0	13	116.7%
16	10	19	22	22	23	130%
17	319	266	240	246	227	-28.8%
18	214	270	320	306	304	42.1%
19	415	363	375	442	367	-11.6%
20	173	225	179	239	204	17.9%
21	106	86	98	90	113	6.6%

**Table 1 (Cont.)**  
**Number of Truancy Cases Filed in Each Judicial District from FY 2007-08 through FY 2011-12**

Judicial District	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	Percentage Change from FY 2007-08 to FY 2011-12
22	13	9	13	17	17	30.8%
<b>Total</b>	<b>3,197</b>	<b>3,213</b>	<b>2,943</b>	<b>2,868</b>	<b>2,647</b>	<b>-17.2%</b>
<i>Total district court juvenile filings</i>	<i>33,370</i>	<i>32,174</i>	<i>30,360</i>	<i>29,958</i>	<i>28,731</i>	<i>-13.9%</i>
<i>Percentage of total district court juvenile filings that were truancy cases</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>	<i>9%</i>	<i>-1.0%</i>

Source: Colorado Judicial Branch

**Representation in truancy cases.** The Colorado Children's Code provides that in all proceedings under the School Attendance Law, the court may appoint counsel or a guardian ad litem (GAL) for the child, unless the child is already represented by counsel.<sup>10</sup> If the court finds that it is in the best interest and welfare of the child, the court may appoint both counsel and a GAL. In addition, in all truancy proceedings, the court is required to make available to the child's parent or GAL information concerning the truancy process.

In 2009, the Children's Code was amended to provide further guidance concerning the appointment of GALs in court cases. If a court finds that the appointment of a GAL in a truancy case is necessary due to exceptional and extraordinary circumstances, a GAL may be appointed.<sup>11</sup> According to the Office of the Child's Representative (OCR), GALs are often involved in court-ordered investigations as to why a child is not attending school. GALs may also make recommendations to the court for services to address the child's needs.

Chief Justice directives also provide direction concerning the appointment of counsel. Specifically, Chief Justice Directive 04-04 (Attachment B) applies to the appointment of counsel in contempt situations, and Chief Justice Directive 04-05 (Attachment C) states that "if the court deems representation is necessary to protect the interest of the child or other parties," counsel may be appointed.

Table 2 provides data concerning the number and percentage of truancy cases from FY 2007-08 through FY 2011-12 in which the child had representation at some point in the case. Representation includes attorneys from the Office of the State Public Defender, the Office of the Alternate Defense Counsel, or private practice. Over the five years examined, attorneys were attached to a case about 1.0 percent of the time. In FY 2008-09, attorneys were attached in 2.0 percent of truancy cases, whereas in FY 2010-11, attorneys were attached in 0.4 percent of truancy cases.

<sup>10</sup>Section 19-1-105 (2), C.R.S.

<sup>11</sup>Section 19-1-111 (2)(b), C.R.S.

**Table 2**  
**Number and Percentage of Truancy Cases in which an Attorney was Involved**  
**from FY 2007-08 through FY 2011-12**

<b>Fiscal Year</b>	<b>Truancy Cases Filed</b>	<b>Cases with an Attorney Attached at Some Point</b>	<b>Percentage of Cases with an Attorney Attached at Some Point</b>
FY 2007-08	3,197	27	0.8%
FY 2008-09	3,213	65	2.0%
FY 2009-10	2,943	18	0.6%
FY 2010-11	2,868	12	0.4%
FY 2011-12	2,647	21	0.8%
Average	2,974	29	0.9%
<b>Total</b>	<b>14,868</b>	<b>143</b>	<b>1.0%</b>

*Source: Colorado Judicial Branch*

The OCR provided the data in Table 3 summarizing the number of truancy cases for which a GAL was appointed from FY 2007-08 through FY 2011-12. The office also provided the average cost per truancy case for each fiscal year. From FY 2007-08 through FY 2011-12, GALs were appointed in an average of 15.0 percent of truancy cases, and the average cost per case over the five-year period was \$391. The OCR also provided detailed information on the number of GAL appointments for truancy cases in each judicial district, the average cost per truancy case in each judicial district, and the total cost of such appointments for each district. This information is available in Attachment D.

**Table 3**  
**Number of Guardian ad Litem (GAL) Appointments and Average Cost of the Appointment per Case from FY 2007-08 through FY 2011-12**

<b>Fiscal Year</b>	<b>Number of Truancy Filings</b>	<b>Number of GAL Appointments</b>	<b>Percentage of Truancy Filings with a GAL Appointment</b>	<b>Average Cost per Case</b>
FY 2007-08	3,197	514	16.1%	\$330
FY 2008-09	3,213	475	14.8%	\$467
FY 2009-10	2,943	406	13.8%	\$473
FY 2010-11	2,868	416	14.5%	\$372
FY 2011-12	2,647	426	16.1%	\$313
Average	2,974	447	15.0%	\$391
<b>Total</b>	<b>14,868</b>	<b>2,237</b>	<b>15.0%</b>	<b>Not applicable</b>

*Source: Colorado Office of the Child's Representative*

**Use of detention in truancy cases.** Pursuant to federal regulations and the federal Juvenile Justice and Delinquency Prevention Act of 1974, status offenders are only permitted to be detained up to 24 hours, unless they are found to have violated a valid court order.<sup>12</sup> Status offenders, which include juveniles in truancy proceedings, are juveniles charged with or adjudicated for conduct that would not be an offense if committed by an adult. The Division of Criminal Justice (DCJ) within the Colorado Department of Public Safety monitors the number of times a juvenile is admitted to a detention center for a status offense. The DCJ also tracks the number of times an accused status offender is held for more than 24 hours in detention and the number of times an adjudicated status offender is sentenced to detention without a valid court order (both of which are violations). This information is tracked both by judicial district and by detention facility. The compliance reports are then sent to the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the U.S. Department of Justice. If a state's rate of detention violations exceeds federal guidelines, its federal OJJDP funding may be reduced. According to a representative from the DCJ, Colorado's rate of detention violations has never resulted in a funding reduction. Full copies of the compliance reports prepared by the DCJ are available upon request.

The DCJ provided the data in Table 4 concerning the number of admissions to detention centers for juveniles charged with or adjudicated for truancy offenses from calendar years 2010 through 2012. It should be noted that the data concerns the number of admissions to detention, and not the number of cases or children involved. It is possible for one child to be admitted both prior to and post-adjudication, or for one child to be involved in multiple truancy cases. Between 2010 and 2012, detention admissions fell by 6.5 percent, from 480 admissions to 449 admissions. In the same time period, violations fell by 55.7 percent, from 122 violations to 54 violations.

**Table 4**  
**Number of Detention Admissions and Violations in Truancy Cases**  
**from 2010 through 2012**

Category of admission	2010	2011	2012
Number of children accused of truancy held for over 24 hours*	84	44	38
Number of children adjudicated for truancy held without a valid court order*	38	7	16
Number of children adjudicated for truancy held with a valid court order	358	344	340
<b>Total detention admissions</b>	<b>480</b>	<b>395</b>	<b>449</b>
<i>Percentage of admissions that were violations</i>	25.4%	12.9%	12.0%
Percentage change in violations from 2010 to 2012			55.7%
Percentage change in detention admissions from 2010 to 2012			6.5%

Source: Division of Criminal Justice, Colorado Department of Public Safety

\*Detentions in this category are considered violations of federal law and regulations

<sup>12</sup>28 CFR, Part 31; P.L. 93-415 (1974)

The DCJ also provided the data in Table 5 concerning the number of truancy detention admissions and violations by judicial district from 2010 through 2012. Throughout the three-year period, five judicial districts (the 5th, 6th, 7th, 9th, and 14th) had no detention admissions for truancy cases. Of the 14 judicial districts that had at least one admission in 2010, 10 judicial districts had fewer detention admissions in 2012 than in 2010. Of the 14 judicial districts that had at least one violation in 2010, 13 judicial districts had fewer violations in 2012. The 4th Judicial District had the most detention admissions, with 477 admissions (and 60 violations) over the three-year period. The 10th Judicial District had the most violations, with 62 violations out of 169 admissions over the three-year period.

**Table 5**  
**Number of Detention Admissions and Violations in Truancy Cases by Judicial District**  
**from 2010 through 2012**

District	Total Number of Detention Admissions and Violations in 2010	Total Number of Detention Admissions and Violations in 2011	Total Number of Detention Admissions and Violations in 2012
1	92 admissions; 2 violations	42 admissions; 5 violations	43 admissions; 1 violation
2	1 admission; 1 violation	0 admissions; 0 violations	0 admissions; 0 violations
3	1 admission; 1 violation	2 admissions; 0 violations	0 admissions; 0 violations
4	196 admissions; 30 violations	150 admissions; 12 violations	131 admissions; 18 violations
5	0 admissions; 0 violations	0 admissions; 0 violations	0 admissions; 0 violations
6	0 admissions; 0 violations	0 admissions; 0 violations	0 admissions; 0 violations
7	0 admissions; 0 violations	0 admissions; 0 violations	0 admissions; 0 violations
8	2 admissions; 1 violation	1 admission; 0 violations	4 admissions; 0 violations
9	0 admissions; 0 violations	0 admissions; 0 violations	0 admissions; 0 violations
10	82 admissions; 36 violations	55 admissions; 9 violations	32 admissions; 17 violations
11	5 admissions; 2 violations	16 admissions; 0 violations	1 admission; 0 violations
12	1 admission; 1 violation	0 admissions; 0 violations	0 admissions; 0 violations
13	11 admissions; 7 violations	13 admissions; 9 violations	4 admissions; 0 violations
14	0 admissions; 0 violations	0 admissions; 0 violations	0 admissions; 0 violations
15	6 admissions; 5 violations	2 admissions; 2 violations	2 admissions; 0 violations

**Table 5 (Cont.)**  
**Number of Detention Admissions and Violations in Truancy Cases by Judicial District**  
**from 2010 through 2012**

District	Total Number of Detention Admissions and Violations in 2010	Total Number of Detention Admissions and Violations in 2011	Total Number of Detention Admissions and Violations in 2012
16	0 admissions; 0 violations	10 admissions; 2 violations	5 admissions; 2 violations
17	29 admissions; 19 violations	6 admissions; 4 violations	7 admissions; 1 violation
18	30 admissions; 13 violations	53 admissions; 3 violations	71 admissions; 7 violations
19	18 admissions; 3 violations	41 admissions; 5 violations	77 admissions; 2 violations
20	1 admission; 1 violation	4 admissions; 0 violations	14 admissions; 5 violations
21	0 admissions; 0 violations	0 admissions; 0 violations	2 admissions; 1 violation
22	0 admissions; 0 violations	0 admissions; 0 violations	1 admission; 0 violations

*Source: Division of Criminal Justice, Colorado Department of Public Safety*

### Recent Legislation Concerning Truancy Proceedings

Between 2007 and 2013, the General Assembly enacted seven bills affecting state law on truancy proceedings. A summary of each bill is provided below, and copies of all bills are available upon request.

**House Bill 13-1021.** In the 2013 legislative session, the General Assembly enacted HB 13-1021, sponsored by Representative Fields and Senator Hudak. The bill contains measures to ensure that children comply with compulsory school attendance requirements and limits the length of detention that a court may impose to enforce those requirements. Under the bill, each school district must adopt and implement policies and procedures concerning elementary and secondary school attendance, including policies and procedures for how to work with children who are habitually truant. The bill specifies that court proceedings to compel compliance with school attendance laws should be pursued as a last resort approach to address truancy, and only pursued if a child continues to be habitually truant after the school or school district has created and implemented a plan to improve the child's school attendance. The bill outlines the actions that the court may take once the school or school district has initiated court proceedings which may include a court order to attend school. If a child is found to be in contempt of court for failing to follow a court order to attend school, the court may issue sanctions that include a sentence for detention of up to five days in a juvenile detention facility. The bill also allows children who are under juvenile court jurisdiction to obtain a General Education Diploma (GED) if the judicial officer or administrative hearing officer finds it is in the child's best interest to do so, and specifies the minimum requirements for education services provided in juvenile detention facilities.

**House Bill 11-1053.** In 2011, the General Assembly enacted HB 11-1053, which was sponsored by Representative Solano and Senator Steadman. The bill required school districts to initiate court proceedings against truant children or against the parents of such children in order to

compel the attendance of the minors in school only as a last resort and after the district has attempted other options that employ best practices and research-based strategies. The bill also authorized the court to order, as a sanction after finding a child in contempt, participation in services for at-risk students.

**Senate Bill 09-256.** SB 09-256, which was enacted in 2009 and sponsored by Senators Romer and Bacon and Representatives Pommer and Scanlan, made changes to the distribution of money from the CDE's Expelled and At-Risk Student Services (EARSS) Grant Program during FY 2009-10. Under the bill, at least one half of any increase in the appropriation for the grant program during FY 2009-10 was required to go to applicants providing services and supports designed to reduce the number of truancy cases requiring court involvement and that reflected the best interests of children and families. The bill specified that such services and supports could include alternatives to GAL representation in truancy proceedings. A representative from the OCR stated that this language was intended to clarify that providing services and programs that might eliminate the need to file a truancy case or appoint a GAL in a truancy case is an appropriate use of EARSS funds. Under the bill, the CDE was authorized to retain up to three percent of any money appropriated for the grant program for the purpose of partnering with organizations or agencies that provide services or supports designed to reduce the number of truancy cases requiring court involvement. The CDE is required to report annually on the efficacy of such services to the House and Senate Education Committees. According to the most recent report, in FY 2011-12, 15 school districts received truancy planning grants. The CDE's EARSS Grant Program evaluations can be found at: [www.cde.state.co.us/DropoutPrevention/EARSS\\_Evaluation.htm](http://www.cde.state.co.us/DropoutPrevention/EARSS_Evaluation.htm).

**Senate Bill 09-268.** In 2009, the General Assembly enacted SB 09-268, which was sponsored by Senator Tapia and Representative Pommer. The bill made a number of clarifications regarding the appointment of professionals in court cases involving children. Specifically, it:

- precluded the court from bearing the cost of a child's legal representative or a child and family investigator in a domestic relations proceeding unless both parties in the case are found to be indigent;
- allowed the court to appoint a GAL in truancy proceedings in cases where the appointment is found to be necessary due to exceptional and extraordinary circumstances;
- required the court to make specific findings that the appointment of a GAL in certain delinquency cases is necessary to serve the child's best interests; and
- clarified when the appointment of a GAL terminates in a delinquency proceeding.

**House Bill 09-1243.** HB 09-1243, which was enacted in 2009 and sponsored by Representatives Middleton and Massey and Senator Bacon, struck a section of the School Attendance Law that required suspensions and expulsions to be considered unexcused absences in a school district's attendance policy.

**House Bill 08-1336.** In 2008, the General Assembly enacted HB 08-1336, which was sponsored by Representative Terrance Carroll and Senator Spence. The bill required:

- the State Board of Education to adopt guidelines by January 1, 2009, establishing a standardized calculation for counting unexcused absences of children; and
- every school district to report annually, starting on or before September 15, 2010, to the CDE the number of children identified as habitually truant for the preceding academic year.

The bill also expanded the types of students that a school district may identify as at risk of suspension or expulsion to include truant children. Previously, only children who had been or were likely to be declared habitually truant or habitually disruptive were considered at-risk students. The bill permitted grant funding from the EARSS Grant Program for educational services for truant services. Previously, school districts and eligible schools could seek funding only for educational services for expelled students and for those at risk of expulsion.

**Senate Bill 07-050.** In 2007, the General Assembly enacted SB 07-050, which was sponsored by Senator Renfroe and Representative Summers. The bill allowed designated school district employees to represent the district in truancy proceedings. The bill also directed districts to adopt a resolution authorizing one or more employees as these district representatives. Previously, attorneys were required to represent districts in truancy proceedings.

**Table 1**  
**Counties within each Colorado Judicial District**

<b>Judicial District</b>	<b>Counties</b>	<b>Judicial District</b>	<b>Counties</b>
1	Gilpin, Jefferson	12	Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache
2	Denver	13	Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Yuma
3	Huerfano, Las Animas	14	Grand, Moffat, Routt
4	El Paso, Teller	15	Baca, Cheyenne, Kiowa, Prowers
5	Clear Creek, Eagle, Lake, Summit	16	Bent, Crowley, Otero
6	Archuleta, La Plata, San Juan	17	Adams, Broomfield
7	Delta, Gunnison, Hinsdale, Montrose, Ouray, San Miguel	18	Arapahoe, Douglas, Elbert, Lincoln
8	Jackson, Larimer	19	Weld
9	Garfield, Pitkin, Rio Blanco	20	Boulder
10	Pueblo	21	Mesa
11	Chaffee, Custer, Fremont, Park	22	Dolores, Montezuma

Source: Colorado Judicial Branch

Colorado Department of Education  
**Truancy Update 2012**

**Summary of amendments in the past ten years pertaining to:**

- 22-33-104. Compulsory school attendance
- 22-33-107. Enforcement of compulsory school attendance
- 22-33-108. Judicial proceedings
- 22-33-22. Identification of at-risk students
- 22-33-205. Services for expelled and at-risk students – grants - criteria

and

**2011-12 school and 2011 court statistics pertaining to:**

Habitual Truant Counts  
Truancy Court Filings

Janelle Krueger  
Program Manager, Expelled and At-Risk Student Services  
Office of Dropout Prevention and Engagement  
Colorado Department of Education  
December 2012



**COLORADO DEPARTMENT of EDUCATION**

## Introduction

Grants made available to school entities through the *Expelled and At-risk Student Services* program are authorized to provide support and services to habitual truants. This includes working with the student's family and may include interagency agreements to access specialized services for the student. This update summarizes policy changes that have emphasized more support to aid truant students and that have shifted attitudes about the role and function of truancy court. It also includes statistics for 2011 truancy court petitions and 2011-12 school district referrals to court.

## Definition of Habitually Truant

Per C.R.S. 22-33-107, a child who is "habitually truant" means a child who has attained the age of six years on or before August 1 of the year in question and is under the age of seventeen years having:

- four unexcused absences from public school in any one month, or
- ten unexcused absences from public school during any school year.

## What is currently required of school districts regarding school attendance?

The School Attendance Law of 1963 sets out attendance requirements and exceptions to them. Among several responsibilities and procedures, Colorado school districts are statutorily required to adopt policies regarding attendance requirements that provide for excused absences and that may include appropriate penalties for nonattendance due to unexcused absence. The policy shall specify the maximum number of unexcused absences a child may incur before judicial proceedings may be initiated. Each district must have an employee designated to act as an attendance officer.

Districts must adopt policies to identify students at risk of suspension and expulsion, of which the policies may also include identifying students *at risk* of being declared habitually truant. Districts must have policies and procedures concerning habitual truants to include the provisions of a plan developed with the goal of assisting the child to remain in school. Districts must annually report the number of habitual truants to the Colorado Department of Education. As a last resort, and after a district has attempted other options/alternatives to court, districts shall initiate court proceedings to compel compliance with the compulsory school attendance law.

## Summary of Legislative Amendments in the Past Ten Years

### 2002 – Judicial Proceedings – Re: Incarceration for Violation of a Valid Court Order

H.B. 02-1079 Allows the court to impose on a juvenile incarceration in a juvenile detention facility for violating a valid court order under the "School Attendance Law of 1963" pursuant to any rules promulgated by the Colorado Supreme Court.

**2006 - Compulsory School Act – Re: School attendance age increased from 16 to 17**

S.B. 06-73 Raises the age of emancipation from compulsory school attendance from 16 to 17 years and applies the increase in age to the definition of habitual truant. (The age was lowered from 7 to 6 in 2007.)

**2006 – Judicial Proceedings – Re: Court jurisdiction to review a board of education’s decision**

H.B. 06-1112 **Judicial proceedings.** Aligns a court’s judicial review of a *[school board’s expulsion]* hearing decision pursuant to rule 106 (a) (4) of the Colorado rules of civil procedure to RULE 3.8 OF THE COLORADO RULES OF JUVENILE PROCEDURE.

In this context, 106(a)(4) pertains to governmental bodies exercising quasi-judicial functions that may have exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law.

Rule 3.8. Status Offenders.

Juveniles alleged to have committed offenses which would not be a crime if committed by an adult (i.e., status offenses), shall not be detained for more than 24 hours excluding non-judicial days unless there has been a detention hearing and judicial determination that there is probable cause to believe the juvenile has violated a valid court order (JDF 560). A juvenile in detention alleged to be a status offender and in violation of a valid court order shall be adjudicated within 72 hours exclusive of non-judicial days of the time detained. A juvenile adjudicated of being a status offender in violation of a valid court order (JDF 561) may not be disposed to a secure detention or correctional placement unless the court has first reviewed a written report (JDF 562) prepared by a public agency which is not a court or law enforcement agency. The purpose of the report is to provide the court with useful information prior to sentencing. The report shall address the juvenile’s behavior and the circumstances which brought the juvenile before the court and shall assess whether all less restrictive dispositions have been exhausted or are clearly inappropriate. The court is not bound by the recommendations contained in the report. The written report must be signed and dated either before or on the date the juvenile is sentenced to detention. Nothing herein shall prohibit the court from ordering the placement of juveniles in shelter care where appropriate, and such placement shall not be considered detention within the meaning of this rule. Juveniles alleged to have violated C.R.S. 18-12-108.5 or adjudicated delinquent for having violated C.R.S. 18-12-108.5 are exempt from the provisions of this rule.

