



COLORADO

An Assessment of Access to Counsel
and Quality of Representation in
Juvenile Delinquency Proceedings

Winter 2012

National Juvenile Defender Center
Colorado Juvenile Defender Coalition



COLORADO

An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings

Written by:

Patricia Puritz

In collaboration with:

Tim Curry

Kim Dvorchak

Stephanie Harrison

David Shapiro

With assistance from:

Rey Banks

Emily Pelletier

Nadia Seeratan

ACKNOWLEDGMENTS

The authors would like to convey our gratitude to the lawyers and other justice system professionals across Colorado who generously gave their time to share their expertise and perspectives on the juvenile defense system. We thank the judges and magistrates who welcomed us into their courtrooms and offered candid insight into juvenile indigent defense practices in their jurisdictions. This Assessment would not have been possible without the assistance of many juvenile defenders, prosecutors, probation officers, SB 94 staff, court administrators, facility directors, policymakers, advocates, and youth across Colorado who shared their experiences and knowledge with Assessment team members. Their input was invaluable.

We extend thanks to Michael Bender, Chief Justice of the Supreme Court of Colorado, for his support in helping us gather critical information regarding the structure of Colorado's juvenile defense system. We especially thank William Delisio, Family Law Program Manager, and Chad Edinger, former Court Auxiliary Services Coordinator at the Colorado State Court Administrator's Office, for their guidance and specialized expertise. We appreciate the time given to us by former Colorado juvenile court judge and national expert, Ted Rubin, who graciously shared his wisdom, insight, and historical perspective on due process and youth in conflict with the law.

This Assessment could not have been conducted without the input and support of key stakeholders, most notably Douglas Wilson, Colorado State Public Defender, and Lindy Frolich, Director of the Office of the Alternate Defense Counsel. We appreciate their cooperation with the Assessment and commitment to improving the juvenile defense delivery system. Special thanks to the members of the Colorado Juvenile Defender Coalition for their dedication to ensuring excellence in juvenile defense and justice for all children in Colorado.

We are grateful for the comprehensive and diligent work of the investigative team. Team members donated their time and specialized expertise and fanned out across Colorado conducting comprehensive court observations and structured interviews, participating in meetings, presentations, and pre- and post-site visit briefings, and providing enormous insight into our understanding of the juvenile defense system in Colorado. Assessment team members included:

Megan Annitto

West Virginia University, Morgantown, WV

Simmie Baer

Attorney at Law, Englewood, CO

Rey Banks

National Juvenile Defender Center, Washington, DC

Sarah Bergen

National Juvenile Defender Center, Washington, DC

Stephen Bergman

Maryland Office of the Public Defender, Baltimore, MD

Angela Chang

Children's Law Center, Covington, KY

Betsy Clarke

Juvenile Justice Initiative, Evanston, IL

Rebecca Ballard DiLoreto

Children's Law Center, Covington, KY

Stephanie Harrison

Mid-Atlantic Juvenile Defender Center, Washington, DC

Marie Osborne

Law Offices of Carlos Martinez, Miami, FL

Leslie Krueger-Pagett

Attorney at Law, Denver, CO

Emily Pelletier
National Juvenile Defender Center, Washington, DC

Brad Peterson
Legal Services of North Dakota, Bismarck, ND

Nadia Seeratan
National Juvenile Defender Center, Washington, DC

Ji Seon Song
Contra Costa Public Defender's Office, Martinez, CA

Deborah St. Jean
Maryland Office of the Public Defender, Baltimore, MD

Jennifer Woolard
Georgetown University, Washington, DC

George Yeannakis
TeamChild, Seattle, WA

Eric Zogry
Office of the Juvenile Defender, Raleigh, NC

In addition, we appreciate the behind-the-scenes support of the National Juvenile Defender Center staff, law clerks, and interns who worked hard to coordinate all site visits and logistics, prepared briefing binders, collected and analyzed data, and compiled and synthesized notes.

We sincerely hope this Assessment sparks conversation on the strengths and challenges within the Colorado juvenile indigent defense system and provides the many dedicated juvenile justice professionals in Colorado with a tool for change.