**2007 – Judicial proceedings – Re: School representation in truancy proceedings not limited to attorneys**

S.B. 07-50 Allows a school district board of education, by resolution, to authorize one or more employees of the school district to represent the school district in truancy proceedings, even though the employee is not an attorney.

**2008 - Compulsory School Attendance – Re: Standardized calculation of unexcused absences**

H.B. 08-1336 Requires the state board of education to adopt guidelines for the standardized calculation of unexcused absences of students from school. Requires the department to post this information on the internet. Allows the department to post information on the internet concerning effective, research-based, truancy- and dropout-prevention programs for the benefit of school districts.

**2008 – Enforcement of Compulsory School Attendance – Re: School counts of Habitual Truants**

H.B. 08-1336 Requires a school district to report annually to the department of education concerning the number of students who are habitually truant.

**2008 – Expulsion Prevention Programs – Re: Truants considered “at-risk” and grant-funded services**

**H.B. 08-1336** Allows a school district to include truant students when identifying students who are at risk of suspension or expulsion from school. Allows certain entities to apply for grants from the expelled and at-risk student services grant program to serve students who are truant. *(Author’s note: This is not intended to suggest that suspension and expulsion are appropriate responses to truancy.)*

**2009 - Compulsory School Attendance – Re: Suspension and expulsions declared to be excused absences**

**H.B.09-1243** Requires that a suspension or expulsion count as an excused absence under a school district's attendance policy

**2009 – Expulsion Prevention Programs – Re: Additional grant funds to reduce court referrals**

**S.B.09-256** - Requires the state board to award at least half of any increase in the appropriation for the expelled and at-risk student services grant program for the 2009-10 fiscal year to grant applicants that provide services and supports that are designed to reduce the number of truancy cases requiring court involvement and that also reflect the best interests of the students and families. Authorizes and encourages the department to retain up to an additional 2% of any moneys appropriated to the expelled and at-risk student program to partner with organizations or agencies that provide services and supports that are designed to reduce the number of truancy cases requiring court involvement and that also reflect the best interests of students and families.

- As a result of this amendment, the Colorado Department of Education awarded \$635,700 to seven Denver-metro area grantees that had the highest numbers of referrals to truancy court.

**2011 – Judicial Proceedings – Re: Truancy Court as a last resort and promotion of alternatives to court**

**H.B. 11-1053** The initiation of court proceedings against a truant minor to compel compliance with the compulsory attendance statute shall be initiated by a school district as a last-resort approach, to be used only after the school district has attempted other options for addressing truancy that employ best practices and research-based strategies to minimize the need for court action and the risk of detention orders against a child or parent. Additionally, a court may order participation in services provided by community organizations and through inter-agency agreements.

**Additional Grant-Funded Support, 2011-12**

As a result of H.B.11-1053, the Colorado Department of Education utilized a portion of Expelled and At-Risk Student Services (EARSS) grant funds for a 6-month Truancy Reduction Planning Grant.

Eligible applicants were those that had a record of referring truants to court in 2008, 2009, 2010 and that were not currently funded with an EARSS grant. Funds were awarded to 15 school districts.

The expressed purpose of the grant was to reduce referrals to court.

## Colorado Statistics Related to Habitual Truancy and Court Filings

### Percent of Habitual Truants in Court

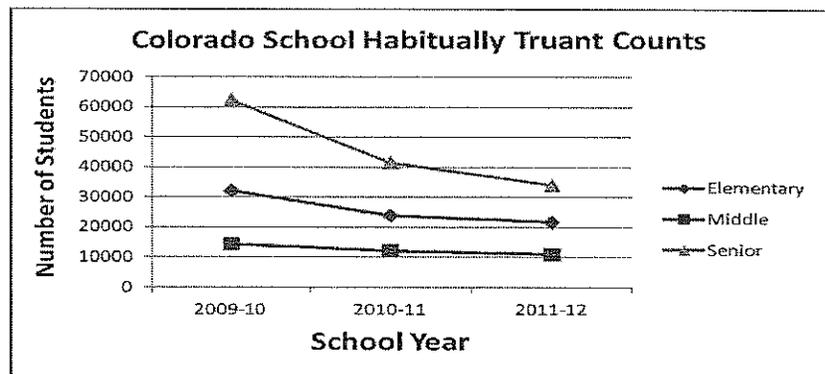
The percent of habitual truants referred to court cannot be calculated on the following data alone. Habitually truant counts cover the fall/spring school year. Court data covers a January through December calendar year. On average, with overlapping calendar and school years, less than 4% of habitual truants are referred to court.

Considering the tens of thousands of habitually truant students in each of the past three years, and less than 3,000 court petitions in each of the past three years, the data indicate that school districts utilize successful interventions in the majority of cases and utilize court as a means of last resort.

Number of Habitually Truant Students			
	School Year		
School Level	2009-10*	2010-11	2011-12
Elementary	31,994	23,808	21,670
Middle	14,370	12,114	11,118
Senior	62,274	41,381	33,984
<b>Total</b>	<b>108,637</b>	<b>77,303</b>	<b>66,772</b>

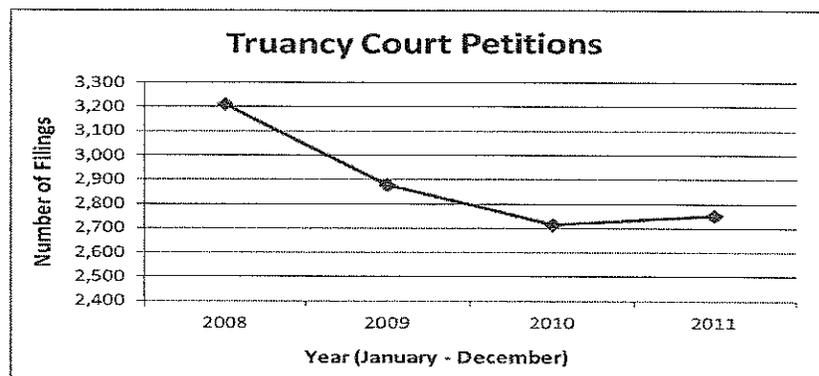
\*H.B.08-1336 required school districts to report the number of habitual truants to the Colorado Department of Education. Following the adoption of rules by the State Board of Education to standardize the calculation of unexcused absences, the 2009-10 school year was the first year the counts were reported.

The statewide pupil count for the 2011-2012 school year increased 10,949 from the previous year. This brought the total count of public school students to 854,265.



Truancy Court Petitions				
	2008	2009	2010	2011
<b>Number</b>	3,209	2,880	2,714	2,752

A Needs Assessment of Truancy Courts report produced by the Colorado Department of Education in 2011 can be downloaded from: [http://www.cde.state.co.us/DropoutPrevention/EARSS TruancyReduction Efforts.htm](http://www.cde.state.co.us/DropoutPrevention/EARSS_TruancyReductionEfforts.htm)



Judicial Districts Calendar Year 2011		
Judicial District	Counties within the judicial district for truancy filings	Total
4	El Paso, Teller	534
19	Weld	442
1	Jefferson	408
18	Arapahoe, Douglas	302
17	Adams	241
20	Boulder	211
2	Denver	203
10	Pueblo	154
21	Mesa	115
<b>Subtotal:</b>		<b>2610</b>
13	Logan, Morgan	31
11	Fremont, Park	19
8	Larimer	16
16	Bent, Otero	15
3	Huerfano, Las Animas	11
22	Montezuma	9
12	Alamosa	8
15	Prowers	8
6	La Plata	7
7	Montrose	7
14	Moffat, Routt	5
9	Garfield	4
5	Lake	2
<b>Total</b>		<b>2,752</b>

In calendar year 2011, 95% of the state's truancy court filings were in these 9 judicial districts.

School Districts 2011-12 School Year	
The following nine school districts accounted for 73% of the 2011-12 school year truancy filings.	
JEFFERSON COUNTY	414
EL PASO DISTRICT 11 (Colorado Springs)	410
WELD RE-6 (Greeley)	355
DENVER PUBLIC SCHOOLS	205
ADAMS ARAPAHOE 28J (Aurora)	148
BOULDER VALLEY (Boulder)	128
ST. VRAIN VALLEY (Longmont)	117
MESA CO VALLEY (Grand Junction)	115
PUEBLO 60 (Pueblo City Schools)	115
<b>Total</b>	<b>2,007</b>

Spreadsheets of annual school-by-school truancy rates can be found at:

<http://www.cde.state.co.us/cdereval/truancystatistics.htm>

For rate calculations, truancy other than habitual refers to unexcused absences in general.

#### Sources:

Legislative Summary: Bill Digest, [http://www.state.co.us/gov\\_dir/leg\\_dir/olls/digest\\_of\\_bills.htm](http://www.state.co.us/gov_dir/leg_dir/olls/digest_of_bills.htm)

Rule 3.8 Status Offenders: Colorado Court Rules, <http://www.lexisnexis.com/hottopics/colorado/>

Habitually Truant Data: Data Services, Colorado Department of Education

Truancy Court Filings: Division of Planning and Analysis, Colorado Judicial Branch

**SUPREME COURT OF COLORADO**

**OFFICE OF THE CHIEF JUSTICE**

**APPOINTMENT OF STATE-FUNDED COUNSEL IN  
CRIMINAL AND JUVENILE DELINQUENCY CASES AND FOR  
CONTEMPT OF COURT**

**I. Statutory Authority**

- A. The federal and state constitutions provide that an accused person has the right to be represented by counsel in criminal prosecutions. This constitutional right has been interpreted to mean that counsel will be provided at state expense for indigent persons in all cases in which actual incarceration is a likely penalty, unless incarceration is specifically waived as a sentencing option pursuant to §16-5-501, C.R.S., or Alabama v. Shelton, 535 U.S. 654 (2002), or there is a waiver of the right to counsel at the advisement.
- B. State funds are appropriated to the Office of the Public Defender to provide for the representation of indigent persons in criminal and juvenile delinquency cases pursuant to §21-1-103, C.R.S.
- C. State funds are appropriated to the Office of Alternate Defense Counsel to provide for the representation of indigent persons in criminal and juvenile delinquency cases in which the Public Defender declares a conflict of interest pursuant to §21-2-101, C.R.S.
- D. Section 19-2-706(2), C.R.S., provides for the representation of juveniles in delinquency cases in which (1) the parent or legal guardian refuses to retain counsel for the juvenile, or (2) the court finds such representation is necessary to protect the interest of the juvenile or other parties involved in the case. When such an appointment is necessary and the juvenile does not qualify for representation by the Public Defender or the Office of Alternate Defense Counsel, the Judicial Department will pay for the costs of counsel and investigator services. However, reimbursement to the state may be ordered, as outlined in this directive.
- E. Colorado Rules of Civil Procedure 107 and 407 provide for the appointment of counsel to an indigent person cited for contempt where a jail sentence is contemplated. If the court appoints private counsel to prosecute a contempt action or to represent an indigent party for contempt charges, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to represent clients for the sole purpose of addressing contempt charges.

**II. Indigency Determination**

- A. A defendant in a criminal case or a juvenile's parent or legal guardian in a delinquency case must be indigent to be represented by the Public Defender or by Alternate Defense Counsel, in cases of Public Defender conflict, at state expense. Such person(s) must also be indigent or otherwise qualify for court-appointed counsel as described in Section III for the court to authorize the payment of certain costs/expenses. Any defendant in a criminal case, or the juvenile's parent, guardian, or legal custodian in a delinquency case, requesting court-appointed representation on

the basis of indigency must complete Form JDF208, Application for Public Defender, Court-Appointed Counsel or Guardian ad Litem, signed under oath.

- B. An indigent person is one whose financial circumstances prevent the person from having equal access to the legal process (Attachments A, B, and C).
- C. Pursuant to §21-1-103 (3), C.R.S., the initial determination of indigency shall be made by the Public Defender subject to review by the court. Therefore, all persons seeking court-appointed representation shall complete form JDF208 and shall first apply with the Office of the Public Defender. The Public Defender will determine if the defendant, or a juvenile's parent or legal guardian in a delinquency case, is eligible for representation in accordance with the fiscal standards.
- D. In all cases, the court retains jurisdiction to determine whether the person is indigent based on all the information available. Upon receipt of the finding by the Public Defender on the issue of eligibility for representation in accordance with the fiscal standards, the court shall review the person's application for Public Defender, including any requests for exception to the determination of the Public Defender. Based on a review of all information available, the court shall enter an order either granting or denying the person's request for appointment of the public defender. The court may use the judicial district's Collections Investigator(s) to provide a recommendation to the court relative to the above determinations, if additional analysis is needed.
- E. If the court finds the person indigent and appoints the Public Defender, or in the case of a conflict, the Alternate Defense Counsel, the court may consider ordering the person to make reimbursement in whole or in part to the State of Colorado pursuant to law using the process described in Section V. of this Chief Justice Directive.
- F. An attorney or other person appointed by the court on the basis of one or more party's inability to pay the costs of the appointment shall provide timely notice to the court in the event financial related information is discovered that would reasonably call into question the party's inability to pay such costs. The court shall have the discretion to reassess indigence, and for purposes of possible reimbursement to the state, the provisions of Section V. of this Chief Justice Directive shall apply. Based upon a reassessment of a party's financial circumstances, the court may terminate a state-paid appointment, require reimbursement to the State of Colorado of all or part of the costs incurred or to be incurred, or continue the appointment in its current pay status.

### **III. Guidelines for Appointment of Counsel**

#### **A. Appointment of Public Defender**

1. Appointments on the Basis of Indigency: To be eligible for representation by the Public Defender (PD), a defendant, or a juvenile's parent or legal guardian in a delinquency case, must be indigent, as defined above and determined by the PD, subject to review by the court. If such person is indigent, the court shall appoint the PD, except as otherwise provided in paragraph III.B.
2. Appointments To Assist in Motions Under Rule 35 of the Colorado Rules of Criminal Procedure: An indigent defendant may be entitled to representation by the PD to assist in motions under Rule 35 if the court does not deny the motion under Crim. P. 35(c)(3)(IV). If

another attorney represents the defendant and withdraws, the PD may be appointed if the defendant is indigent and there is no conflict with such representation.

3. Appointments for Appeals:

- a. The court or the PD shall reassess the indigency status of a defendant who requests court-appointed counsel, as described in Section II.A., for purposes of appeal.
- b. When an indigent person has an Alternate Defense Counsel attorney for the trial of a criminal or delinquency case, the PD shall be appointed to represent the defendant on appeal unless the court determines that the PD has a conflict of interest.

B. Appointment of Alternate Defense Counsel

The Office of Alternate Defense Counsel (OADC) shall maintain a list of qualified attorneys for use by the courts in making appointments. Upon appointment of an Alternate Defense Counsel attorney, the clerk shall notify the OADC's designee. No more than one attorney may be appointed as counsel for an indigent person except in specific exceptional circumstances. Accordingly, upon specific written request by counsel for appointment of an additional attorney to assist in the defense of an indigent person, the OADC may approve appointment of an additional attorney for good cause shown. Such requests should be made in writing and directed to the OADC. Alternate Defense Counsel shall be appointed under the following circumstances:

1. Conflict-of-Interest Appointments: The PD shall file a motion or otherwise notify the court to withdraw in all cases in which a conflict of interest exists. The court shall appoint an Alternate Defense Counsel attorney to represent indigent persons in cases in which the court determines that the PD has a conflict of interest and removes the PD from the case. The OADC is responsible by statute to handle all PD conflict cases. Therefore, the OADC shall establish policies and procedures to cover instances when Alternate Defense Counsel has a conflict.
2. Appointments To Assist in Motions Under Rule 35 of the Colorado Rules of Criminal Procedure: An indigent defendant may be entitled to conflict-free counsel to assist in motions under Rule 35 if the court does not deny the motion under Crim. P. 35(c)(3)(IV) and if the PD notifies the court that a conflict of interest exists. The provisions of III.B.1. above shall be followed in appointing an Alternate Defense Counsel attorney.
3. Appointments for Appeals: If the court determines that the PD has a conflict of interest, it shall set forth in a written order the reason for the conflict of interest and the court shall appoint an Alternate Defense Counsel attorney to represent the defendant.

C. Appointment of Other Counsel

1. The Clerk of Court or the District Administrator shall maintain a list of qualified private attorneys from which appointments shall be made under this section. Private counsel appointed under the following circumstances will be paid by the Judicial Department as established in this directive:
  - a. Exceptional Circumstances: Counsel in Juvenile Delinquency Cases if Parties are Not Indigent: The parents/legal guardians of juveniles are routinely expected to retain and pay for their own private counsel. Upon any request that the State of Colorado /

Judicial Department pay counsel fees and costs, the initial determination shall be whether the party(ies) are indigent, and if so, the Public Defender or ADC shall be appointed, as described above. If the juvenile and parents/guardians are **not** indigent, the court may appoint counsel in a juvenile delinquency case with consideration for the following:

- i. Counsel may be appointed if the court deems representation by counsel is necessary to protect the interests of the juvenile or of other parties or if the parent or guardian refuses to retain counsel, pursuant to §19-2-706(2), C.R.S.
  - ii. If such appointment is made by the court *and* the juvenile and parents/guardians are not indigent (and therefore not eligible for representation by the Public Defender or ADC), the court shall order the parent or guardian to reimburse the court for the costs of counsel and if applicable, investigator appointment.
  - iii. The court may waive the requirement that the parent/guardian reimburse the costs of representation *if the court finds good cause for the refusal to retain counsel, such as when a family member is alleged to be the victim of the juvenile's actions.*
- b. Appointments of Advisory Counsel: There is no constitutional right to the appointment of advisory counsel to assist a *pro se* defendant. However, pursuant to case law, the court may appoint private advisory counsel either 1) at the request of an indigent *pro se* defendant, or 2) over the objections of an indigent *pro se* defendant to ensure orderly proceedings and to provide assistance to the defendant. If the court appoints private advisory counsel for an indigent *pro se* defendant in a criminal case, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to advise *pro se* defendants.
- c. Appointments of Contempt Counsel: Private counsel may be appointed as a special prosecutor or as counsel for an indigent person facing contempt charges when punitive sanctions may be imposed, in accordance with Rule 107(d) and 407(d) of the Colorado Rules of Civil Procedure. Costs and reasonable attorney's fees in connection with the contempt proceeding may be assessed at the discretion of the court.
- d. Appointments of Counsel for Grand Jury Witnesses: A witness subpoenaed to appear and testify before a grand jury is entitled to assistance of counsel pursuant to §16-5-204, C.R.S. For any person financially unable to obtain adequate assistance, counsel may be appointed at state expense. Pursuant to case law, no attorney who provides counsel in the grand jury room may represent more than one witness in a single investigation without grand jury permission. If the court appoints counsel for an indigent witness before a grand jury, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to represent grand jury witnesses.
- e. Appointments of Counsel for Witnesses: An indigent witness subpoenaed to appear and testify in a court hearing may be appointed counsel if the witness requests counsel and the judge determines the appointment of counsel is necessary to assist the witness in asserting his or her privilege against self-incrimination. If the court appoints counsel for an indigent witness for this purpose, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to represent a witness.

2. For appointments under this section, the appointing judge or magistrate shall, to the extent practical and subject to attorney-client privilege, monitor the actions of the appointee to ensure compliance with the duties and scope specified in the order of appointment.
3. Attorneys appointed under this section shall notify the State Court Administrator, in writing, within five (5) days of any malpractice suit or grievance brought against them.
4. Appointees shall maintain adequate professional liability insurance for all work performed. In addition, appointees shall notify the State Court Administrator, in writing, within five (5) days if they cease to be covered by said liability insurance and shall not accept court appointments until coverage is reinstated.

#### **IV. Guidelines for Payment**

##### **A. Public Defender Costs**

The Public Defender's Office has attorneys on staff (Deputy Public Defenders) to accept appointments. Court costs and other expenses incurred by the Public Defender shall be billed to the Public Defender's Office in accordance with that office's policies and procedures.

##### **B. Office of Alternate Defense Counsel Costs**

Claims for payment of counsel and investigator fees and expenses shall be filed with the OADC. A schedule of maximum hourly rates and maximum total fees for OADC state-funded counsel and investigators is shown in Attachment D (1). Court costs incurred by Alternate Defense Counsel attorneys and investigators shall be billed to the OADC in accordance with that office's policies and procedures.

##### **C. Other Court-Appointee's Costs**

The fees and costs associated with appointments described under section III. C. shall be paid by the Judicial Department as follows:

1. **Fees and Expenses:** Appointments may be made by the courts on a non-contract hourly fee basis or contract basis as set forth by the State Court Administrator's Office. A schedule of maximum hourly rates and maximum total fees for state-funded counsel and investigators is shown in Attachment D (2). Upon appointment of counsel or other appointee, court staff shall enter the appointment in the ICON/Eclipse computer system and complete the appointment on the CAC system for payment and tracking purposes. Claims for payment on hourly appointments shall be entered in the Department's **Internet-based payment system (CACS)**; or, if the Financial Services Division of the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, claims for payment shall be filed with the District Administrator in the respective judicial district on the Request and Authorization for Payment of Fees (form JDF207). Claims for payment on flat-fee, contract appointments shall be entered in the Department's Internet-based payment system (CACS); or, if the Financial Services Division of the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, such claims for payment shall be filed with the State Court Administrator's Office using the process and format required by that office. All requests for hourly payment must be in compliance with Guidelines for Payment of Court-Appointed Counsel and Investigators Paid

by the Judicial Department for Itemized Fees and Expenses on an Hourly Basis (Attachment E) and shall follow the Court-Appointed Counsel and Investigators Procedures for Payment of Fees and Expenses (Attachment F). All hourly payment requests shall be reviewed by the District Administrator or his/her designee to ensure that all charges are appropriate and in compliance with this directive and applicable fiscal policies and procedures, before authorizing the request. The Office of the State Court Administrator may review, verify, and revise, when appropriate, authorizations for payment. All incomplete or erroneous claims will be returned to the attorney or investigator with an explanation concerning the issue(s) identified.

2. Court Costs, Expert Witness Fees, and Related Expenses: Costs incurred by counsel shall be pre-approved, billed to and paid by the appointing court. Court costs include such items as: expert and standard witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. Payment of all court costs shall be in accordance with applicable statutes, Chief Justice Directives, and other policies and procedures of the Judicial Department, including the Mandated Costs chapter of the Judicial Department's Fiscal Policies and Procedures manual. Out-of-state investigation travel expenses incurred by the appointee must be accompanied by appropriate travel receipts.
3. Investigator Appointments: If a court appointed attorney paid by the Judicial Department requires the services of an investigator, he or she shall submit a motion to the court requesting authority to hire an investigator. The court shall authorize such appointments as the judge or magistrate deems necessary, and shall issue an order authorizing the amount of investigator fees and expenses that may be incurred, not to exceed the maximum fees set forth in Attachment D (2). The Judicial Department shall pay for investigator services under these circumstances.
4. Online Appointee Billing: Appointees shall invoice the Judicial Department using the Department's Internet-based system (CACS) according to the policies and procedures set forth by the State Court Administrator's Office. An appointee may request an exception to this requirement by contacting the Financial Services Division at the State Court Administrator's Office. In the request, the appointee shall describe the extenuating circumstances preventing the use of CACS for invoicing. The Director of Financial Services or his/her designee shall review such requests and shall have final decision authority concerning the granting or denial of the request. Failure of an appointee to learn or avail him/herself of training on the use of CACS is not sufficient cause to warrant an exception.
5. To maintain the security and integrity of CACS, appointees shall immediately notify the Director of Financial Services, or his/her designee, in writing, of any changes in appointee's staffing or practice that may require cancellation or other changes in the CACS login authority or credentials of appointee or appointee's staff.
6. Failure of appointee to appropriately use CACS shall be sufficient grounds for denial of payment and may result in removal from consideration for future appointments.

**D. Court Costs, Expert Witness Fees and Investigator Fees of an Indigent Party who is Not Appointed Counsel**

1. In certain circumstances, a defendant's court costs, expert witness fees, and/or investigator fees may be paid by the Judicial Department even though the defendant is not being represented by state-funded counsel (i.e., Public Defender; Alternate Defense Counsel; Judicial-paid counsel). Payment by the local court is appropriate if any of the following statements apply:
    - a) The defendant is indigent and proceeding *pro se*;
    - b) The defendant is indigent and receiving *pro bono*, private counsel;
    - c) The defendant is receiving private counsel but becomes indigent during the course of the case, and the court has determined that the defendant lacks sufficient funds to pay for court costs, and that it would be too disruptive to the proceedings to assign the Public Defender or Alternate Defense Counsel to the case.
  2. Court costs include such items as: expert and standard witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. An investigator appointed by the court under this section shall be paid in accordance with the rates and maximum fees established in Attachment D (2). A motion requesting authorization to hire an investigator, to pay court costs, or for expert witness fees shall be submitted to the court. The Court shall authorize such appointments or payments as the judge or magistrate deems necessary, and shall issue an order authorizing the amount of the costs, fees and expenses that may be incurred under this section. For maximum rates for payment of expert witnesses, see CJD 87-01, as amended.
- E. In instances in which fees for activity such as travel time, waiting time, and mileage expenses were incurred simultaneously for more than one court appointment, appointees shall apportion the fees or expenses across cases, as applicable. (For example, traveling to/from court would be billed 50% on the client A appointment and 50% on the client B appointment if the appointee made one trip to cover both clients' hearings.)

**V. Reimbursement to the State**

- A. If the court determines, at any time before, during the course of the appointment (at the court's discretion if questions concerning indigence arise), or after the appointment of state-funded counsel, that the person has the ability to pay all or a part of the expenses for representation including related, ancillary costs, the court shall enter a written order that the person reimburse all or a part of said expenses and inform the responsible party of this obligation. Such order shall constitute a final judgment including costs of collection, and may be collected by the state in any manner authorized by law. The court's financial review concerning ability to pay counsel fees and costs may be accomplished with the use of the judicial district's Collections Investigator. If the defendant is placed on probation, the court may require payment for the costs of representation as one of the conditions of probation.
- B. If the court appoints counsel for a juvenile in a delinquency case because of the refusal of a non-indigent parent, guardian, or other legal custodian to retain counsel for the juvenile, the court shall order the responsible party(ies) (unless the county department of social services or the Department of Human Services is the responsible party) to reimburse the state for the costs of

counsel unless the court finds there is good cause for the refusal to retain counsel pursuant to §19-2-706(2)(b), C.R.S.

- C. Collection of fees and costs related to court-appointed representation may be referred to the Collections Investigator or a private collector that has an agreement for such collection services with the State Court Administrator's Office.
- D. Costs for representation provided may be assessed against the responsible party(ies) at the fixed hourly rate for state-funded private counsel, at the state-funded counsel flat fee rate, or at the hourly cost of providing legal representation by the Public Defender or Alternate Defense Counsel for the number of hours reported by counsel to the court. Other costs incurred for the purposes of prosecution of the case may also be assessed including, for example, costs for transcripts, witness fees and expenses, and costs for service of process. In addition, the responsible party(ies) may be required to pay costs of collection. Costs incurred for accommodations required under the Americans with Disabilities Act, such as hearing interpreter fees, may not be assessed.

## VI. Complaints

- A. All written complaints and documentation of verbal complaints regarding the performance of any state-paid counsel shall be submitted to the District Administrator.
- B. All complaints shall be referred by the District Administrator to the appropriate agency or person. Public Defender complaints shall be submitted to the Public Defender's Office. Complaints against an Alternate Defense Counsel attorney shall be submitted to the Alternate Defense Counsel Office. The District Administrator will forward all other complaints to the presiding judge or, if appropriate, the Chief Judge of the district unless a conflict exists due to the judge's involvement in a pending case. If a conflict exists, the District Administrator will forward the complaint to another judge designated for that purpose.
- C. If the complaint involves an attorney and the reviewing judge or District Administrator determines that the person may have violated the Colorado Rules of Professional Conduct, the information shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel. The Regulation Counsel shall advise the reporting judge or District Administrator and the State Court Administrator of the final outcome of the investigation.
- D. Copies of all written complaints and documentation of verbal complaints regarding state-paid counsel shall be forwarded by the District Administrator to the State Court Administrator's Office. The State Court Administrator may investigate a complaint and take action he/she believes is necessary to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to, terminating the contract with the attorney.

**VII. Sanctions**

- A. All contracts with the Judicial Department for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with this Chief Justice Directive. Failure to comply with this Directive may result in termination of the contract and/or removal from the appointment list.
- B. Judges and Magistrates shall notify appointees that acceptance of the appointment requires compliance with this Directive, and that failure to comply may result in termination of the current appointment and/or removal from the appointment list.

CJD 04-04 is amended and adopted effective July 1, 2011.

Done at Denver, Colorado this 28<sup>th</sup> day of June, 2011.

/s/

---

Michael L. Bender, Chief Justice

Applicant Name \_\_\_\_\_ Court \_\_\_\_\_

Case Number \_\_\_\_\_ Case Name \_\_\_\_\_

**FISCAL STANDARDS - ELIGIBILITY SCORING INSTRUMENT**

Use information from Form JDF208 and information provided by applicant during screening interview. Circle the points in the category that applies and transfer to the "Points" column. Total at end.

Factor				Points	
<b>1. Income Guidelines</b> Gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workman's Compensation Benefits, Unemployment Benefits, and alimony.  Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, veteran's benefits earned from a disability, child support payments or other public assistance programs.  NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the Applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income.)	At or below guidelines	Up to 10% above guidelines	11% to 75% above guidelines (Not eligible if income is more than 75% above guidelines.)		
	150	100	0		
<b>2. Expenses vs. Income</b> (Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall <u>not</u> be included.)	Monthly expenses exceed income by over \$100	Monthly expenses are within \$100 of income	Monthly income exceeds expenses by over \$100		
	50	25	0		
<b>3. Charge (most severe) vs. Assets which could be used to pay defense costs</b> (Assets to include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.)	Class 1 - Class 3 Felony or Habitual Offender related	Class 4 - Class 6 Felony	Class 1 - Class 3 Misdemeanor or jailable Traffic		
	Assets \$0 - \$750	150	125		50
	Assets \$751 - \$1,500	125	100		25
	Assets \$1,501 - \$2,500	100	75		0
	Assets \$2,501 - \$5,000	75	50		0
	Assets \$5,001 - \$7,500	50	25		0
	Assets \$7,501 - \$10,000	25	0		0
Assets over \$10,000	0	0	0		
<b>TOTAL POINTS</b>					
<b>150 or greater</b>		<b>Less than 150</b>			
<input type="checkbox"/> Indigent - Eligible for Public Defender (Note: Reimbursement of costs of representation may be ordered by the court pursuant to Section 21-1-106, C.R.S.)		<input type="checkbox"/> Not Eligible for State-Funded Counsel			

EXCEPTION REQUESTED TO [ ALLOW / DISALLOW ] APPOINTMENT OF [ PUBLIC DEFENDER / ALTERNATE DEFENSE COUNSEL (if PD conflict) ] NOTWITHSTANDING THE ABOVE SCORE. (Documentation justifying request is attached.)

Evaluated by \_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Evaluator Signature

\_\_\_\_\_  
Date

<b>INCOME ELIGIBILITY GUIDELINES</b>						
(amended January, 2013)						
Family Size	Monthly Income*	Monthly Income plus 10%	Monthly Income plus 75%	Yearly Income*	Yearly Income plus 10%	Yearly Income plus 75%
1	\$1,197	\$1,317	\$2,095	\$14,363	\$15,799	\$25,134
2	\$1,616	\$1,777	\$2,827	\$19,388	\$21,326	\$33,928
3	\$2,034	\$2,238	\$3,560	\$24,413	\$26,854	\$42,722
4	\$2,453	\$2,698	\$4,293	\$29,438	\$32,381	\$51,516
5	\$2,872	\$3,159	\$5,026	\$34,463	\$37,909	\$60,309
6	\$3,291	\$3,620	\$5,759	\$39,488	\$43,436	\$69,103
7	\$3,709	\$4,080	\$6,491	\$44,513	\$48,964	\$77,897
8	\$4,128	\$4,541	\$7,224	\$49,538	\$54,491	\$86,691
* 125% of poverty level as determined by the Department of Health and Human Services						
For family units with more than eight members, add \$335 per month to "monthly income" or \$4,020 per year to "yearly income" for each additional family member.						
Source: FEDERAL REGISTER (78FR5182, 01/24/2013)						

**FISCAL STANDARDS: PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY  
FOR COURT-APPOINTED COUNSEL ON THE BASIS OF INDIGENCY**

A determination of indigency is necessary for certain appointments addressed in Chief Justice Directive 04-04. Any defendant in a criminal case, or the juvenile's parent, guardian, or legal custodian in a delinquency case, requesting court-appointed counsel on the basis of indigency must apply for counsel as described below. The Public Defender and court staff will determine the applicant's eligibility for appointment of counsel in accordance with the following procedures:

- The defendant shall apply for the Public Defender by completing the Application for Court-Appointed Counsel, form JDF208 (Judicial Department Form).
- If the defendant is in custody and cannot post or is not allowed bail, the Public Defender may automatically elect to represent the defendant, and will notify the court either verbally or in writing of the circumstances.
- If the defendant's income (or that of a juvenile defendant's parents/guardians) is at or below the income eligibility guidelines and he or she has no assets, as determined on form JDF208, the Public Defender may automatically elect to represent the defendant, and will submit the form JDF208 to the court to demonstrate eligibility.
- If the defendant's income (or that of a juvenile defendant's parents/guardians) is more than 75 percent above the income eligibility guidelines, the Public Defender will note that the defendant is ineligible for court-appointed counsel, and will submit the form JDF208 to the court to demonstrate ineligibility.
- If eligibility or ineligibility cannot be determined as described above, the eligibility-scoring instrument (Attachment A, CJD 04-04) will be completed, using information obtained on form JDF208. The form is designed to use income and expenses to determine basic eligibility, with an added factor for assets available to pay for an attorney. The points assigned in the "asset" category take into account both the dollar value of the assets and the class type of charges against the defendant. This is to address variations in the types of expenses that might be incurred due to the nature of the charges.
- The total score will determine whether the defendant will be represented by the Public Defender (or the Alternate Defense Counsel in case of Public Defender conflict), or whether the defendant is not eligible for representation at state expense on the basis of indigency. The Public Defender or defendant may request an exception to the eligibility determination based on the score and may submit documentation of the reasons for the exception to the court, which then has the opportunity to make an appointment decision based on all of the information.

**ALTERNATE DEFENSE COUNSEL  
MAXIMUM HOURLY RATES <sup>1</sup>**

<u>ADC Fees</u>	<u>No Distinction of In/Out of Court Hours</u>	<u>Effective Date*</u>
Death Penalty Case (excludes travel)		
Attorney	\$85.00 per hour	July 1, 2006
Investigator	\$39.00 per hour	July 1, 2006
Type A Felonies	\$68.00 per hour	July 1, 2008
Type B Felonies	\$65.00 per hour	July 1, 2008
Juvenile, Misdemeanor & Traffic	\$65.00 per hour	July 1, 2008
Authorized Investigator	\$36.00 per hour	July 1, 2007
Authorized Paralegal/Legal Assistant	\$25.00 per hour	July 1, 2007
Travel (regardless of type of case)		
Attorney	\$65.00 per hour	July 1, 2008
Investigator	\$36.00 per hour	July 1, 2007
Mileage at rate defined by §24-9-104 C.R.S. -	Reimbursement paid per OADC policy.	

\* For work performed on or after this date (July 1, 2008)

**MAXIMUM TOTAL FEES PER APPOINTMENT**

<u>Appointment Type</u>	<u>With Trial / Without Trial</u>	<u>Effective Date</u>
Class 1 felonies & unclassified felonies where the maximum possible penalty is death, life or more than 51 years	\$ 24,000 / 12,000	July 1, 2008
Class 2 felonies & unclassified felonies where the maximum possible penalty is 41 through 50 years	\$ 10,000 / 5,000	July 1, 2008
Class 3, 4, 5 and 6 felonies and unclassified felonies where the maximum possible penalty is from 1 to 40 years	\$ 6,000 / 3,000	July 1, 2008
Class 1, 2, and 3 misdemeanors, unclassified misdemeanors, and petty offenses	\$ 2,000 / 1,000	July 1, 2008
Juvenile Cases	\$ 2,500 / 1,750	July 1, 2008

Juvenile and Misdemeanor Appeals: Refer to OADC web site for minimums/maximms based on case classification.

Felony Appeals and Post-conviction: Refer to OADC web site for minimums/maximms based on case classification.

Investigator maximum fee is what has been previously authorized by the ADC

<sup>1</sup> Rates may vary pursuant to Chief Justice Directive or ADC Order. The appointee should contact the Office of the Alternate Defense Counsel or visit the web site at [www.coloradoadc.org](http://www.coloradoadc.org) if there is a question concerning the current authorized rate.

**JUDICIAL PAID APPOINTMENTS**

**MAXIMUM HOURLY RATES <sup>1</sup>**

<u>All Case Types</u>	<u>In-Court and Out-of-Court</u>	<u>Effective Date*</u>
Court-Appointed Counsel Fee	\$65.00 per hour	July 1, 2008
Authorized Investigator	\$33.00 per hour	July 1, 2006
Paralegal / Legal Assistant Time	\$25.00 per hour	July 1, 2006

\* For work performed on or after this date

**MAXIMUM TOTAL FEES PER APPOINTMENT**

<u>Appointment Type</u>	<u>With Trial / Without Trial</u>	<u>Effective Date</u>
Class 1 felonies & unclassified felonies where the maximum possible penalty is death, life or more than 51 years	\$ 24,250 / 12,150	July 1, 2008
Class 2 felonies & unclassified felonies where the maximum possible penalty is 41 through 50 years	\$ 12,150 / 6,425	July 1, 2008
Class 3, 4, 5 and 6 felonies and unclassified felonies where the maximum possible penalty is from 1 to 40 years	\$ 8,575 / 4,300	July 1, 2008
Class 1, 2, and 3 misdemeanors, unclassified misdemeanors, and petty offenses	\$ 2,150 / 1,450	July 1, 2008
Juvenile Cases	\$ 2,875 / 2,150	July 1, 2008
Appeal	\$ 8,575	July 1, 2008
Contempt and Witness	\$ 1,450	July 1, 2008

- Billable time for appeals begins on the date of appointment and is for the appeal portion of the case only.
- Investigator maximum fee allowed is calculated from the preceding chart using the case classification and the "without trial" maximum, exclusive of expenses.

<sup>1</sup> Rates may vary pursuant to Chief Justice Directive or Order. The appointee should contact the local district court, State Court Administrator's Office or visit the web site at [www.courts.state.co.us](http://www.courts.state.co.us) if there is a question concerning the current authorized rate.

## Guidelines for Itemized Hourly Payment: Judicial Paid Appointments Only

### Court-Appointed Counsel and Investigators

- A) Claims for payment on an hourly basis shall be submitted using the Judicial Department's online CAC System (if the appointee is authorized to use this system) or submitted to the appointing court on form JDF207 ("Colorado Judicial Department Request and Authorization For Payment Of Fees") including attachments, and shall be in compliance with these guidelines. For appellate counsel only, claims for payment shall be submitted directly to the Court of Appeals. The claims and attachments shall conform to the Procedures for Payment of Fees and Expenses (Attachment F, this CJD). In accordance with this CJD and all other applicable Department policies and procedures, and upon review and approval by the appointing court, the request for payment will be sent to the State Court Administrator's Office (SCAO) for processing. The SCAO may review, verify, and revise, when appropriate, such authorized requests for payment.
- B) A schedule of maximum hourly rates for court-appointed counsel is established by the Supreme Court in Attachment D (2) and/or by Chief Justice Order. **No payment shall be authorized for hourly rates in excess of the Chief Justice Directive or Order. The maximum total fee that may be paid to court-appointed private counsel for representation on a case is established in Attachment D (2). This maximum includes appointee fees (both contract flat fees plus hourly, as applicable), allowable incidental expenses, paralegal, legal assistant, and law clerk time. To find the allowed maximum total fee for investigators, exclusive of expenses, use the case classification type and the "without trial" maximum from the chart in Attachment D (2).**
1. If there are unusual circumstances involved in the case and the appointee determines that additional work must be completed that will create fee charges over the maximum allowed, pre-approval for fees in excess is to be obtained by submitting a Motion to Exceed the Maximum to the presiding judge/magistrate. (While there may be exceptions in which pre-approval is not possible before additional work is performed, seeking pre-approval should be the norm.) If satisfied that the excess fees are warranted and necessary, the presiding judge/magistrate should approve such motion. The District Administrator (or designee) should deny further payment unless accompanied by a Motion to Exceed the Maximum and an order granting the Motion by the presiding judge or magistrate.
  2. The Motion to Exceed the Maximum must cite the specific special and extraordinary circumstances that justify fees in excess. The judge or magistrate, in his or her discretion, may grant approval with an Order for Fees in Excess which provides a maximum up to 150% of the established maximum as outlined in Attachment D (2) of this Chief Justice Directive. A subsequent Motion to Exceed Maximum must be submitted for the same appointment if total fees are expected to further exceed the maximum established by the judge or magistrate.
- C) **All court appointees and investigators must submit their JDF207 or invoice using CACS, as applicable, to the court within six months of the earliest date of billed activity.** For example, for an invoice containing work performed from January 1, 2010 through June 14, 2010, the *court must receive the bill by June 30, 2010*. Any court appointee or investigator desiring to request an exception to the 6-month rule based on unusual circumstances shall make such request in writing to the Director of Financial Services at the SCAO, or the Director's designee, whose decision concerning payment shall be final. Before an exception will be considered, the request must detail

the extraordinary circumstances concerning a bill or portion of a bill wherein the activity does not fall within the six-month rule.