TABLE OF CONTENTS

Executive Summary.....	7
Introduction.....	13
Purpose of Assessment.....	13
Methodology.....	13
CHAPTER ONE – Due Process and the Juvenile Justice System.....	15
Role of Counsel in Delinquency Proceedings	16
Critical Importance of the Attorney-Client Relationship.....	16
The Mandate for Juvenile Defense as a Specialized Practice	17
CHAPTER TWO – Context for Legal Representation of Youth in Colorado	19
Structure of the Judicial System.....	19
Structure of the Indigent Defense System	19
Overview of the Juvenile Justice System	21
Overview of the Colorado Children’s Code.....	25
CHAPTER THREE – Assessment Findings and Analysis	35
Systemic Barriers to Providing Juvenile Defense Services.....	35
Inadequate Resource Allocation and Lack of Strong, Engaged Leadership	35
Juvenile Defense as a Specialized Practice.....	36
High Turnover	36
Role Confusion	37
Lack of Professional Standards and Accountability	37
Lack of Professional Relevance and Visibility	38
Barriers that Limit Access to Counsel.....	38
Advisement of Rights.....	38
Timing and Manner of Appointment of Counsel.....	38
Indigence Determinations.....	39
Waiver of Counsel	40
Compensation	40
Caseloads.....	41
Use of Mechanical Restraints in the Courtroom.....	41

Practice Observations at Critical Stages	42
Preparation and Client Contact	42
Defense Advocacy Consistently Poor at Pre-Trial Proceedings.....	42
Detention Hearings.....	43
Defense Seldom Conducts Independent Investigation	44
Motions Practice	44
Extremely High Rates of Plea Agreements	44
Bench Trials/Jury Trials.....	45
Little Individualized Defense Advocacy at Disposition.....	45
Post-Disposition Representation of Adjudicated Youth Virtually Non-Existent	45
No Uniform System for Juvenile Appeals.....	45
Work Uninformed by Knowledge of Developmental Science and other Research.....	46
Youth Prosecuted as Adults.....	46
Additional Obstacles to Fairness.....	46
Juvenile Court Culture: Remnants of <i>Parens Patriae</i>	47
Impact of Inadequate Access to Counsel on Minority and Immigrant Youth	47
Juvenile Sex Cases and the Registry	47
Comprehensive Service System but Insufficient Attention to Due Process	48
Mental Health Issues	48
Truancy Court.....	48
CHAPTER FOUR – Promising Approaches and Innovative Practices.....	49
CHAPTER FIVE – Core Recommendations and Implementation Strategies	51
Endnotes.....	56
Appendix A: Chief Justice Directive 04-04	67
Appendix B: Excerpt of Colorado Rules of Juvenile Procedure.....	90

EXECUTIVE SUMMARY

Despite the efforts of many talented and dedicated lawyers who practice in juvenile court, the juvenile indigent defense system in Colorado suffers from benign neglect. It is not that people willfully work against the system; there is just no concerted effort to work for it. The lack of statewide leadership, coupled with the lack of professional standards or a dedicated focus on juvenile defense, has left most defenders who practice in juvenile court without adequate support or in a system that largely depreciates their role. It is this type of neglect that fosters a constant minimization of juvenile court practice – the sentiment that it is just “kiddie court,” not a place for real lawyers. This lack of system accountability diminishes juvenile defense across the state and wreaks direct and collateral harm to youth who depend on it to protect their legal interests. There needs to be greater statewide leadership, vision, and uniformity in practice and policy.

Without question, most lawyers who defend children—and many other professionals—share an authentic and abiding concern for the youth with whom they work. This concern, however, does not automatically translate into any genuine protection or realistic acknowledgement of a child’s due process rights. A significant percentage of youth pass through the delinquency system without counsel, effective legal advocates, or adequate safeguards to protect their interests. The concern for the child’s perceived best interests often overshadows even the hint of due process, as the court and practitioners default to a pre-*Gault*, *parens patriae* style of system that has long been deemed unconstitutional.