- D) The District Administrator or his/her designee will carefully review all hourly payment requests submitted for approval. To assist in this review, attorneys and investigators must submit a detailed itemization of in-court and out-of-court hours with each request for payment as outlined in Procedures for Payment of Fees and Expenses, Attachment F. Authorization for payment is not automatic, and the District Administrator (or designee) must be satisfied that the number of hours billed and expenses charged are appropriate and necessary for the complexity of the issues involved. If there are questions concerning the reasonableness of the bill, the appropriate judge or magistrate will be consulted. If reimbursement to the state is to be ordered and such order is not already entered, the District Administrator or his/her designee shall notify the appropriate judge.
- E) Requests by appointees for reimbursement of expenses must include itemized statements and accompany the request for payment. In addition, such requests must comply with Maximum Hourly Rates/Maximum Fees Per Appointment as set forth in Attachment D (2). When practical, a paralegal or legal assistant should be used for tasks that require legal expertise but can be done more cost-effectively by an assistant, such as drafting court motions or performing some legal research. The billable hourly rate for a paralegal or legal assistant time is found in Attachment D (2). The Judicial Department does not pay for the time of administrative support staff. Therefore, charges for time spent on administrative activities, such as setting up files, typing, copying discovery or other items, faxing documents, making deliveries, preparing payment requests, and mailing letters are not reimbursable costs. Attorneys are expected to have sufficient administrative support for these activities.
1. Certain court costs are paid individually by the appointing court (not SCAO) with prior court approval. The appointing court pays court costs incurred by counsel. Counsel or investigators should submit the bills for items listed below directly to the local court and should not include these costs for reimbursement on the Request for Payment form (JDF207) nor through online billing.

**Costs Paid Locally by the Individual Court**

- Cost of subpoenas;
  - Fees and expenses of witnesses;
  - Service of process;
  - Language interpreters;
  - Mental Health examinations/evaluations;
  - Transcripts;
  - Discovery Costs (including: Lexis Nexis research charges, medical records, etc.)
2. Court-appointed counsel and investigators may request reimbursement for certain reasonable out-of-pocket expenses that are incurred on behalf of their clients. The following expenses may be claimed on the Request for Payment form (JDF207) or using CACS.

**Other Allowable Expenses**

- Copy charges at the rate of \$0.10 per page (specify the number of copies made);
- Mileage at the rate defined by §24-9-104 C.R.S. (the actual number of miles must be specified for each trip);
- Long-distance telephone calls at cost (if total billing exceeds \$50, it must include a copy of the telephone bill with the following information highlighted: date, phone number, and charges);
- Postage at cost (regular 1<sup>st</sup> class mail charges);
- Reimbursement for delivery and express mail charges are only reimbursable for a case on appeal. A receipt or invoice for these charges must be attached to the order for payment;
- Requests for payment of overnight travel or out-of-state travel require prior authorization by the court and must be in accordance with state travel regulations as described in the Travel section of the Colorado Judicial Department's Fiscal Policies and Procedures manual. Out-of-state travel expenses incurred by the appointee shall be submitted to the court using form JDF207 with the appropriate copies of travel receipts included.

3. The following items are not authorized for payment or reimbursement.

**Non-Allowable Expenses**

- Phone calls when no contact is made (i.e., no answer, client not available or message left to call back, etc.);
- Fax charges;
- Parking Fees;
- Items purchased for indigent (or other) persons represented which includes meals, books, clothing, and other personal items;
- Administrative activities (as previously discussed)
- Electronic filing fees for which state funded counsel appointments are exempt;
- Any other cost or expense not authorized under Colorado law or Chief Justice Directive for payment by the state or reimbursement to counsel or other party.

- F) In any case in which a payment has been made to the attorney by a party who is later determined to be indigent, the state will reimburse the attorney for the total number of hours expended on the case, less any payments received from the party for fees incurred prior to the determination of indigence. The payment calculation is at the allowed Chief Justice Directive and/or Chief Justice Order hourly rate applicable to when the activity occurred.
- G) Attorneys shall maintain records of all work performed relating to court appointments and make all such records available to the Judicial Branch for inspection, audit, and evaluation in such form and manner as the Branch in its discretion may require, subject to attorney/client privilege.
- H) The Judicial Department will review and respond promptly to any question or dispute concerning a bill received, submitted, or paid. However, due to research time and record retention limitations, there is a time restriction of two years for billing questions and disputes. The two-year restriction starts from the activity date (or date of service) that is in question. For prompt resolution concerning questions or disputes concerning hourly or contract payment requests, all

questions and disputes must be directed to the local court or State Court Administrator's Office immediately when issues arise.

## Judicial Paid Appointments

### \* Procedures for Payment of Fees and Expenses \*

#### GENERAL INFORMATION

These procedures apply to requests for payment of fees and expenses for court-appointed counsel, other appointees, and investigators paid by the Judicial Department on an hourly basis. Payment requests shall be submitted via the Department's online CAC System (CACs) in accordance with the policies and procedures set forth by the State Court Administrator's Office or, if an exception has been granted pursuant to Section IV.C.4. of this Chief Justice Directive, by using the standardized "Colorado Judicial Department Request and Authorization For Payment of Fees" form JDF207 (Judicial Department Form). Completion, including attachments, should adhere to the procedures described below. Requests for payment that do not include the necessary information will be returned to the appointee or to the court for completion or correction.

All appointees, both hourly and contract, who have not yet received payment from the Judicial Department must submit a completed W-9 form and, if applicable, an "Authorization to Pay a Law Firm" form before a payment can be issued. Payments are issued/submitted to whomever the attorney has authorized and approved on W-9 and "Authorization to Pay a Law Firm" forms. Therefore, if an attorney is no longer with the law firm indicated on a prior W-9 and/or Authorization to pay a Law Firm, he/she must complete a new form(s) and submit them to the Financial Services Division at SCAO. The forms are available from the court or from the Financial Services Division by calling (303) 837-3639.

To change only the mailing address, send the address change to the Colorado Judicial Department, Financial Services Division, 101 W. Colfax, Suite 500, Denver, CO 80202, or call for e-mail instructions.

Billing for Representation of Client with Multiple Cases: When billing for multiple cases in representation of the same client (i.e., companion cases), the appointee should work with the Financial Services Division at the State Court Administrator's Office to ensure the appointments/cases are designated as "concurrent" for billing purposes. Appointees must use the "Concurrent Appointment Notification" form, which is available from the Financial Services Division upon request. This applies to situations in which activity occurs simultaneously in the representation of the party across the multiple cases (example: the appointee attends a single court hearing during which more than one of the client's cases is discussed) and allows for the activity to be billed once via a "master" case. Cases in which the appointee's activity does not overlap multiple cases should not be billed concurrently, and should instead be billed by submitting separate invoices for each respective case.

When an attorney is appointed to continue on a case for the purposes of appeal, payment shall be on an hourly basis even if the original appointment was on a contract, flat fee basis.

## **A. PROCEDURES FOR BILLING**

### **1. Detail of Itemized Billing**

Time sheets must be attached to the JDF207 to support the summarized hours billed. (If CACS online billing is used, the detail is entered in this system.) Time must be described in sufficient detail to justify the amount of time spent on the activity. Time reported must include all time spent between the beginning and ending dates of the billing and must be in chronological order. Time sheets must be legible – preferably typed. Expenses must be described. A sample itemization is shown on the next page.

**Rates may vary pursuant to Chief Justice Directive or Order. The appointee should contact the local district court, State Court Administrator's Office or visit the web site at [www.courts.state.co.us](http://www.courts.state.co.us) if there is a question concerning the current authorized rates.**

- a. The billing detail and itemization needs to include date, distinguish between out-of court and in-court time, and a description of service performed. Time must be billed in *tenths* of an hour using the decimal system. One-tenth of an hour is equal to six (6) minutes. For example, 12 minutes is charged as 0.2 hours.
- b. Mileage itemization must include the date of the trip, the purpose of the trip, and the number of miles traveled for each trip.

### **2. Other Attachments**

- a. Investigators must include the order of appointment appointing the attorney for whom the investigator is working, the court's order authorizing an investigator, and the amount of expenses the investigator may incur.
- b. If the total fee request (including past payments and the current invoice) exceeds the maximum fee allowed by this Directive as specified in Attachment D (2), a copy of the court's order authorizing fees beyond the maximum must be submitted. Submitting this copy once is sufficient as long as subsequent billings remain within the newly authorized amount.
- c. If total expenses exceed \$50, all receipts or invoices for those expenses must be submitted with the invoice. If using CACS online billing, submit the receipts to the local court and clearly indicate the case number and billing time frame for which the receipts relate.
- d. All receipts for any expenses outside of the guidelines and an explanation for the additional costs must be submitted.

*John Sample, Attorney at Law*

Date	Activity	In-court	Out-of-court	Paralegal	
05/06/10	Court appearance –pending charges	0.4			
05/06/10	Conf with client, father and DA		1.1		
06/05/10	Review family service plan		0.5		
06/09/10	Court appearance, plea, sentencing	0.3			
06/10/10	Meet with client to discuss placement		1.0		
06/11/10	Prepare motion to reconsider placement			0.2	
08/07/10	Travel to Lookout Mtn Detention round trip (57 miles)		1.4		
08/07/10	Conf. With client/staffing at Lookout Mtn.		1.0		
08/07/10	Draft restitution Motion			0.2	
08/14/10	Restitution Hearing	0.3			
Dates of service 05/6/10 – 08/14/10		Total hours	1.0	5.0	0.4

<b>SUMMARY OF FEES</b>	<b>Activity:</b>	
	6.0 hours @ \$65 per hour	\$390.00
	0.4 hours @ \$25 per hour	\$10.00
	<b>TOTAL FEES</b>	<b>\$400.00</b>
<b>TOTAL MILEAGE</b>	57 miles @ \$0.45 per mile (or rate defined by §24-9-104 C.R.S.)	<b>\$25.65</b>
<b>SUMMARY OF OTHER EXPENSES</b>	Copies: Police report and complaint = 12 pgs @ \$0.10	\$1.20
	Postage	\$0.44
	<b>TOTAL OTHER EXPENSES</b>	<b>\$1.64</b>
	<b>TOTAL BILLING</b>	<b>\$427.29</b>

**COMPLETION OF THE JDF207 (Hourly Billing if not billing online)**

Completion of the JDF207 form is required by the Judicial Department for payment of court appointees appointed on an hourly basis unless the appointee has been authorized to invoice using CACS (online system). The appointee should keep a copy and submit the original plus one copy. All applicable sections of the form should be completed as indicated in the instructions. Attach all required documents before submitting to the local court. All incomplete Requests for Payment will be returned to the appointee for correction(s).

**Section I.**

Enter the case number of the charges being billed. When billing for multiple cases in representation of the same client (i.e., companion cases), enter all applicable case numbers. If the bill is for appellate charges, include the appeal case number and the original case number being appealed.

Include the name and number of person/(s) represented, the name of the case, applicable county, name of appointing judge/magistrate and current judge/magistrate. Indicate if the case jurisdiction is district or county.

**Section II.**

Enter all applicable appointee information, attorney registration number, name, complete address, phone, fax, e-mail. If the address has changed, check new address box. For more information concerning changes, review the General Information section in this attachment.

The Social Security Number or Tax Id Number must be included on each JDF207 (for more information concerning authorized payee changes, review the General Information section in this attachment).

Indicate the appointment date, if you are an original or substitute appointee, if the case has or has not gone to trial, if the case was originally under contract. If originally under contract, explain why an hourly bill is being submitted and the date circumstances changed resulting in hourly billing.

**Section III.**

Indicate the type of representation provided.

**Section IV.**

Indicate the authority/statute title allowing for the appointment. This is indicated on the original appointment form/order.

**Section V.**

The indigency status of the person represented must be noted. If the person is found indigent, use the date of determination. If the person is not indigent, indicate which statement is applicable to the party represented and if reimbursement is to be ordered by the presiding judge. This information is usually included in the order of appointment or may be found in the application for court-appointed counsel (form JDF208) or another affidavit of indigence, as requested by the court.

**Section VI.**

Under this section all charges are to be summarized.

For the activity *from date*, enter the first chronological date of activity billed from the itemized detail document. For the activity *to date*, enter the last chronological date in which activity occurred as itemized in the detail document. Group the *start* and *to date* for activities in which the effective date of the rates (as set by Chief Justice Directive or Chief Justice Order) are the same.

Instructions for summarizing attorney hours and fees are located on the reverse side of the Request and Authorization for Payment of Fees form (JDF207) #5.

For non-attorney billing activity, summarize all non-attorney hours by category. Next, apply the rate as set by Chief Justice Directive or Chief Justice Order and enter the total charge requested in the right column. Summarize all expenses by type, apply the correlating rates and/or receipts and enter the total charge per category. Charges must correspond to attached receipts.

Total all charges and calculate total amount billed.

Include all prior amounts invoiced for the appointment in the "Total Amount Previously billed" line, (excluding the current request).

Determine the cumulative total of fees charged by appointee for the case by adding the "Total Amount Previously billed" plus the current request amount. If the cumulative total is over the authorized maximum, check the indicator box "Exceeds allowed maximum". Include the Motion to Exceed Maximum and the approved Order to Exceed Maximum (if possible, this should be judge/magistrate pre-approved and not requested after services are performed).

**Appointee signature and date are required.**

**If this is the final bill, check the "Final Bill" box.**

**SUPREME COURT OF COLORADO  
OFFICE OF THE CHIEF JUSTICE**

**APPOINTMENT AND PAYMENT PROCEDURES FOR COURT APPOINTED  
COUNSEL PURSUANT TO TITLES 12, 13, 14, 15, 19 (DEPENDENCY AND  
NEGLECT ONLY), 22, 27, AND GUARDIANS *AD LITEM*, CHILD AND FAMILY  
INVESTIGATORS, AND COURT VISITORS PAID BY THE STATE COURT  
ADMINISTRATOR'S OFFICE**

This policy is adopted to assist the administration of justice with respect to the following appointments:

- Appointment of counsel for children and adults under Titles 12, 13, 15, 19 (dependency and neglect only), 22, and 27;
- Appointment and training of guardians *ad litem* and court visitors appointed on behalf of wards or impaired adults in all cases;
- Appointment of non-attorney child and family investigators in the best interest of children pursuant to §14-10-116.5, C.R.S. For additional policies addressing guidelines for payment, practice standards, guidelines for appointment, complaint process, eligibility, sanctions and the court's authority, role, and responsibilities related to all child and family investigators (attorney, non-attorneys, private paid and state paid) refer to Chief Justice Directive 04-08 and Chief Justice Directive 04-06. This Chief Justice Directive 04-05 provides payment policies governing child and family investigators appointed for indigent parties and paid by the state.

This policy does not cover appointments made pursuant to Titles 16 and 18, nor appointments of counsel in juvenile delinquency matters pursuant to Title 19, nor appointments of guardians *ad litem* for minors, attorney child and family investigators and child's legal representatives (Office of the Child's Representative (OCR) appointments). For information concerning criminal and juvenile delinquency appointments refer to Chief Justice Directive 04-04, and for state paid attorneys appointed in the best interest of children and paid by the OCR, refer to Chief Justice Directive 04-06.

**I. STATUTORY AUTHORITY**

- A. The federal and state constitutions and various Colorado statutes provide authority for the appointment of counsel, guardians *ad litem* (GAL), child and family investigators, and court visitors in certain legal actions.
- B. State funds are appropriated to the Judicial Department to provide for representation in dependency and neglect cases and in certain other cases in which the party represented, or the party's parent or legal guardian, is determined to be indigent.

## II. ELIGIBILITY DETERMINATION

- A. The person for whom representation is requested or, in the case of children, the responsible party, must be indigent to qualify for court-appointed representation at state expense pursuant to Titles 14, 22, and 27 and for representation of respondents in a dependency and neglect action under Title 19. Such person(s) must also be indigent for the court to authorize payment of certain costs and expenses.
- B. An indigent person is one whose financial circumstances fall within the fiscal standards set forth in Attachment A.
- C. All persons requesting court-appointed representation to be paid by the state on the basis of indigency must complete, or have completed on their behalf, application form JDF208 ("Application for Public Defender, Court-Appointed Counsel or Guardian *ad litem*") signed under oath, before an appointment of counsel at state expense may be considered. Form JDF208 must be completed for the appointment of counsel at state expense in all cases except mental health cases under Title 27, guardianship and protective proceeding cases under Title 15 in which the respondent refuses to or is unable to supply the necessary information, cases in which a minor is requesting counsel for judicial bypass proceedings pursuant to §12-37.5-107(2)(b), C.R.S. Pursuant to §13-90-208, C.R.S. a person who is deaf or hard of hearing may have access to counsel for advice on whether to execute a waiver of state funded interpreter services.
- D. For appointments under Title 15 and some appointments under Title 27 where the court believes that the person needs the assistance of counsel and is unable to obtain counsel, the person for whom representation is requested or, in the case of children, the responsible party, need not be indigent to qualify for court-appointed representation at state expense.
- E. If, in the interest of justice, a tentative appointment of legal counsel or a guardian *ad litem* for the party is necessary, such appointment may be made pending a final decision regarding indigency. If a review of a person's application shows that the person is not indigent and the person is not qualified to have court-appointed representation at state expense, the court may order the person to reimburse the state for any justifiable fees and expenses as a result of representation provided from a tentative appointment of legal counsel or a guardian *ad litem*.
- F. An attorney or other person appointed by the court on the basis of one or more party's inability to pay the costs of the appointment shall provide timely notice to the court in the event financial related information is discovered that would reasonably call into question the party's inability to pay such costs. The court shall have the discretion to reassess indigence, and for purposes of possible reimbursement to the state, the provisions of Section V. of this Chief Justice Directive shall apply. Based upon a reassessment of a party's financial circumstances, the court may terminate a state-paid appointment, require reimbursement to the State of Colorado of all or part of the costs incurred or to be incurred, or continue the appointment in its current pay status.

### III. GUIDELINES FOR APPOINTMENT OF COUNSEL, GAL (FOR ADULTS), NON-ATTORNEY CHILD AND FAMILY INVESTIGATORS, AND COURT VISITORS

The Clerk of Court or the District Administrator shall maintain a list of qualified persons from which appointments will be made under this section. The order of appointment shall specify:

1. The authority under which the appointment is made;
2. Reason(s) for the appointment;
3. Scope of the duties to be performed; and
4. Terms and method of compensation (including indigency status).

*See Attachments B (Form JDF209) and C (Form JDF210). See Chief Justice Directive 04-08 guidelines for the appointment of child and family investigators.*

#### A. Appointments of Counsel

Appointments may be made under flat fee or hourly contracts developed by the Judicial Department, or if necessary to meet the jurisdiction's needs, on a non-contract hourly fee basis. Any attorney not under contract with the Department who requests appointments must submit to the Chief Judge a request with an affidavit of qualifications for such appointments. The Chief Judge, in his or her discretion, may approve additions to the list of non-contract attorneys at any time. An attorney not under contract with the Judicial Department must submit an updated affidavit to the chief judge every three years to ensure that he or she is maintaining his or her qualifications for such appointments. The judge or magistrate shall consider the number of an attorney's active cases, the qualifications of the attorney, and the needs of the party to be represented when making appointments.

1. Appointment of Counsel for Respondent in Dependency and Neglect Proceedings: Counsel shall be appointed for an indigent parent or guardian in dependency and neglect proceedings as provided under Title 19.
2. Appointment of Counsel for Involuntary or Emergency Alcohol/Drug Commitment Proceedings: Counsel appointments to provide legal representation to eligible persons shall be in accordance with the provisions under Title 27, Articles 81 and 82, as amended.
3. Appointment of Counsel for Care and Treatment of Mentally Ill: Counsel appointments to provide legal representation to eligible persons shall be in accordance with the provisions under Title 27, Article 65, as amended.
4. Appointment of Counsel for Probate, Trusts, and Fiduciaries: Counsel appointments to provide legal representation to eligible persons shall be in accordance with provisions under Title 15, Article 14, as amended.

5. Appointment of Counsel for a Juvenile:
  - a. Counsel may be appointed for a child in a truancy matter under Title 22 if adjudication is previously entered and the child is served with a contempt citation or if the court deems representation by counsel necessary to protect the interests of the child or other parties. Parties requesting counsel must complete form JDF208 and a finding of indigence is required for the appointment of counsel at state expense. If the party is not qualified to have court-appointed representation at state expense, the court may order the responsible party(ies) to reimburse the state for any justifiable fees and expenses as a result of representation provided from a tentative appointment of legal counsel.
  - b. Counsel may be appointed for a minor under the judicial bypass provisions of the Colorado Parental Notification Act pursuant to §12-37.5-107(2)(b), C.R.S. and Chapter 23.5 of the Colorado Rules of Civil Procedure (“Rules of Procedure for Judicial Bypass of Parental Notification Requirements”).
6. Appointment of Counsel for Appeals: The trial court shall determine the need and statutory requirement for appointment of counsel on appeal. The court shall be under no obligation to appoint counsel in appeals where the sole issue for determination is the individual allocation of parental responsibilities between and among two parents. Where applicable, determinations of indigency should be in accordance with the procedure described in section II. The maximum total fee allowable on an appeal shall be in accordance with the maximum fees outlined in section IV. D. Requests for payment shall be filed on Form JDF207 (Colorado Judicial Department Request and Authorization For Payment of Fees) with the appellate court and must contain a copy of the order appointing counsel to represent the indigent person on appeal. An appellate court judge, or designee, shall carefully review all requests for payment submitted to the court for approval.
7. Appointment of Counsel for a Person who is Deaf or Hard of Hearing: Pursuant to §13-90-208, C.R.S., the right of a person who is deaf or hard of hearing to a qualified interpreter or auxiliary service may not be waived except in writing by the person who is deaf or hard of hearing. Prior to executing such a waiver, a person who is deaf or hard of hearing may have access to counsel for advice.
8. Appointment of Counsel in Other Cases: Indigent parties may request that the court appoint counsel in other cases for which there is not specific statutory authority. See, In re C.A.O. for the adoption of G.M.R., 192 P.3d. 508 (Colo. App. 2008). The Judicial Department does not budget for non-statutorily required appointments. In an instance where the court finds constitutional authority for the appointment of counsel for an indigent party, a written order of appointment stating the grounds for appointment, citing legal authority, and certifying payment of counsel at the state rate is required.

B. Appointments of Guardians *ad litem* (for Adults), Non-Attorney Child and Family Investigators and Court Visitors.

The court may appoint a qualified person other than an attorney as a child and family investigator or court visitor when the appointment of an attorney is not mandated by statute. The court shall maintain a list of qualified persons to accept appointments as guardians *ad litem*, court visitors and non-attorney child and family investigators from which the court will make appointments.

1. Appointment of GAL in Dependency and Neglect Case: A guardian *ad litem* may be appointed pursuant to Title 19 for a parent or guardian in dependency and neglect proceedings who has been determined to be mentally ill or developmentally disabled, unless a conservator has been appointed.
2. Appointment of GAL in Trusts or Estates: In formal proceedings involving trusts or estates of decedents, protected persons, and in judicially supervised settlements pursuant to Title 15, a guardian *ad litem* may be appointed for an incapacitated person, unascertained person, or a person whose identity or address is unknown, if the court determines that a need for such representation exists.
3. Appointment of GAL in a Civil Suit: A guardian *ad litem* may be appointed for an incompetent person who does not have a representative and who is a party to a civil suit, pursuant to CRCP 17(c).
4. Appointment of GAL for Emergency or Involuntary Commitment of Alcoholics or Drug Abusers: Upon the filing of a petition for involuntary commitment of alcoholics or drug abusers, a guardian *ad litem* may be appointed for the person if the court deems the person's presence in court may be injurious to him or her pursuant to Title 27.
5. Appointment of Non-Attorney Child and Family Investigator: A non-attorney child and family investigator may be appointed in a domestic relations case pursuant to §14-10-116.5, C.R.S. Also see applicable guidelines pursuant to Chief Justice Directive 04-08. For appointment of an *attorney* child and family investigator, see applicable guidelines implemented through the Office of the Child's Representative pursuant to Chief Justice Directive 04-06. Pursuant to §14-10-116.5(b), C.R.S., in cases where the appointment is made prior to the entry of a decree of dissolution or legal separation, the court shall consider the combined income and assets of both parties for purposes of determining indigence and whether the state shall bear the costs, fees, or disbursements related to the appointment of a child and family investigator. The court shall enter an order for costs, fees, and disbursements against any or all of the parties and, as provided in §14-10-116.5(c), C.R.S., shall make every reasonable effort to apportion costs between the parties in a manner that will minimize the costs, fees, and disbursements that shall be borne by the state. When a responsible party is indigent, the state will pay the non-attorney child and family investigator at the rates established in section IV.C. and IV.D. for the portion of authorized fees and expenses for which the indigent party is responsible.

6. Appointment of Court Visitor: A court visitor shall be appointed for a respondent pursuant to Title 15.

#### IV. GUIDELINES FOR PAYMENT OF COUNSEL, GUARDIANS *AD LITEM*, NON-ATTORNEY CHILD AND FAMILY INVESTIGATORS, AND COURT VISITORS

- A. The fees and costs associated with appointments described under this directive shall be paid by the Judicial Department as follows:

1. Fees and Expenses: Appointments may be made under contracts developed by the Judicial Department or on a non-contract hourly fee basis. Upon appointment of counsel or other appointee, court staff shall enter the appointment in the ICON/Eclipse computer system and complete the appointment on the CAC system for payment and tracking purposes. Claims for payment on hourly appointments shall be entered in the Department's **Internet-based payment system (CACS)**; or, if the Financial Services Division of the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, claims for payment shall be filed with the District Administrator in the respective judicial district on the Request and Authorization for Payment of Fees (form JDF207). Claims for payment on flat-fee, contract appointments shall be entered in CACS; or, if the Financial Services Division of the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, such claims for payment shall be filed with the State Court Administrator's Office using the process and format required by that office. All requests for hourly payment must be in compliance with Guidelines for Payment of Court-Appointed Counsel, Guardians *ad litem*, Non-Attorney Child and Family Investigators and Court Visitors Paid by the Judicial Department for Itemized Fees and Expenses on an Hourly Basis (Attachment D) and shall follow the Court Appointees and Investigators Procedures for Payment of Fees and Expenses (Attachment E). All hourly payment requests shall be reviewed by the District Administrator or his/her designee to ensure that all charges are appropriate and in compliance with this directive and applicable fiscal policies and procedures, before authorizing the request. The Office of the State Court Administrator may review, verify, and revise, when appropriate, authorizations for payment. All incomplete or erroneous claims will be returned to the attorney or other appointee with an explanation concerning the issue(s) identified.
2. Court Costs, Expert Witness Fees, and Related Expenses: Costs incurred by counsel shall be pre-approved and paid by the appointing court. Court costs include such items as: expert witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. Payment of all court costs shall be in accordance with applicable statutes, Chief Justice Directives/Orders, and other policies and procedures of the Judicial Department, including the Judicial Department's Fiscal Policies and Procedures manual. A motion requesting authorization to hire an investigator, to pay court costs, or for expert witness fees shall be submitted to the court. The court shall authorize such

appointments or payments as the judge or magistrate deems necessary, and shall issue an order authorizing the amount of the costs, fees and expenses that may be incurred under this section. For maximum rates for payment of expert witnesses, see CJD 87-01, as amended.

3. Online Appointee Billing: Appointees shall invoice the Judicial Department using the Department's Internet-based system (CACS) according to the policies and procedures set forth by the State Court Administrator's Office. An appointee may request an exception to this requirement by contacting the Financial Services Division at the State Court Administrator's Office. In the request, the appointee shall describe the extenuating circumstances preventing the use of CACS for invoicing. The Director of Financial Services or his/her designee shall review such requests and shall have final decision authority concerning the granting or denial of the request. Failure of an appointee to learn or avail him/herself of training on the use of CACS is not sufficient cause to warrant an exception.
  4. To maintain the security and integrity of CACS, appointees shall immediately notify the Director of Financial Services, or his/her designee, in writing, of any changes in appointee's staffing or practice that may require cancellation or other changes in appointee's or appointee's staff's CACS login authority and credentials.
  5. Failure of appointee to appropriately use CACS shall be sufficient grounds for denial of payment and may result in removal from consideration for future appointments.
- B. A flat fee contract system is available to the Judicial Districts to use in appointing and compensating attorneys for certain appointment types. The Department contracts with individual attorneys for this purpose on a state fiscal-year basis (July 1 through June 30) at rates established by the Department. Claims for payment by attorneys for appointments made under flat fee contracts shall be submitted by appointees in compliance with the procedures specified in the contract and set forth by the State Court Administrator's Office. Claims for payment not covered by flat fee contracts with the Department shall be submitted in accordance with the procedures described in this Section IV and Attachment E. Judicial districts shall make every effort to appoint flat fee contractors on the appointment list if that compensation method is selected by the district. For each appointment type in which flat fee or hourly contracts with private counsel may be established, either a flat fee compensation method or an hourly compensation method should be adopted by the district for the given fiscal year, not both.
- C. The following maximum hourly rates are established for any hourly invoicing. (No payment shall be authorized for hourly rates that exceed the "maximum hourly rates.")

**MAXIMUM HOURLY RATES (IN AND OUT OF COURT)**

Court-appointed Counsel and Guardian <i>ad litem</i> (for adult)	\$65 per hour
Non-Attorney Child and Family Investigator	\$25 per hour
Paralegal, Legal Assistant, or Law Clerk Time	\$25 per hour

Court-authorized Investigator	\$33 per hour
Court Visitor	\$25 per hour

- D. Maximum total fees that may be paid by the Department for court-appointed counsel, guardians *ad litem*, non-attorney child and family investigators, or court visitors are as follows:

**MAXIMUM TOTAL FEE PER APPOINTMENT**

Title 19 – Dependency and Neglect Matters

Respondent Parent Counsel	\$2,870
Non-Attorney Child and Family Investigator	\$1,250

Title 19 – Other Matters (i.e. delinquency GAL, support, adoption, paternity, etc.)

Non-Attorney Child and Family Investigator	\$ 625
--	--------

Titles 14 and 15

Counsel (probate only)	\$2,870
Guardian <i>ad litem</i> (for adult)	\$2,870
Non-Attorney Child and Family Investigator	\$1,250
Court Visitor	\$ 500

Titles 22 and 27

Counsel	\$ 750
Guardian <i>ad litem</i> (for adult)	\$ 750

Appeals

Counsel and Guardian <i>ad litem</i> (for adult)	\$2,870
--	---------

- E. **Under no circumstances shall the total fees exceed the maximums outlined without a detailed written motion and detailed written order showing the specific special circumstances that justify fees in excess of the maximum (see guidelines in Attachment D, paragraph B). If a court-appointed attorney chooses to use the support of a paralegal, legal assistant, investigator, or law clerk, the combined fees, inclusive of expenses, of the attorney or non-attorney appointee and other support staff shall not exceed the total maximum outlined.**
- F. To maintain effective representation by court-appointed counsel and to provide basic fairness to attorneys and others so appointed, the State Court Administrator is directed by the Chief Justice to periodically review and make recommendations concerning the fee schedule established in this CJD and/or Chief Justice Order for court-appointed counsel.

- G. Appointees shall maintain records of all work performed relating to court appointments and make all such records available to the Judicial Department for inspection, audit, and evaluation in such form and manner as the Department in its discretion may require, subject to any applicable attorney/client privilege.
- H. In instances in which fees for activity such as travel time, waiting time, and mileage expenses were incurred simultaneously for more than one court appointment, appointees shall apportion the fees or expenses across cases, as applicable. (For example, traveling to/from court would be billed 50% on the client A appointment and 50% on the client B appointment if the appointee made one trip to cover both clients' hearings.)

## **V. REIMBURSEMENT TO THE STATE FOR COURT-APPOINTED COSTS**

- A. For all appointments requiring a finding of indigence, the court shall review the indigency status of the responsible party(ies) or estate at the time of appointment, during the course of the appointment (at the court's discretion if questions concerning indigence arise), and, if feasible, at the time of case closure. In the case of a court visitor appointment, the petitioner and/or the respondent may be ordered to pay all or a portion of the visitor's fees and expenses if they are not determined to be indigent. If the court determines, at any time before or after appointment of counsel, guardian *ad litem*, non-attorney child and family investigator or court visitor, that the responsible party(ies) or estate has the ability to pay all or part of the costs for representation or other costs, the court shall enter a written order that the person(s) or estate reimburse all or part of said costs. Such order shall constitute a final judgment including costs of collection and may be collected by the state in any manner authorized by law.
- B. Collection of fees and costs related to court-appointed representation and other costs may be referred to the Collections Investigator or a private collector with whom the Judicial Department has contracted.
- C. Costs for representation provided may be assessed against the responsible party(ies) at the fixed hourly rate for state-funded private counsel, at the state-funded counsel contract rate, or at the hourly cost of providing legal representation for the number of hours reported by counsel to the court. Other costs incurred may also be assessed including, for example, costs for transcripts, witness fees and expenses, and costs for service of process. In addition, the responsible party(ies) may be required to pay costs of collection. Costs incurred for accommodations required under the Americans with Disabilities Act, such as sign language interpreter fees, may not be assessed.

## **VI. TRAINING OF GUARDIANS *AD LITEM* AND COURT VISITORS APPOINTED ON BEHALF OF WARDS OR IMPAIRED ADULTS**

- A. Attorneys appointed as a guardian *ad litem* shall possess the knowledge, expertise, and training necessary to perform the court appointment, and shall be subject to all of the rules and standards of the legal profession.

- B. In addition, the guardian *ad litem* shall obtain 10 hours of continuing legal education, or other courses relevant to an appointment that enhance the attorney's knowledge of the issues in representation, per legal education reporting period. The court shall require that proof of such education, expertise, or experience is on file with the court at the time of appointment.
- C. In those cases in which a non-attorney is appointed as a court visitor, the non-attorney shall also demonstrate the knowledge, expertise, and training necessary to fulfill the terms of the appointment. The court may determine whether the person's knowledge, expertise, and training are adequate for an appointment, and may require the person to demonstrate his or her qualifications.

## **VII. DUTIES OF GUARDIANS *AD LITEM* AND COURT VISITORS APPOINTED ON BEHALF OF WARDS OR IMPAIRED ADULTS**

- A. The person appointed shall diligently take steps that he or she deems necessary to protect the interest of the person for whom he or she was appointed, under the terms and conditions of the order of appointment, including any specific duties set forth in that or any subsequent order. If the appointee finds it necessary and in the best interests of the ward or impaired adult, the appointee may request that the court expand the terms of the appointment and scope of the duties.
- B. Persons appointed shall perform all duties as directed by the court, which may include some or all of the duties described below:
  - 1. Attend all court hearings and provide accurate and current information directly to the court. (*Although another qualified attorney may substitute for some hearings, this should be the exception.*)
  - 2. At the court's direction and in compliance with applicable statutes, file written or oral report(s) with the court and all other parties.
  - 3. Conduct an independent investigation in a timely manner, which shall include, at a minimum:
    - (a) Personally meeting with and observing the client, as well as proposed custodians, when appropriate;
    - (b) Reviewing court files and relevant records, reports, and documents;

In cases in which the ward or impaired person is living or placed more than 100 miles outside of the jurisdiction of the court, the requirements to personally meet with and interview the person are waived unless extraordinary circumstances warrant the expenditure of state funds required for such visits. However, the appointee shall endeavor to meet the person if and when that person is within 100 miles of the jurisdiction of the court.

## VIII. DUTIES OF JUDGES AND MAGISTRATES

- A. For any type of court appointment under this Chief Justice Directive, the appointing judge or magistrate shall, to the extent practical and subject to attorney-client privilege, monitor the actions of the appointee to ensure compliance with the duties and scope specified in the order of appointment.
- B. Judges and magistrates shall ensure that guardians *ad litem* and court visitors involved with cases under their jurisdiction are representing the best interests of adult wards or impaired adults and performing the duties specified in this order. In providing this oversight, judges and magistrates shall:
  - 1. Routinely monitor compliance with this directive;
  - 2. Encourage local bar associations to develop and implement mentor programs which will enable prospective guardians *ad litem* and court visitors to learn these areas of the law;
  - 3. Meet with guardians *ad litem* and court visitors at the first appointment to provide guidance and clarify the expectations of the court;
  - 4. Hold periodic meetings with all practicing guardians *ad litem* and court visitors as the court deems necessary to ensure adequate representation of wards or impaired adults.

*See Chief Justice Directive 04-08 for the court's authority, role and responsibility related to child and family investigators.*

## IX. COMPLAINTS

- A. Colorado's "Practice Guidelines for Respondent Parents' Counsel in Dependency and Neglect Cases" (Attachment F to this directive) may provide helpful guidance in the Court's investigation of the complaint regarding court-appointed Respondent Parents' Counsel. All written complaints and documentation of verbal complaints regarding the performance of any state paid counsel, guardian *ad litem*, or court visitors appointed pursuant to this directive shall be submitted to the District Administrator. The District Administrator shall forward the complaint to the presiding judge or, if appropriate, the chief judge of the district unless a conflict exists due to the judge's involvement in a pending case. If a conflict exists, the District Administrator will forward the complaint to another judge designated for that purpose.
- B. If the complaint involves an attorney and the reviewing judge or District Administrator determines that the person may have violated the Colorado Rules of Professional Conduct, the information shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel. The Regulation Counsel shall advise the reporting judge or District Administrator and the State Court Administrator of the final outcome of the investigation.
- C. Copies of all written complaints and documentation of verbal complaints, and the results of the investigation including any action taken with regard to Judicial paid counsel, guardians *ad litem*, , and court visitors shall be forwarded by the District Administrator to the State

Court Administrator's Office. The State Court Administrator may conduct an additional investigation and take action he believes is necessary to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to, terminating the contract with the attorney, GAL, non-attorney child and family investigator or court visitor.

*See Chief Justice Directive 04-08 for the complaint process regarding the performance of child and family investigators.*

## **X. SANCTIONS**

- A. All contracts with the Judicial Department for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with this Chief Justice Directive. Failure to comply with this Directive may result in termination of the contract and/or removal from the appointment list.
- B. Judges and magistrates shall notify appointees that acceptance of the appointment requires compliance with this Directive, and that failure to comply may result in termination of the current appointment and/or removal from the appointment list.

*See Chief Justice Directive 04-08 for sanctions regarding child and family investigators.*

## **XI. GRIEVANCES, MALPRACTICE, AND LIABILITY**

- A. Attorneys appointed shall notify the State Court Administrator, in writing, within five (5) days of any malpractice suit or grievance brought against them.
- B. Professional appointees shall maintain adequate professional liability insurance for all work performed. In addition, professional appointees shall notify the State Court Administrator, in writing, within five (5) days if they cease to be covered by said professional liability insurance and shall not accept court appointments until coverage is reinstated.

*See Chief Justice Directive 04-08 for grievance, malpractice, and liability regarding child and family investigators.*

Effective April, 2005. Amended to be made consistent with amendments to Chief Justice Directive 04-08 and made effective November, 2011 in Denver, Colorado.

Done at Denver, Colorado this 30<sup>th</sup> day of November, 2011.

\_\_\_\_\_  
/s/  
Michael L. Bender, Chief Justice

**PROCEDURES FOR THE DETERMINATION OF ELIGIBILITY  
FOR COURT APPOINTED COUNSEL AND GUARDIAN AD LITEM REPRESENTATION ON  
THE BASIS OF INDIGENCY**

**Indigency Determination**

Persons requesting court-appointed representation to be paid by the state on the basis of indigency must complete, or have completed on their behalf, application form JDF208 (“Application for Court-Appointed Counsel or Guardian *ad litem*”) signed under oath, before such an appointment may be considered by the court. Form JDF208 must be completed for the appointment of counsel at state expense in all cases except mental health cases under Title 27 in which the respondent refuses to or is unable to supply the necessary information and cases in which a minor is requesting counsel for judicial bypass proceedings pursuant to §12-37.5-107(2)(b), C.R.S.

**Procedures for the Determination of Indigency**

- Completion of Form JDF208 by Applicant  
Persons applying for state paid counsel or guardian *ad litem* representation must complete, or have completed on their behalf, the Application for Court-Appointed Counsel, form JDF208, and submit it to the court.
- Review of Financial Information by Court Personnel  
Court personnel shall review the applicant’s information on form JDF208 to determine whether or not the applicant is indigent on the basis of three factors:
  - ❖ Income <sup>1</sup>
  - ❖ Liquid assets <sup>2</sup>
  - ❖ Expenses <sup>3</sup>

**Criteria for Indigency**

An applicant qualifies for court appointed counsel or guardian *ad litem* on the basis of indigency if his or her financial circumstances meet either set of criteria described below.

**1. Income is at or below guidelines / Liquid assets equal \$0 to \$1,500**

- If the applicant’s income is at or below the income eligibility guidelines and he or she has liquid assets of \$1,500 or less, as determined on form JDF208, the applicant is indigent and eligible for court appointed counsel or guardian *ad litem* representation at state expense.

---

<sup>1</sup> Income is gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workers’ Compensation Benefits, Unemployment Benefits, and alimony. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the applicant’s income in a fashion which would allow the applicant proprietary rights to the roommate’s income.

Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, veteran’ benefits earned from a disability, child support payments or other assistance programs.

<sup>2</sup> Liquid assets include cash on hand or in accounts, stocks bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant’s ability to maintain home and employment.

<sup>3</sup> Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included. Allowable expense categories are listed on form JDF208.

**2. Income is up to 25% above guidelines / Liquid assets equal \$0 to \$1,500 / Monthly expenses equal or exceed monthly income**

- If the applicant's income is up to 25% above the income eligibility guidelines; the applicant has assets of \$1,500 or less; and the applicant's monthly expenses equal or exceed monthly income, as determined on form JDF208, the applicant is indigent and eligible for court appointed counsel or guardian *ad litem* representation.