A strong juvenile defense system is critical to upholding constitutionally required due process protections for youth. Youth do not have uniform access to or appointment sufficiently early in the process, and the quality of representation across the state is, at best, uneven. Indigence determinations and fees spur conflicts between parent and child that exacerbate widespread waivers of counsel. Despite the weaknesses in the juvenile defense system, the investigators routinely noted the high level of skill and professionalism exhibited in the courts, detention centers, institutions, and a range of programs and service centers visited across the state. Coloradans care deeply about their youth and about strong communities.

To guarantee the fair and effective representation of youth through all phases of the delinquency process, the public defense system in Colorado must take serious steps to re-evaluate its commitment to the representation of youth, and then reallocate resources accordingly. Juvenile defenders must become more pro-active in fulfilling their duties and ethical obligations. Judges and other system professionals must embrace the role of the juvenile defender as vital in protecting the due process rights of children. Given geographical challenges and resource considerations, juvenile defenders will have to work with others to address and solve these problems – they cannot possibly be expected to solve these problems alone.

Coloradans have an abiding interest in ensuring that the justice system is not the dumping ground for failing schools, mental health systems, or parents who want the state to control their children. The justice system should be reserved for those youth who must be there. When youth do have the misfortune of coming into contact with the justice system, the system must ensure the protection of their legal rights. As the United States Supreme Court indicated long ago, good intentions alone are not a substitute for a proper system of juvenile defense and due process.¹

The judicial, legislative, and executive branches of government must work together with the public defense system, juvenile defense experts, and the community to build a modern and true juvenile defense system in Colorado. The time is now to improve this system and give it the attention it sorely lacks.

The Core Recommendations that follow represent the principal areas in which work is needed to improve both access to counsel and quality of representation for youth in the delinquency system. The Implementation Strategies derive from the Core Recommendations and provide more detailed suggestions to relevant state and local organizations and entities, including indigent defense leaders, juvenile defenders, other juvenile justice system stakeholders, and policymakers.

CORE RECOMMENDATIONS

Colorado has an obligation to treat youth in the justice system with dignity, respect, and fairness. In order to ensure the practical realization of due process and systemic accountability, Coloradans must tackle the following areas:

1. **Stop Marginalizing Juvenile Defense:** Juvenile defense must be recognized as a specialized area of practice and ongoing, specialized training must be made available to all attorneys handling delinquency cases.

2. **Ensure Timing and Appointment of Counsel:** Youth must receive early and timely access to counsel, and must have time for a meaningful consultation with counsel, prior to waiving that or any other rights, such as those forfeited when entering into plea agreements.
3. **Restrict Waiver of Counsel:** There must be a concerted effort to ensure that youth do not waive counsel prematurely, and if there is to be such a waiver, the court must make every effort to ensure that waiver is knowing and voluntary. The court must make certain that youth fully appreciate the short- and long-term direct and collateral consequences of waiving counsel and entering a plea. Courts must also strive to ensure that judicial colloquies with youth regarding their decision to waive counsel are thorough, comprehensive, and easily understood.
4. **Establish a Presumption of Indigence:** No child should be denied counsel because of a lack of resources. The indigence determination process creates barriers that prevent youth from receiving access to counsel in a timely manner and often forces youth into conflicts of interest with parents and attorneys. All children should be presumed indigent for the purpose of the *immediate* appointment of counsel at or before the first hearing. It is preferred, however, that all children, by virtue of their status as children, be presumed indigent throughout the life of the entire delinquency case.
5. **Eliminate Routine Use of Mechanical Restraints in the Courtroom:** The routine and indiscriminate handcuffing and shackling of all in-custody youth in the courtroom should be stopped. The use of mechanical restraints should be limited to the rare circumstance where a clear and present showing made on the record demonstrates that the child is a risk of flight or a danger to him/herself or others.
6. **Reallocate Resources:** Resources must be reallocated to support adequate juvenile defense practice and specialized units with training and supervision at the county/district level. These units should have a strong local presence and operate with support, vision, and guidance from the state's administrative office. An effective structure for handling delinquency appeals is urgently needed and must be developed.
7. **Ensure Access to Counsel in Truancy Court:** Youth in truancy court who may be subject to detention or loss of liberty must have access to defense counsel.
8. **Create the Position of Chief Juvenile Defender:** Within the Office of the State Public Defender a new high level statewide position should be established to strengthen and enhance juvenile defense practice and policy across the state. The Chief Juvenile Defender would report to the Public Defender and provide leadership, develop standards, conduct training, identify gaps in research and practice, and ensure that the Office of the State Public Defender, the Public Defender Commission, and other key stakeholders have regular access to relevant and timely information about ongoing juvenile defense matters.
9. **Promulgate and Adopt Statewide Standards of Juvenile Defense Practice in Delinquency Proceedings:** Given the rapid changes and developments in juvenile jurisprudence, it is imperative to provide juvenile defenders with guidelines and performance expectations that are consistent with the evolution of the law and meet ethical practice demands. Statewide standards, accompanied by an implementation and enforcement strategy, would go a long way in enhancing the juvenile defense function and evening out justice by geography.
10. **Ensure Representation at all Critical Stages:** The continuity of representation must be ensured throughout the duration of the juvenile court process from the initial and detention hearings through any and all post-disposition stages.