**In cases where the criteria above are not met but extraordinary circumstances exist, the court may find the applicant indigent. In such cases, the court shall enter a written order setting forth the reasons for the finding of indigency.**

INCOME ELIGIBILITY GUIDELINES (amended January 2013)				
Family Size	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$1,197	\$1,496	\$14,363	\$17,953
2	\$1,616	\$2,020	\$19,388	\$24,234
3	\$2,034	\$2,543	\$24,413	\$30,516
4	\$2,453	\$3,066	\$29,438	\$36,797
5	\$2,872	\$3,590	\$34,463	\$43,078
6	\$3,291	\$4,113	\$39,488	\$49,359
7	\$3,709	\$4,637	\$44,513	\$55,641
8	\$4,128	\$5,160	\$49,538	\$61,922
* 125% of poverty level as determined by the Department of Health and Human Services				
For family units with more than eight members, add \$335 per month to "monthly income" or 4,020 per year to "yearly income" for each additional family member.				
Source: FEDERAL REGISTER (78FR5182, 01/24/2013)				

<input type="checkbox"/> County Court <input type="checkbox"/> District Court <input type="checkbox"/> Denver Juvenile Court _____ County, Colorado Court Address: _____ Plaintiff/Petitioner: _____ v. Defendant/Respondent: _____	▲ <i>COURT USE ONLY</i> ▲ Case Number: _____ Division: _____ Courtroom: _____
<b>ORDER APPOINTING COUNSEL, GUARDIAN AD LITEM, CHILD AND FAMILY INVESTIGATOR, CHILD LEGAL REPRESENTATIVE, OR ATTORNEY REPRESENTATIVE UNDER TITLE 12, 14, 19, OR 22</b>	

1. Upon  Court's own motion;  stipulation of the parties;  motion of \_\_\_\_\_;  
 (appointee name) \_\_\_\_\_ (address) \_\_\_\_\_

(phone) \_\_\_\_\_ (SSN)/Atty. Reg. # \_\_\_\_\_ is appointed as  Counsel,  
 Guardian ad Litem/GAL,  Child & Family Investigator, or  Child's Legal Representative for the following  
 child(ren) number of children represented \_\_\_\_\_ or  
 adult(s): \_\_\_\_\_ (address) \_\_\_\_\_ (phone) \_\_\_\_\_.

2. This Order is entered pursuant to Section: Appointment is in the best interest of a minor (under the age of 18). **OCR Paid Appointment**

- 19-1-111(1) and 19-3-203(1) appointment of a GAL for a child in a dependency and neglect case.
- 19-1-105(2) counsel for child in a dependency and neglect case in addition to the GAL.
- 19-1-111(2)(a)(I, II, III) appointment of a GAL for a child in a delinquency case.
- 19-1-105(2) appointment of GAL for a child in a truancy matter under Title 22.
- 19-2-517 appointment of a GAL for a juvenile charged as an adult in a criminal case.
- 19-4-110 appointment of a GAL in a paternity action as to child support and the establishment of a parent-child relation and the Court finds one or more of the parties responsible indigent.
- 14-10-116 appointment of an attorney to serve as the Legal Representative of the Child in a domestic relations matter and the Court finds the responsible party indigent OR 14-10-116.5 appointment of an attorney Child & Family Investigator to serve the Court in a domestic relations matter that involves allocation of parental responsibilities and the responsible party is indigent (appoint to the child).
- Other (e.g. civil matters best interest for a minor. Refer to CJD 04-06 for appointments where determination of indigency are required.) \_\_\_\_\_.

This Order is entered pursuant to Section: **Judicial Paid Appointment**

- 19-1-111(2)(c) appointment of a GAL for a parent, guardian, legal custodian, custodian, stepparent, or spousal equivalent in dependency or neglect proceedings for an adult (age 18 or older).
- 19-3-202(1) appointment of counsel for a Respondent parent in a dependency and neglect action.
- 14-10-116.5 appointment of a non-attorney Child & Family Investigator to serve the Court in a domestic relations matter that involves allocation of parental responsibilities and the responsible party is indigent (appoint to the child).
- 19-1-105(2) appointment of counsel for a child and/or other parties in a truancy matter under Title 22.
- Appointment of a GAL for an indigent impaired adult in a civil case.
- 12-37.5-107(2) The Court, at its discretion may appoint an attorney if said minor is not represented by counsel - judicial bypass - this case is suppressed and confidential.
- Other (specify) \_\_\_\_\_.

3. The appointee is directed to:

- Represent the best interests of the child(ren).
- Advise the child who has been deemed the holder of the patient-therapist privilege regarding the exercise of that privilege.
- Provide legal representation to the child who has been deemed the holder of the patient-therapist privilege regarding the exercise of the privilege
- Provide legal representation to the child regarding the entry of valid court orders and/or pending contempt proceedings.
- Other (specify): \_\_\_\_\_
- Provide legal representation as counsel for the party.
- Investigate, report upon, and make recommendations to the Court concerning:
  - parental responsibility  parenting time  potential dependency and neglect issues  allegations of abuse  placement
  - conflicts between the parties  property division  visitation with other parties  sentencing recommendations
  - Other (specify) \_\_\_\_\_

4. The appointee shall be compensated by the:
- Responsible party(ies) as directed by the Court: ( \_\_\_\_\_% paid by Petitioner; \_\_\_\_\_% paid by Co-Petitioner/Respondent.     State of Colorado because both parties are indigent (JDF 208 completed).
  - Other (explain) \_\_\_\_\_
5. Dependency and neglect cases appointment of counsel only. The following have occurred or are applicable to this appointment made:
- after treatment/permanency plan.
  - after a change of venue.
  - after a motion to terminate parental rights has been filed.
6. The appointee shall have access, without further release or liability, to all relevant information regarding the child(ren) or adults to whom he/she has been appointed subject to applicable law, including, but not limited to, psychiatric, psychological, drug, alcohol, medical, law enforcement, school, social services, and financial reports, evaluations and other information.

NEXT APPEARANCE DATE IS \_\_\_\_\_ (DATE), AT \_\_\_\_\_ (TIME), IN \_\_\_\_\_ (DIVISION).

Date: \_\_\_\_\_

\_\_\_\_\_  
 Judge     Magistrate

<input type="checkbox"/> County Court <input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ <hr/> Plaintiff/Petitioner: v. Defendant/Respondent:	<div style="border-top: 1px solid black; border-bottom: 1px solid black; margin: 0 auto; width: 80%;"> <p style="margin: 0;">▲      <i>COURT USE ONLY</i>      ▲</p> </div> <hr/> Case Number: _____ Division: _____      Courtroom: _____
<b>ORDER APPOINTING COUNSEL, GUARDIAN AD LITEM, OR COURT VISITOR UNDER TITLE 15 OR 27</b>	

1. Upon  Court's own motion;  stipulation of the parties;  motion of \_\_\_\_\_; (appointee name) \_\_\_\_\_ (address) \_\_\_\_\_ (phone) \_\_\_\_\_ (bar #/SSN) \_\_\_\_\_ is appointed as  Counsel,  Guardian *ad litem*, or  Court Visitor for the following  child or  adult: \_\_\_\_\_ (address) \_\_\_\_\_ (phone) \_\_\_\_\_.

2. **This Order is entered pursuant to Section:**
- 27-65-103(3)(7) Appointment of GAL for minor under 15 who is a ward of DHS or any minor objecting to hospitalization.
  - 27-65-127(4) Appointment of counsel for a respondent in an imposition of legal disability - deprivation of legal right or restoration of such right.
  - 27-65-106(10) Appointment of counsel in the event of involuntary admittance to 72 hour treatment/evaluation facility.
  - 27-65-107(5) Appointment of counsel in short term treatment certification proceedings.
  - 27-65-103(7) Appointment of counsel for minor.
  - 27-10.5-110(5)(a) Appointment of counsel for respondent with an imposition of legal disability -- removal of legal right.
  - 27-65-111(5) Appointment of counsel for respondent who refuses medication.
  - 27-81-112(4) Appointment of a GAL in involuntary commitment of alcoholic proceedings.
  - 27-81-112(12) Appointment of counsel in involuntary commitment of alcoholic proceedings.
  - 27-81-111(6) Appointment of counsel in emergency commitment of a person intoxicated or incapacitated by alcohol.
  - 27-82-107(6) Appointment of counsel in emergency commitment of a person under the influence of/incapacitated by drugs.
  - 27-82-108(4) Appointment of a GAL in involuntary commitment of drug abuser proceedings.
  - 27-82-108(12) Appointment of counsel in involuntary commitment of drug abuser proceedings.
  - 15-10-403(5) Appointment of a GAL to represent the interest of a minor or unborn in a trust, estate, or judicially supervised settlement matter.
  - 15-10-403(5) Appointment of a GAL to represent the interest of an incapacitated or unascertained person in a trust, estate, or judicially supervised settlement matter.
  - 15-14-115 Appointment of a GAL in a probate matter (appointment for a minor -- indigency required.)
  - 15-14-305(1) or 15-14-406(1) appointment of a court visitor in a probate matter (appointment for a minor -- indigency required.)
  - 15-14-305(2); 15-14-205(3); 15-14-405(1); 15-14-406(2); or 15-14-312 appointment of counsel in a probate matter (appointment for a minor -- indigency required.)
  - Other (specify) \_\_\_\_\_.

3. **The appointee is directed and empowered:**
- To represent the interests of the minor party -- GAL. (OCR appointment)
  - To represent the interests of the party.
  - To investigate, report upon and make recommendations to the Court concerning:
    - parental responsibility                       parenting time                       potential dependency and neglect issues
    - allegations of abuse                               client financial status                       property division
  - Other (specify) \_\_\_\_\_

4. **The appointee shall be compensated by:**
- The captioned estate.
  - The responsible party(ies) as directed by the Court: \_\_\_\_\_
  - The State of Colorado because all responsible parties are indigent (JDF 208 completed).
  - The State of Colorado because the parents/guardians refuse to pay for good cause: \_\_\_\_\_
  - The State of Colorado because indigency cannot be determined (Title 27 only).
  - Other (explain) \_\_\_\_\_

5. **The appointee shall have access, without further release or liability, to all relevant information regarding the child(ren) or adult, including, but not limited to, psychiatric, psychological, drug, alcohol, medical, law enforcement, school, social services, and financial reports, evaluations and other information.**

NEXT APPEARANCE DATE IS \_\_\_\_\_ (DATE), AT \_\_\_\_\_ (TIME), IN \_\_\_\_\_ (DIVISION).

Dated: \_\_\_\_\_

BY THE COURT

\_\_\_\_\_  
 Judge    Magistrate

**Guidelines for Itemized, Hourly Payment: Judicial Paid Appointments Only  
Court-Appointed Counsel, Guardians *ad litem* (for adults),  
Non-Attorney Child and Family Investigators and Court Visitors**

- A) Claims for payment on an hourly basis by shall be submitted using the Judicial Department's online CAC System (if the appointee is authorized to use this system) or submitted to the appointing court on form JDF207 ("Colorado Judicial Department Request and Authorization For Payment Of Fees") including attachments, and shall be in compliance with these guidelines. For appellate counsel only, claims for payment shall be submitted directly to the Court of Appeals. The claims and attachments shall conform to the Procedures for Payment of Fees and Expenses (Attachment E, this CJD). In accordance with this CJD and all other applicable Department policies and procedures, and upon review and approval by the appointing court, the request for payment will be sent to the State Court Administrator's Office (SCAO) for processing. The SCAO may review, verify, and revise, when appropriate, such authorized requests for payment.
- B) A schedule of maximum hourly rates for appointees is established by the Supreme Court in this Chief Justice Directive, section IV.C., and/or by Chief Justice Order. No payment shall be authorized for hourly rates in excess of the Chief Justice Directive or Order. The maximum total fee that may be paid to an appointee for representation on a case is also established in this Chief Justice Directive, section IV.D. This maximum includes appointee fees (both contract flat fees plus hourly, as applicable), allowable incidental expenses, paralegal, legal assistant, and law clerk time.
- 1) If there are unusual circumstances involved in the case and the appointee determines that additional work must be completed, which will create fee charges over the maximum allowed, pre-approval for fees in excess is to be obtained by submitting a Motion to Exceed the Maximum to the presiding judge/magistrate. (While there may be exceptions in which pre-approval is not possible before additional work is performed, seeking pre-approval should be the norm.) If satisfied that the excess fees are warranted and necessary, the presiding judge/magistrate should approve such motion. The District Administrator (or designee) should deny further payment unless accompanied by a Motion to Exceed the Maximum and an order granting the Motion by the presiding judge or magistrate.
  - 2) The Motion to Exceed the Maximum must cite the specific special and extraordinary circumstances that justify fees in excess. The judge or magistrate, in his or her discretion, may grant approval with an Order for Fees in Excess which provides a maximum up to 150% of the established maximum as outlined in section IV.D. of this Chief Justice Directive. A subsequent Motion to Exceed Maximum must be submitted for the same appointment if total fees are expected to further exceed the maximum established by the judge or magistrate.
- C) **All court appointees and investigators must submit their JDF207 or invoice using CACS, as applicable, to the court within six months of the earliest date of billed activity.** For example, for an invoice containing work performed from July 1, 2010 through December 14, 2010, the *court must receive the bill by December 31, 2010.* Any court appointee or investigator desiring to request an exception to the 6-month rule based on unusual circumstances shall make such request in writing to the Director of Financial Services at the SCAO, or the Director's designee, whose decision concerning payment shall be final. Before an exception will be considered, the request must detail the extraordinary circumstances concerning a bill or portion of a bill wherein the activity does not fall within the six-month rule.

- D) The District Administrator or his/her designee will carefully review all hourly payment requests submitted for approval. To assist in this review, attorneys, other appointees and investigators must submit a detailed itemization of in-court and out-of-court hours with each request for payment as outlined in Procedures for Payment of Fees and Expenses, Attachment E. Authorization for payment is not automatic, and the District Administrator (or designee) must be satisfied that the number of hours billed and expenses charged are appropriate and necessary for the complexity of the issues involved. If there are questions concerning the reasonableness of the bill, the appropriate judge or magistrate will be consulted. If reimbursement to the state is to be ordered, the District Administrator or his/her designee shall forward the JDF207 to the appropriate judge for an Order for Reimbursement.
- E) Requests by appointees for reimbursement of expenses must include itemized statements and accompany the request for payment. In addition, such requests must comply with Maximum Hourly Rates/Maximum Fees Per Appointment as set forth in sections IV.C. and IV.D. of this Chief Justice Directive. When practical, a paralegal or legal assistant should be used for tasks that require legal expertise but can be done more cost-effectively by an assistant, such as drafting court motions or performing some legal research. The billable hourly rate for a paralegal or legal assistant time is found in section IV. C. The Judicial Department does not pay for the time of administrative support staff. Therefore, charges for time spent on administrative activities, such as setting up files, typing, copying discovery or other items, faxing documents, making deliveries, preparing payment requests, , and mailing letters are not reimbursable costs. Attorneys are expected to have sufficient administrative support for these activities.
1. Certain court costs are paid individually by the appointing court (not SCAO) with prior court approval. The appointing court pays court costs incurred by counsel. Counsel, other appointees, or investigators should submit the bills for items listed below directly to the local court and should not include these costs for reimbursement on the Request for Payment form (JDF207).

**Costs Paid Locally by the Individual Court**

- Cost of subpoenas;
  - Fees and expenses of witnesses;
  - Service of process;
  - Language interpreters;
  - Mental Health examinations/evaluations;
  - Transcripts;
  - Discovery Costs (including: Lexis Nexis research charges, medical records, etc.)
2. Court-appointed counsel and investigators may request reimbursement for certain reasonable out-of-pocket expenses that are incurred on behalf of their clients. The expenses below may be claimed on the Request for Payment form (JDF207) or using CACS.

**Other Allowable Expenses**

- Copy charges at the rate of \$0.10 per page (specify the number of copies made);
- Mileage at the rate defined by §24-9-104 C.R.S. (the actual number of miles must be specified for each trip);
- Long-distance telephone calls at cost (if total billing exceeds \$50, it must include a copy of the telephone bill with the following information highlighted date, phone number, and charges);

**Other Allowable Expenses, cont.**

- Postage at cost (regular 1<sup>st</sup> class mail charges);
- Reimbursement for delivery and express mail charges are only reimbursable for a case on appeal. A receipt or invoice for these charges must be attached to the order for payment;
- Requests for payment of overnight travel or out-of-state travel require prior authorization by the court and must be in accordance with state travel regulations as described in the Travel section of the Colorado Judicial Department's Fiscal Policies and Procedures manual. Out-of-state travel expenses incurred by the appointee shall be submitted to the court using form JDF207 with the appropriate copies of travel receipts included.

3. The following items are not authorized for payment or reimbursement.

**Non-Allowable Expenses**

- Phone calls when no contact is made (i.e., no answer, client not available or message left to call back, etc.);
- Fax charges;
- Parking Fees;
- Items purchased for indigent (or other) persons represented which includes meals, books, clothing, and other personal items;
- Administrative activities (as previously discussed);
- Electronic filing fees for which state funded counsel appointments are exempt;
- Any other cost or expense not authorized under Colorado law or Chief Justice Directive for payment by the state or reimbursement to counsel or other party.

- F) In any case in which a payment has been made to the attorney by a party who is later determined to be indigent, the state will reimburse the attorney for the total number of hours expended on the case, less any payments received from the party for fees incurred prior to the determination of indigence. The payment calculation is at the allowed Chief Justice Directive and/or Chief Justice Order hourly rate applicable to when the activity occurred.
- G) Attorneys shall maintain records of all work performed relating to court appointments and make all such records available to the Judicial Department for inspection, audit, and evaluation in such form and manner as the Department in its discretion may require, subject to attorney/client privilege.
- H) The Judicial Department will review and respond promptly to any question or dispute concerning a bill received, submitted, or paid. However, due to research time and record retention limitations, there is a time restriction of two years for billing questions and disputes. The two-year restriction starts from the activity date (or date of service) that is in question. For prompt resolution concerning questions or disputes concerning hourly or contract payment requests, all questions and disputes must be directed to the local court or State Court Administrator's Office immediately when issues arise.

**Judicial Paid Appointments**  
**\* Procedures for Payment of Fees and Expenses \***

**GENERAL INFORMATION**

These procedures apply to requests for payment of fees and expenses for court-appointed counsel, other appointees, and investigators paid by the Judicial Department on an hourly basis. Payment requests shall be submitted via the Department's online CAC System (CACCS) in accordance with the policies and procedures set forth by the State Court Administrator's Office or, if an exception has been granted pursuant to Section IV.A.3. of this Chief Justice Directive, by using the standardized "Colorado Judicial Department Request and Authorization For Payment of Fees" form JDF207 (Judicial Department Form). Completion, including attachments, should adhere to the procedures described below. Requests for payment that do not include the necessary information will be returned to the appointee or to the court for completion or correction.

All appointees, both hourly and contract, who have not yet received payment from the Judicial Department must submit a completed W-9 form and, if applicable, an "Authorization to Pay a Law Firm" form before a payment can be issued. Payments are issued/submitted to whomever the attorney has authorized and approved on W-9 and "Authorization to Pay a Law Firm" forms. Therefore, if an attorney is no longer with the law firm indicated on a prior W-9 and/or Authorization to pay a Law Firm, he/she must complete a new form(s) and submit them to the Financial Services Division at SCAO. The forms are available from the court or from the Financial Services Division by calling (303) 837-3639.

To change only the mailing address, send the address change to the Colorado Judicial Department, Financial Services Division, 101 W. Colfax, Suite 500, Denver, CO 80202, or call for e-mail instructions.

Billing for Representation of Client with Multiple Cases: When billing for multiple cases in representation of the same client (i.e., companion cases), the appointee should work with the Financial Services Division at the State Court Administrator's Office to ensure the appointments/cases are designated as "concurrent" for billing purposes. Appointees must use the "Concurrent Appointment Notification" form, which is available from the Financial Services Division upon request. This applies to situations in which activity occurs simultaneously in the representation of the party across the multiple cases (example: the appointee attends a single court hearing during which more than one of the client's cases is discussed) and allows for the activity to be billed once via a "master" case. Cases in which the appointee's activity does not overlap multiple cases should not be billed concurrently, and should instead be billed by submitting separate invoices for each respective case.

When an attorney is appointed to continue on a case for the purposes of appeal, payment shall be on an hourly basis even if the original appointment was on a contract, flat fee basis.

## **A. PROCEDURES FOR BILLING**

### **1. Detail of Itemized Billing**

Time sheets must be attached to the JDF207 to support the summarized hours billed. (If CACS online billing is used, the detail is entered in this system.) Time must be described in sufficient detail to justify the amount of time spent on the activity. Time reported must include all time spent between the beginning and ending dates of the billing and must be in chronological order. Time sheets must be legible – preferably typed. Expenses must be described. A sample itemization is shown on the next page.

**Rates may vary pursuant to Chief Justice Directive or Order. The appointee should contact the local district court, State Court Administrator's Office or visit the web site at [www.courts.state.co.us](http://www.courts.state.co.us) if there is a question concerning the current authorized rates.**

- a. The billing detail and itemization needs to include date, distinguish between out-of-court and in-court time, and a description of service performed. Time must be billed in *tenths* of an hour using the decimal system. One-tenth of an hour is equal to six (6) minutes. For example, 12 minutes is charged as 0.2 hours.
- b. Mileage itemization must include the date of the trip, the purpose of the trip, and the number of miles traveled for each trip.

### **2. Other Attachments**

- a. Investigators must include the order of appointment appointing the attorney for whom the investigator is working, the court's order authorizing an investigator, and the amount of expenses the investigator may incur.
- b. If the total fee request (including past payments and the current invoice) exceeds the maximum fee allowed by this Directive, a copy of the court's order authorizing fees to exceed of the maximum must be submitted. Submitting this copy once is sufficient.
- c. If total expenses exceed \$50, all receipts or invoices for those expenses must be submitted.
- d. All receipts for any expenses outside of the guidelines and an explanation for the additional costs must be submitted.

*John Sample, Attorney at Law*

Date	Activity	In-court	Out-of-court	Paralegal	
05/06/10	Court – temp. protection custody hearing	0.4			
05/06/10	Conf with client to discuss hearing		1.1		
06/05/10	Review social services report		0.5		
06/09/10	Court appearance, review hearing	0.3			
06/10/10	Meet with client to discuss permanency plan		1.0		
06/11/10	Prepare motion to reconsider placement			0.2	
08/07/10	Travel to Canon City Prison (57 miles)		1.4		
08/07/10	Conf. with client and Social Services		1.0		
08/07/10	Prepare motion for placement			0.2	
08/14/10	Hearing concerning motion on placement	0.3			
Dates of service 05/06/10 – 08/14/10		Total hours	1.0	5.0	0.4

SUMMARY OF FEES	Activity:	
	6.0 hours @ \$65 per hour	\$390.00
	0.4 hours @ \$25 per hour	\$10.00
	<b>TOTAL FEES</b>	<b>\$400.00</b>
<b>TOTAL MILEAGE</b>	57 miles @ \$0.45 per mile/(or rate defined by §24-9-104 C.R.S.)	<b>\$25.65</b>
<b>OTHER EXPENSES</b>	Copies: Social Services report = 12 pgs @ \$0.10	\$1.20
	Postage	\$0.44
	<b>TOTAL OTHER EXPENSES</b>	<b>1.64</b>
	<b>TOTAL BILLING</b>	<b>\$427.29</b>

**COMPLETION OF THE JDF207 (Hourly Billing if not billing online)**

Completion of the JDF207 form is required by the Judicial Department for payment of court appointees appointed on an hourly basis unless the appointee has been authorized to invoice using CACS (online system). The appointee should keep a copy and submit the original plus one copy. The form is in triplicate and includes copies for the appointee, the court file, and the State Court Administrator’s Office (SCAO). All applicable sections of the form should be completed as indicated in the instructions. Attach all required documents before submitting to the local court. All incomplete Requests for Payment will be returned to the appointee for correction(s).

**Section I.**

Enter the case number of the charges being billed. When billing for multiple cases in representation of the same client (i.e., companion cases), enter all applicable case numbers. If the bill is for appellate charges, include the appeal case number and the original case number being appealed.

Include the name(s) and number of persons represented, the name of the case, applicable county, name of appointing judge/magistrate and current judge/magistrate. Indicate if the case jurisdiction is district or county.

**Section II.**

Enter all applicable appointee information, attorney registration number, name, complete address, phone, fax, e-mail. If the address has changed, check new address box. For more information concerning changes, review the General Information section in this attachment.

The Social Security Number or Tax Id Number must be included on each JDF207 (for more information concerning authorized payee changes, review the General Information section in this attachment).

Indicate the appointment date, if you are an original or substitute appointee, if the case has or has not gone to trial, if the case was originally under contract. If originally under contract, explain why an hourly bill is being submitted and the date circumstances changed resulting in hourly billing.

**Section III.**

Indicate the type of representation provided.

**Section IV.**

Indicate the authority/statute title allowing for the appointment. This is indicated on the original appointment form/order.

**Section V.**

The indigency status of the person represented must be noted. If the person is found indigent, use the date of determination. If the person is not indigent, indicate which statement is applicable to the party represented and if reimbursement is to be ordered by the presiding judge. This information is usually included in the order of appointment or may be found in the application for court-appointed counsel (form JDF208) or another affidavit of indigence, as requested by the court.

**Section VI.**

Under this section all charges are to be summarized.

For the activity *from date*, enter the first chronological date of activity billed from the itemized detail document. For the activity *to date*, enter the last chronological date in which activity occurred as itemized in the detail document. Group the *start* and *to date* for activities in which the effective date of the maximum rates as set by Chief Justice Directive or Chief Justice Order are the same.

Instructions for summarizing attorney hours and fees are located on the reverse side of the Request and Authorization for Payment of Fees form (JDF207) #5.

For non-attorney billing activity, summarize all non-attorney hours by category. Next, apply the maximum rate as set by Chief Justice Directive or Chief Justice Order and enter the total charge

requested in the right column. Summarize all expenses by type, apply the correlating rates and/or receipts and enter the total charge per category. Charges must correspond to attached receipts.

Total all charges and calculate total amount billed.

Include all prior amounts invoiced for the appointment in the "Total Amount Previously billed" line, (excluding the current request).

Determine the cumulative total of fees charged by appointee for the case by adding the "Total Amount Previously billed" plus the current request amount. If the cumulative total is over the authorized maximum, check the indicator box "Exceeds allowed maximum". Include the Motion to Exceed Maximum and the approved Order to Exceed Maximum (if possible, this should be judge/magistrate pre-approved and not requested after services are performed).

**Appointee signature and date are required.**

**If this is the final bill, check the "Final Bill" box.**

## **Practice Guidelines for Respondent Parents' Counsel in Dependency and Neglect Cases**

### **Preface**

In order to ensure quality representation for all litigants, the Colorado Supreme Court's Respondent Parents' Counsel Task Force developed practice guidelines for respondent parents' counsel in dependency and neglect cases. These practice guidelines are based in part on the American Bar Association Standards for Respondent Parent Representation that were approved in August 2006.

There are nine practice guidelines that were developed through a collaborative process that involved Colorado judges and magistrates, respondents' counsel representing parents in dependency and neglect cases, City and County Attorneys, and Guardians ad Litem for children and parents. The comments set forth with each guideline explain and illustrate the meaning and purpose of the guideline and are intended as a guide to its interpretation.

These guidelines are intended to assist in ensuring quality representation for respondent parents, ensuring due process of law, and affording parents the best opportunity to maintain familial relationships successfully. All attorneys appointed as respondent parents' counsel are subject to the rules and standards of the legal profession, including the additional responsibilities set forth by Colorado Rule of Professional Conduct 1.14. Violation of a guideline should not in and of itself give rise to a cause of action nor should it create any presumption that a legal duty has been breached or that a professional ethical violation has occurred. These guidelines are intended to promote quality representation and uniformity of practice among the attorneys appointed to defend a parent's fundamental liberty interest in the care and custody of his or her child.

### **One TRAINING**

**An attorney appointed as respondent parents' counsel in a dependency or neglect case (hereinafter "RPC") shall possess the knowledge, expertise, and training necessary to perform the court appointment. RPC shall be familiar with the Colorado Children's Code, basic agency practices, procedural rules of the court, the applicable Chief Justice Directives, local custom or practice, and relevant state and federal law. In addition, RPC shall obtain 10 hours of the required continuing legal education courses or any other modified training requirements established by subsequent Chief Justice Directive practice standards, rule or statute, which are relevant to the appointment and that enhance the attorney's knowledge of the issues in best interest representation. These requirements should be met prior to attorney's first appointment and per legal education reporting period. When submitting an application to provide attorney services or to renew a contract, the attorney shall provide the district of appointment with proof of compliance with this requirement.**

*Commentary: Dependency and neglect cases are both factually and legally complicated. Not only do these cases involve difficult issues related to litigation, they also involve numerous other systems that must be navigated by parents whose families are involved in the child welfare system.*

*RPC who have a basic knowledge and understanding of the practices of the social service agencies with whom their clients must deal may facilitate earlier, more appropriate services by extra-judicial advocacy on behalf of their client with the agency.*

*RPC must be able to seek help from the court when necessary. This requires a working knowledge of statutory remedies, rules of procedure, applicable Chief Justice Directives (including CJD 96-08 and 98-02), and local court practices. In addition, if the child/ren is eligible for membership in an Indian Nation, the family and child/ren have additional legal rights under the Indian Child Welfare Act.*

*Counsel should attend court- or DHS-sponsored trainings, continuing legal education seminars, or other specialized programs to assist them in developing the necessary expertise in dependency practice. These trainings should include multidisciplinary trainings that educate the attorney on, among other things, substance abuse evaluations, mental health or psychological evaluations, visitation assessments, safety assessments, and other family reunification services.*

## **Two REPRESENTATION**

**RPC shall diligently advocate for the client at all stages of the proceedings. RPC shall be adequately prepared for proceedings. A RPC shall make reasonable efforts to expedite litigation consistent with the interests of his or her client. RPC must be aware of the impact that his or her client's dependency and neglect case may have on other legal proceedings. RPC shall advise the parents of his or her rights to information and decision making while the child/ren is in out-of-home placement.**

*Commentary: RPC should personally attend all court hearings and provide accurate and current information directly to the court. When counsel is unavailable for a court appearance, substitute counsel should be obtained. Participating in pretrial proceedings may improve case resolution for the parent either to help the client obtain early access to services or to deter the agency from filing a petition or removing the client's child if a petition is filed. The attorney should discuss available services with the client. RPC must balance the need for early treatment for the client against the potential waiver of important rights at a very early stage of the proceedings.*

*Delaying a case often increases the time a family is separated, and can reduce the likelihood of reunification. Additionally, continuances may actually prejudice a client's rights, particularly in expedited permanency planning cases, where the Adoption and Safe Families Act timelines continue to run regardless of any delay in the proceedings. If a continuance is imperative to protect the client's interests, RPC should request the continuance in writing, as far as possible in advance of the hearing, and should request*

*the shortest delay possible, consistent with the client's interests. If there is a delay in either the provision of services to the family or the procedural status of the case, RPC should take care to request the Court make "good cause" findings for the extension of Expedited Permanency Planning guidelines.*

### **Three COMMUNICATION**

**RPC shall meet or otherwise communicate with the client on a regular basis to the greatest extent possible. Communication with imprisoned clients raises special challenges, and the RPC representing an incarcerated respondent parent shall take particular care to ensure that the incarcerated parent is kept informed of the status of the case.**

**Counsel shall also stay in communication with other professionals involved in the case or with the client.**

*Commentary: Representing parents in dependency and neglect cases presents unique challenges for an attorney. Parents are frequently unemployed, homeless, incarcerated, or without telephones. Financial circumstances, substance abuse, or unresolved mental health issues may cause parents to have extremely unstable living arrangements that make it difficult and sometimes impossible, despite counsel's best efforts, to communicate with the client.*

*Establishing a system for communication is one method of making certain that there is ongoing contact between RPC and the client. RPC may wish to have clients acknowledge receipt of an advisement of their responsibility to stay in communication with RPC. When possible, meeting with the client well in advance of court hearings outside of the courthouse will assist RPC in effectively representing the client. It is extremely important that the client understands each stage of the case and the consequences that may flow from non-compliance with court orders. RPC should make sure that his or her client understands any court orders.*

*Incarcerated parents are in an especially vulnerable position regarding their parental rights. Treatment plans adopted to remediate the difficulties that bring families before the court often cannot be realistically implemented due to the parental incarceration. This problem is exacerbated by the difficulty in communicating with someone in jail or prison. RPC representing an incarcerated parent must take communication limitations into consideration in case planning. There may, for example, be long time lags between a message and a response.*

*The parent's attorney should communicate with attorneys for the other parties, court appointed special advocates (CASAs) or guardians ad litem (GALs). Similarly, the parent's attorney should communicate with the caseworker and service providers to learn about the client's progress and their views of the case, as appropriate. The parent's attorney should have open lines of communication with the attorney(s) representing the client in related matters such as any criminal, protection from abuse,*

*private custody, or administrative proceedings to ensure that probation orders, protection from abuse orders, private custody orders, and administrative determinations do not conflict with the client's goals in the dependency and neglect case.*

#### **Four DOCUMENTATION**

**Unless prohibited by order of the court or confidentiality rules or statutes, RPC shall access copies of pleadings, court reports, court orders, the child welfare agency case file, and all other documents that are necessary to represent the client. When possible, copies of treatment plans and court orders shall be provided and explained to the client.**

*Commentary: Miscommunication or misunderstanding is less likely when the client possesses information in written form. Having information in writing also allows a client to review the information with other professionals involved in his or her case. In order for a parent to make informed decisions regarding the course of the litigation, including whether he or she is in compliance with a court ordered treatment plan, the client should also have access to all of the necessary and available documents in advance of each hearing.*

#### **Five INVESTIGATION**

**RPC shall conduct an independent investigation of facts at every stage of the proceedings through a review of records and interviews of witnesses or professionals, as dictated by the needs of the case.**

*Commentary: The parent's attorney must take all reasonable steps to prepare an independent case theory, and a thorough investigation is an essential element of that preparation. Consistent with the client's interests and goals, and as permitted by agreement or court order, RPC should contact service providers who work with the client, relatives who can discuss the parent's care of the child, the child's teacher, caregivers, or other people who can develop facts helpful to the client, or to clarify information relevant to the case. Pending availability of funding for investigators, the attorney should petition the court for funds to hire an investigator.*

#### **Six AGENCY ADVOCACY**

**RPC shall, consistent with the interests of their clients, engage in case management planning, advocate for appropriate family or individual services, and, where appropriate, explore placements of the child/ren with kin when return to the parent may not be a viable option.**

*Commentary: Case management planning is critical to the parents' successful resolution of a dependency and neglect case. Making certain that the treatment plan for the parents and child/ren is client-specific, reasonable, practical, culturally appropriate and that it adequately addresses the issues that resulted in the case being filed is a crucial part of RPC's representation.*

*RPC must not only have an understanding of the issues at the initiation of the case, but also of the issues that are disclosed as the case evolves. Dependency and neglect cases are dynamic by their very nature. This often requires adjustments of the services provided to the family during the course of the litigation. Effective advocacy for appropriate adjustments requires RPC to advocate informally with the social services agency and, when necessary, formally before the court.*

*If parental incarceration or other circumstances justify a finding that no appropriate treatment plan can be identified to reunify the parent and child/ren, RPC may serve the client's interest by advocating for an outcome that preserves the familial relationship. To this end, RPC should counsel clients to share information about potential kinship placement and extended family members as mandated by ICWA or other requirement. RPC should advocate for concurrent planning when it allows an opportunity for a more positive result for the client.*

## **Seven CLIENT LOCATION**

**RPC shall make good faith efforts to locate his or her client.**

*Commentary: Upon accepting an appointment, RPC should advise the client of his or her responsibility to stay in contact with the attorney. In order to protect the due process rights and liberty interests of his or her client, RPC representing a missing parent should make good faith efforts to locate that person. Good faith efforts include leaving contact information with the client's family, the caseworker, or service providers, or sending a letter to the last known address of the parent, address correction requested. If the attorney is unable to find and communicate with the client after initial consultation, the attorney should assess what action would best serve the client's interests. This decision must be made on a case-by-case basis. In some cases, the attorney may decide to take a position consistent with the client's last clearly articulated position. In other cases the attorney may decline to participate in the court proceedings in the absence of the client because that may better protect the client's right to vacate orders made in the client's absence. After a prolonged period without contact with the client, the attorney should consider moving to withdraw from representation.*

## Eight CULTURAL AWARENESS

**RPC shall be aware of the client's culture and how that culture may impact the parents' participation in the case.**

*Commentary: A significant number of respondent parents who enter the child welfare system are from cultures other than the community's dominant culture. There may be language barriers or cultural considerations that affect the client's ability to understand what the court is requiring.*

*Unless RPC is respectful of the client's culture and sensitive to the impact of these considerations upon the client's participation in the case, the attorney cannot be sure that the client understands the nature of the proceedings or what is required of the client or the possible consequences for failing to comply with court-mandated treatment plans.*

## Nine APPEALS

**RPC shall make certain that appellate options, timelines, and requirements are fully explained to parents whose rights have been affected by orders of the court. RPC handling the appeal shall keep the client informed as to the status of any appeal that is filed.**

*Commentary: Appeals in dependency and neglect proceedings are now expedited pursuant to Rule 3.4 of the Colorado Appellate Rules. RPC must discuss the specific requirements of an appeal with the client at the earliest practicable time so that the appellate timelines do not lapse before the client can make an informed decision about whether to seek appellate review. RPC must also be familiar with local practices that may affect the ability of counsel to perfect the appellate record. Specifically, RPC must be familiar with the local compliance plan adopted by each jurisdiction pursuant to Chief Justice Directive 05-03 for the transcription of the record for appeal.*

# Attachment D

Office of the Child's Representative  
 Truancy data  
 FY08 - FY13

Prepared by: Elisabeth Dickinson, Controller  
 Date: 23-Aug-13

Number of Appointments and Expenditures by Jurisdiction

Jurisdiction	FY13	FY12	FY11	FY10	FY09	FY08
01 - Jefferson/Gilpin	19	12	2	3	4	0
02 - Denver Juvenile	84	21	49	91	152	177
04 - El Paso/Teller	105	68	82	54	16	3
06 - La Plata	2	1	1	1	0	0
07 - Montrose/San Miguel	0	0	1	0	0	0
08 - Larimer	2	3	2	14	0	2
09 - Garfield/Rio Blanco	0	0	0	0	1	0
10 - Pueblo	1	1	1	0	7	13
11 - Fremont/Park	1	1	2	1	0	2
12 - Alamosa/Rio Grande	0	0	0	0	1	0
13 - Morgan/Logan	7	2	7	6	10	13
14-Moffat	0	2	1	0	0	0
15 - Prowers	4	8	7	14	0	0
16 - Bent/Otero	63	34	28	24	20	7
17 - Adams/Broomfield	92	41	37	63	36	14
18 - Arapahoe/Douglas	229	221	163	98	181	247
19 - Weld	72	7	19	15	15	10
20 - Boulder	16	4	13	22	27	23
22 - Dolores/Montezuma	0	0	1	0	4	4
Total appointments	697	426	416	406	474	515

Jurisdiction	FY13	FY12	FY11	FY10	FY09	FY08
01 - Jefferson/Gilpin	\$ 2,458.66	\$ 4,749.10	\$ 538.85	\$ 1,296.02	\$ 1,637.47	\$ -
02 - Denver Juvenile	\$ 34,998.69	\$ 8,717.71	\$ 8,951.59	\$ 31,338.66	\$ 54,900.88	\$ 55,164.97
04 - El Paso/Teller	\$ 30,917.41	\$ 10,203.21	\$ 31,258.41	\$ 31,743.67	\$ 14,019.38	\$ 355.01
06 - La Plata	\$ 1,256.72	\$ 989.03	\$ 24.05	\$ 1,657.90	\$ -	\$ -
07 - Montrose/San Miguel	\$ -	\$ -	\$ 809.90	\$ -	\$ -	\$ -
08 - Larimer	\$ 805.05	\$ 2,938.54	\$ 1,387.75	\$ 5,834.21	\$ -	\$ 477.00
09 - Garfield/Rio Blanco	\$ -	\$ -	\$ -	\$ -	\$ 560.24	\$ -
10 - Pueblo	\$ -	\$ 429.00	\$ 13.00	\$ -	\$ 4,386.82	\$ 6,074.71
11 - Fremont/Park	\$ 293.50	\$ 55.50	\$ 1,062.70	\$ 307.80	\$ -	\$ 361.22
12 - Alamosa/Rio Grande	\$ -	\$ -	\$ -	\$ -	\$ 1,042.53	\$ -
13 - Morgan/Logan	\$ 3,990.98	\$ 975.00	\$ 2,352.00	\$ 1,470.80	\$ 2,535.39	\$ 6,500.85
14-Moffat	\$ -	\$ 312.68	\$ 981.50	\$ -	\$ -	\$ -
15 - Prowers	\$ 1,365.16	\$ 3,836.50	\$ 2,165.30	\$ 4,147.68	\$ -	\$ -
16 - Bent/Otero	\$ 16,357.25	\$ 4,460.85	\$ 9,332.05	\$ 3,624.62	\$ 3,352.47	\$ 1,999.80
17 - Adams/Broomfield	\$ 22,355.03	\$ 12,806.14	\$ 10,535.44	\$ 17,742.03	\$ 13,613.13	\$ 3,901.89
18 - Arapahoe/Douglas	\$ 74,218.49	\$ 77,622.19	\$ 74,855.80	\$ 63,935.34	\$ 101,774.62	\$ 79,200.81
19 - Weld	\$ 24,152.34	\$ 1,676.07	\$ 5,246.50	\$ 5,625.37	\$ 10,686.60	\$ 3,746.16
20 - Boulder	\$ 6,188.78	\$ 1,318.50	\$ 5,399.11	\$ 8,391.65	\$ 12,386.70	\$ 11,036.58
22 - Dolores/Montezuma	\$ -	\$ -	\$ 216.45	\$ -	\$ 963.97	\$ 1,037.99
Case management/OCR Cares	\$ 984.37	\$ 2,450.56	\$ -	\$ -	\$ -	\$ -
Total expenses	\$ 220,342.43	\$ 133,341.38	\$ 154,930.40	\$ 177,413.55	\$ 221,920.18	\$ 169,855.99

Jurisdiction	FY13	FY12	FY11	FY10	FY09	FY08
01 - Jefferson/Gilpin	\$ 129.40	\$ 395.76	\$ 269.43	\$ 432.01	\$ 409.37	\$ -
02 - Denver Juvenile	\$ 416.65	\$ 415.13	\$ 182.69	\$ 344.36	\$ 361.58	\$ 311.67
04 - El Paso/Teller	\$ 294.45	\$ 150.05	\$ 381.20	\$ 587.85	\$ 876.21	\$ 118.34
06 - La Plata	\$ 628.36	\$ 989.03	\$ 24.05	\$ 1,657.90	\$ -	\$ -
07 - Montrose/San Miguel	\$ -	\$ -	\$ 809.90	\$ -	\$ -	\$ -
08 - Larimer	\$ 402.53	\$ 979.51	\$ 693.88	\$ 423.87	\$ -	\$ 238.50
09 - Garfield/Rio Blanco	\$ -	\$ -	\$ -	\$ -	\$ 560.24	\$ -
10 - Pueblo	\$ -	\$ 429.00	\$ 13.00	\$ -	\$ 626.69	\$ 467.29
11 - Fremont/Park	\$ 293.50	\$ 55.50	\$ 531.35	\$ 307.80	\$ -	\$ 180.61
12 - Alamosa/Rio Grande	\$ -	\$ -	\$ -	\$ -	\$ 1,042.53	\$ -
13 - Morgan/Logan	\$ 570.14	\$ 487.50	\$ 336.00	\$ 245.10	\$ 253.54	\$ 500.07
14-Moffat	\$ -	\$ 156.34	\$ 981.50	\$ -	\$ -	\$ -
15 - Prowers	\$ 341.29	\$ 479.56	\$ 309.33	\$ 296.26	\$ -	\$ -
16 - Bent/Otero	\$ 259.64	\$ 131.20	\$ 333.29	\$ 151.03	\$ 167.62	\$ 285.69
17 - Adams/Broomfield	\$ 242.99	\$ 307.47	\$ 284.74	\$ 281.62	\$ 378.14	\$ 278.71
18 - Arapahoe/Douglas	\$ 324.10	\$ 351.23	\$ 458.01	\$ 652.40	\$ 562.29	\$ 320.65
19 - Weld	\$ 335.45	\$ 239.44	\$ 276.13	\$ 388.36	\$ 712.44	\$ 374.52
20 - Boulder	\$ 386.80	\$ 329.88	\$ 415.32	\$ 381.44	\$ 458.77	\$ 479.85
22 - Dolores/Montezuma	\$ -	\$ -	\$ 216.45	\$ -	\$ 240.99	\$ 259.50
Case management/OCR Cares	N/A	N/A	\$ -	\$ -	\$ -	\$ -
Average cost per appt.	\$ 316.13	\$ 313.01	\$ 372.43	\$ 436.98	\$ 468.19	\$ 329.82



COLORADO YOUTH  
WORKFORCE DEVELOPMENT ENTERPRISE

**Synopsis**

*Goal:* Develop a sustainable collaboration among all sectors that work with youth and their families to improve workforce knowledge and standards of practice.

This brief:

- substantiates the need for cross disciplinary training for professionals serving system-involved youth;
- highlights the public will and momentum that is already in place in Colorado to identify the areas of knowledge that a professional in the field should have as well as strategies to develop the infrastructure that enables professionals to obtain the training;
- emphasizes the importance of sustaining this strategic workforce development by institutionalizing professional standards and integrated training opportunities across system entities such as juvenile probation, corrections, and child welfare, among others; and
- demonstrates steps that agencies, divisions and/or departments can take to actualize effective workforce development collaboration.

**Context**

The critical need for enhanced multi-disciplinary training for youth serving professionals is not a new issue and mirrors a growing concern among national, state and local juvenile justice and child welfare entities such as the Federal Office of Justice Programs' Office for Victims of Crime, the Colorado Criminal and Juvenile Justice task force at the state level, and the Denver Crime Prevention and Control Commission at a local level about the negative impact of 'siloed' professional training on justice-involved youth, their families and communities. A research study conducted in 2008 by the National Academy for State Health Policy (NASHP) found that effectively meeting the needs of youth in the juvenile justice system was often impeded by a lack of knowledge about policies across and between state and local agencies. In response, NASHP recommended the use of umbrella entities to not only capitalize on collaborative approaches, but also implement cross-agency training programs.<sup>1</sup>

A number of Colorado's key juvenile justice stakeholders<sup>2</sup>, recognizing the significant need to improve standards of practice among youth serving professionals - in order to better prevent youth from unnecessarily progressing deeper into systems and institutions - began exploring best practices around general principles of knowledge necessary for professionals engaged in this field.<sup>3</sup> These efforts were adopted by the Colorado Criminal and Juvenile Justice Commission Juvenile Task Force and handed off to the Juvenile Justice Delinquency Prevention Council's Professional Development committee, which has since had a series of discussions regarding the current state of

training curricula for Colorado professionals working with justice-involved youth and gaps, needs, barriers and opportunities for developing a youth workforce development enterprise.

### **What is a Youth Workforce Development Enterprise?**

A youth workforce development enterprise would consist of a comprehensive multi-disciplinary training series, which establishes standards of practice for any professional working with system-involved youth. The youth workforce development enterprise would provide two categories of training: primary and secondary core competencies. Primary core competencies trainings are intended to strengthen the foundational capacity of professionals working with system-involved or at-risk youth. For example, one of the key core competencies included in the learning enterprise would address an unmet need among many of Colorado's youth serving professionals – greater understanding of adolescent brain development and how that affects behaviors. Secondary competencies trainings would develop capacity in distinct subject areas specific to system-involved or at-risk youth. The workforce development enterprise is structured to offer three tailored tracks of training, including a series for practitioners working directly with system-involved youth, a series for those who work more indirectly with system-involved youth (i.e., judges or legislators), and a supervisory series, which provides managers, supervisors, and administrators with training on leadership and management of professionals working with system-involved youth.<sup>4</sup>

### **Why is a Youth Workforce Development Enterprise needed in Colorado?**

There are significant benefits to having a statewide youth professional development enterprise, including addressing a critical deficit in knowledge among professionals who serve system-involved youth. As research demonstrates, “once youth are in multiple systems, they risk being subject to multiple processes by multiple agencies with little or no coordination to achieve optimal case plans. Assessments are often duplicated, little or no attention is given to the integration of findings from the various assessments, and case plans may be duplicative or even contradictory. This lack of a coordinated response is not only unproductive in terms of addressing the youths’ needs and criminogenic factors, but it can push youth further into the juvenile justice and other systems when they fail to meet the requirements of contradictory case plans.”<sup>5</sup> In addition, findings from a recent study conducted by the Florida Department of Juvenile Justice’s Research and Planning division, consisting of case sample analysis of 27,311 low risk youth, demonstrated that “diverting low risk youth is the most effective strategy in terms of reducing subsequent reoffending.”<sup>6</sup>

There are numerous examples nationally - captured in federal practitioner guidebooks, research studies and briefs, and state juvenile justice statistical reports, among others - on how a deficit of comprehensive professional development strategies for staff representing the various systems and sectors that work with system-involved youth can impede ensuring best outcomes for those youth. One such example, a recent nationwide study, conducted by *Strategies for Youth*, highlights this issue within a specific context – the need to equip police officers with more adolescent behavioral health knowledge.<sup>7</sup> Findings from the study demonstrate that nationally, “only 9 states provide new officers with any training on adolescent mental health issues, and only 2 with training on adolescent development and psychology and that forty states’ juvenile justice curricula focus

primarily on the juvenile code and legal issues and provide no communication or psychological skills for officers working with youth.”<sup>8</sup>

Specific to Colorado, a 2012 assessment of the state’s juvenile defender system, conducted by the National Juvenile Defense Center, demonstrated that “the juvenile indigent defense system in Colorado suffers from benign neglect. The lack of statewide leadership, coupled with the lack of professional standards or a dedicated focus on juvenile defense, has left defenders floundering.”<sup>9</sup> One of the assessment’s key recommendations was to “promulgate and adopt statewide standards of Juvenile Defense Practice in Delinquency Proceedings. Statewide standards, accompanied by an implementation and enforcement strategy, would go a long way in enhancing the juvenile defense function.”<sup>10</sup>

While the two examples cited are specific to police officers and juvenile defenders, this inability to understand youth behavior as well as be familiar with behavioral health needs, and screening and assessment within a broader contextual framework applies to any professional who serves system-involved youth and can lead to flawed interventions that most often miss the central issues facing the young person.<sup>11</sup>

Establishing comprehensive training opportunities, that equip professionals from different disciplines with the knowledge to understand the spectrum of issues that may have initiated a youth’s involvement in a system, will contribute to reduced youth recidivism rates, and subsequently, reduced costs to families and communities. In addition, based on the lessons learned by system entities - such as youth corrections, which historically built off of an adult model - establishing standards of practice tailored specifically for the juvenile population is a necessary step. At a time when system resources - from corrections to probation - are being squeezed, strengthening the professional development of one’s workforce will also better ensure effective utilization of limited resources.

### **Barriers to Implementing a Youth Workforce Development Enterprise**

Transitioning the concept of a statewide youth workforce development enterprise into action presents some questions regarding feasibility due to a number of hard to navigate barriers including: differing mandates across state agencies on required trainings for staff within their various systems, inability for agencies to integrate their existing training infrastructure into an umbrella hub, limited funding to develop or provide training opportunities and limited resources to inform all the disciplines that might touch a system-involved youth on the principles of knowledge that would ensure adherence to standards of practice. Designing, administering and sustaining an overarching youth workforce development enterprise, in itself, would require an investment of funding and resources.

### **Pathways to implementing and sustaining a Youth Workforce Development Enterprise**

There are currently no states that offer some iteration of a statewide workforce development enterprise for professionals working with system-involved youth. However, states such as Pennsylvania, Massachusetts and Arizona have taken preliminary steps in this direction. Many states, similar to Colorado, operate professional development academies within individual agencies or departments such as youth corrections or child welfare, but the curricula offered at the

academies are specific to a defined profession and are not integrated with the broader training and knowledge of other systems. Yet, as Pennsylvania's 2012 Juvenile Justice Enhancement strategy report emphasizes "training is a key element of the successful implementation of evidence-based practices in juvenile justice. Without it, departments and service providers will not have the knowledge, skills, and perspectives required to guide juveniles through the social and behavioral processes of behavioral change and recidivism reduction."<sup>12</sup>

The National Center for Juvenile Justice Reform has suggested a starting point for states looking not only at enhanced cross training opportunities, but also at overall better coordination across youth serving systems. In the Center's report, *Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice*, they reference an academic article that states "as systems consider how they are going to work together to improve outcomes for dually-involved youth, they need to conduct inventories of the resources, best practices, and assessment processes available in their systems, as well as provide corresponding training to all involved personnel (Wiig and Tuell, 2004, rev. 2008)."<sup>13</sup>

*Current status of efforts:* Colorado has already developed core and secondary areas of training as well as a preliminary inventory of trainings offered across many of the agencies that serve system-involved youth, identifying which trainings address which core competencies and secondary competencies.

*Next steps:* Recognizing that the full implementation of an overarching youth workforce development enterprise is a longer term effort, the Juvenile Justice Delinquency Prevention Council's Professional Development committee is currently taking specific steps to work towards this goal, which include:

- finalizing the inventory of trainings offered across Colorado's systems, including times and locations of where trainings are offered and who can access those trainings;
- identifying barriers as to why trainings offered at a specific division / agency may not be available to staff at a different division or agency (i.e., costs and resources), and potential solutions to those barriers;
- consolidating this information into an accessible format, such as an online resource, that can not only be distributed to the traditionally identified youth serving professionals from child welfare and juvenile justice, but also to professors who are working with students interested in juvenile justice careers, among others;
- ensuring sustainability by institutionalizing the workforce development enterprise through formal commitments from organizations, divisions and departments (i.e., Division of Youth Corrections, Child Welfare, and the Office of Behavioral Health, etc.); and
- securing commitment from state level partners to work collaboratively to fill gaps and improve access for agencies that serve youth at a local level.

In essence, a workforce development enterprise would not operate as a bricks and mortar academy, but would instead utilize and leverage the resources already in place as well as address gaps in training offerings and any access barriers for professionals who are trying to complete trainings. Institutionalizing more comprehensive training and standards of practice and providing a spectrum

of training opportunities that enable professionals to address the needs of the whole youth will ensure the sustainability of the workforce development enterprise.

### The Opportunity

Turning the youth workforce development enterprise concept into reality could help achieve a primary juvenile justice goal - improved outcomes for youth by promoting the professional development of system actors from judges to prosecutors to direct service workers. In Colorado, across multiple system stakeholders, the will exists to move the youth workforce development enterprise from design to implementation. In fact, the need for enhanced professional development has been identified as a focus area in multiple statewide efforts around system collaboration. As such, the Juvenile Justice Delinquency Prevention's Professional Development committee, which consists of representatives from many of the key organizations reflected in the state's multiple youth serving systems, is committed to mobilizing resources and expertise to help make this vision a reality. Not only does the will exist to implement a youth workforce development enterprise, Colorado already has a model to build upon in establishing minimal standards of practice for youth serving professionals. The state, by rule and statute, set minimal requirements for those working in child welfare, and subsequently, a comprehensive child welfare academy is being developed to meet those standards - affording an opportunity to expand this concept to other youth serving systems.

We hope that your \_\_\_\_\_ (organization, division and/or department) will partner with us in ensuring that Colorado is a leader in developing a highly competent youth serving professionals with demonstrated dedication to working in the field by:

- ✓ expanding organizational training offerings and better equipping your staff with the competencies necessary to more effectively meet the needs of the youth they serve;
- ✓ standardizing core trainings in recommended competency areas (in order to meet state established standards of practice);
- ✓ exploring and participating in potential federal, state and local funding opportunities that support collaborative workforce development efforts; and
- ✓ assessing your ability to make the trainings that you offer available to professionals who fall outside of your own agency or divisions.

Your partnership will help maximize Colorado's opportunity to lead the nation in designing a model that more effectively utilizes limited resources and leverages skill sets to ensure that low risk high need youth are appropriately matched with the support and services that best facilitate their success.

## End Notes

- 
- <sup>1</sup> Cocozza, J., Shufelt, J., & Skowrya, K. (2010) *Systems of Care Programs That Serve Youth Involved With the Juvenile Justice System: Funding and Sustainability*. Washington, D.C.: Technical Assistance Partnership for Child and Family Mental Health. Retrieved from: [http://www.tapartnership.org/docs/jjResource\\_funding.pdf](http://www.tapartnership.org/docs/jjResource_funding.pdf)
- <sup>2</sup> For a list of the juvenile justice stakeholders who have spearheaded efforts to strengthen professional training standards for Colorado's youth serving professionals, please see Appendix A.
- <sup>3</sup> Professional Youth Development Training Academy (PYDT) Policy Statement ~ Denver Crime Prevention and Control Commission, Youth Prevention Committee
- <sup>4</sup> PYDTA Policy Statement ~ Denver Crime Prevention and Control Commission, Youth Prevention Committee
- <sup>5</sup> Herz, D., Lee, P., Lutz, P., Tuell, J. & Wiig, J. (2012) *Addressing the Needs of Multi-System Youth: Strengthening the Connecting between Child Welfare and Juvenile Justice*. Boston, Massachusetts: The Center for Juvenile Justice Reform and Robert F. Kennedy Children's Action Corps. Retrieved from: <http://cjjr.georgetown.edu/pdfs/msy/AddressingtheNeedsofMultiSystemYouth.pdf>
- <sup>6</sup> Baglivio, M. (2013) Florida Department of Justice Briefing Report: The Rick Principle. Tallahassee, Florida. Retrieved from: <http://www.djj.state.fl.us/docs/research2/briefing-report-the-risk-principle.pdf?sfvrsn=0>
- <sup>7</sup> Nygaard, G. (2013) *If Not Now, When? Survey Finds Scant Police Training in Juvenile Justice*. Portland, Oregon: Reclaiming Futures. Retrieved from: <http://www.reclaimingfutures.org/blog/if-not-now-when-survey-finds-scant-police-training-juvenile-justice>
- <sup>8</sup> Retrieved from <http://www.reclaimingfutures.org/blog/if-not-now-when-survey-finds-scant-police-training-juvenile-justice>
- <sup>9</sup> Puritz, P. (2012) *Colorado: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings*. National Juvenile Defender Center in partnership with the Colorado Juvenile Defender Coalition. Pg. 37. Retrieved from: [http://www.njdc.info/pdf/Colorado\\_Assessment.pdf](http://www.njdc.info/pdf/Colorado_Assessment.pdf)
- <sup>10</sup> Retrieved from: [http://www.njdc.info/pdf/Colorado\\_Assessment.pdf](http://www.njdc.info/pdf/Colorado_Assessment.pdf)
- <sup>11</sup> Retrieved from: <http://cjjr.georgetown.edu/pdfs/msy/AddressingtheNeedsofMultiSystemYouth.pdf>
- <sup>12</sup> *Pennsylvania Juvenile Justice System Enhancement Strategy: Achieving our balanced and restorative Justice Mission through Evidence-based Policy and Practice* (2012). Retrieved from: <http://www.modelsforchange.net/publications/342>
- <sup>13</sup> Retrieved from: <http://cjjr.georgetown.edu/pdfs/msy/AddressingtheNeedsofMultiSystemYouth.pdf>

**APPENDIX A:**

**ORGANIZATIONS AND GROUPS INVOLVED IN EFFORTS TO STRENGTHEN PROFESSIONAL  
STANDARDS FOR COLORADO'S YOUTH SERVING WORKFORCE**

**The Juvenile Task Force of the Colorado Commission on Criminal and Juvenile Justice  
(CCJJ)**

**Denver Crime Prevention and Control Commission (DCPCC)**

**DCPCC's Youth Crime Prevention Committee**

**Colorado Division of Criminal Justice**

**Colorado Juvenile Justice and Delinquency Prevention Council (JJDP)**

**JJDP's Professional Development committee**

APPENDIX B: COLLABORATION FOR ENHANCED WORKFORCE DEVELOPMENT (EXAMPLE 1)

<i>Example of expansion of information sharing training to strengthen the professional development of Colorado's youth serving workforce</i>			
<b>Resource</b>	<b>Ask</b>	<b>Audience for the ask</b>	<b>Outcome</b>
Effective information sharing trainings	Open up several training slots in organization's existing information sharing training to staff from outside community-based organizations or government entities that do not offer employees training on effective and appropriate information sharing practices	Any agency that is providing some form of information sharing training including: <ul style="list-style-type: none"> <li>• Colorado Children and Youth Information Collaborative</li> <li>• State Judicial</li> <li>• Division of Youth Corrections (DYC)</li> </ul>	Standardize and improve the practice of information sharing statewide to ensure legal expectations regarding confidentiality are met and that information is shared effectively to promote the best outcomes for system-involved youth

**APPENDIX C: COLLABORATION FOR ENHANCED WORKFORCE DEVELOPMENT (EXAMPLE 2)**

<i>Expansion of Motivational Interviewing training to strengthen the professional development of Colorado's youth serving workforce</i>			
<b>Resource</b>	<b>Ask</b>	<b>Audience for the ask</b>	<b>Outcome</b>
<p>Trainings on psychotropic medication, side effects and potential implications for youth behavior</p>	<p>Open up several training slots in existing available organizational psychotropic medication trainings to other youth serving professionals at community-based organizations or government entities (i.e., State Judicial, DYC) that do not offer employees training in this area</p>	<p>Any agency that is providing training on psychotropic medication including:</p> <ul style="list-style-type: none"> <li>• Office of the Child's Representative</li> <li>• Colorado Association of Family and Children's Agencies</li> <li>• The Kempe Center</li> <li>• Colorado Behavioral Health Council</li> </ul>	<p>Broad-based understanding among Colorado's youth serving professionals on Colorado's guidelines on the use of psychotropic medication as well as the reasons for prescribing psychotropic medications, the side effects of the medications and potential implications for youth behavior</p>

APPENDIX D: COLLABORATION FOR ENHANCED WORKFORCE DEVELOPMENT (EXAMPLE 3)

<i>Expansion of Motivational Interviewing training to strengthen the professional development of Colorado's youth serving workforce</i>		
<b>Resource</b>	<b>Ask</b>	<b>Audience for the ask</b>
Motivational Interviewing (MI) training	<p>Provide 5 training slots to Diversion, Child Welfare, juvenile judges and community-based providers, etc. who do not have access to training in this area</p> <p>Offer or expand existing trainings to be situation specific:</p> <ul style="list-style-type: none"> <li>✓ Individual</li> <li>✓ Group</li> <li>✓ Supervisory</li> <li>✓ Coaching/ Coding</li> <li>✓ Instructor Training Model</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence-Based Implementation for Capacity project (EPIC) team</li> <li>• State Judicial</li> <li>• Division of Youth Corrections (DYC)</li> </ul> <p>Practices</p>
		<b>Outcome</b> MI training available to all professionals who work with system involved youth