IMPLEMENTATION STRATEGIES

Addressing the Core Recommendations requires simultaneous action by many different groups. Governmental and non-governmental organizations and communities must work together to increase understanding of the role of the juvenile defender, improve the quality of representation, and engage in systems reform, advocacy, data collection, and monitoring. The Implementation Strategies laid out below address specific challenges in Colorado and offer ideas for consideration. Coloradans must work together to ensure that any child brought before the justice system receives the fairness and due process to which they are entitled. Specifically:

The Judicial Branch should:

- Establish a statewide Juvenile Rules Committee to address specific juvenile defense practice issues and make recommendations to the Colorado Supreme Court;

- Appoint an Advisory Committee to oversee the recommendations in this Assessment, including the development of statewide juvenile defense guidelines or standards, and report back to the Colorado Supreme Court;
- Issue a Chief Justice directive clarifying the role and expectations of juvenile defense counsel in delinquency proceedings;
- Issue a Chief Justice directive calling for the elimination of the indiscriminate shackling of youth in juvenile courts across the state;
- Collect data in key metrics including appointment of counsel, the circumstances surrounding waiver of counsel, juvenile defense practice needs in rural areas, and the impact of vast fees and surcharges on youth and families;
- Develop expedited statewide procedures or protocols for expunging juvenile arrest and court records and getting youth off the sex offender registry; and
- Ensure judicial forms for mandatory protection orders do not exceed statutory authority.

The Legislative Branch should:

- Amend the right to counsel statute to clarify and ensure representation at all critical stages from the initial hearing, including first appearance and detention hearings, through post-disposition placement and sex offender registry reviews;
- Consider enacting a presumption of indigence for children throughout the duration of the case or, at a minimum, for the purpose of early appointment of counsel; and
- Ensure accountability and oversight of agencies and departments responsible for Colorado's juvenile indigent defense systems.

The Executive Branch should:

- Work with the public defense system to develop mechanisms and shared responsibility for post-disposition representation; and
- Ensure non-legal department personnel, such as SB 94 employees, are not dispensing legal advice or acting in a quasi-attorney role.

The Office of the State Public Defender and Public Defender Commission should:

- Take leadership on issues and matters related to juvenile defense and create a high level, statewide, chief juvenile defender position to promote statewide uniformity and efficiency;
- Develop an effective statewide system for juvenile appeals;
- Take leadership on supporting and enhancing juvenile defense practice at the county/district level;
- Create an effective statewide system for petitioning youth off the sex offender registry and ensuring that juvenile sex offenders are represented at hearings on petitions for removal or exemption from the registry;
- Ensure adequate coverage and representation at initial hearings including first appearance and detention hearings and work with the Office of the Alternate Defense Counsel to ensure rapid coverage if conflicts arise;
- Challenge the lack of pre-file procedural protections in juvenile court;
- Develop mechanisms for providing post-disposition representation;
- Increase opportunities for juvenile defense-specific training and technical support; and
- Work with the Office of the Alternate Defense Counsel to improve and enhance juvenile defense practice and policy.

County/District Public Defender Trial Offices should:

- Change the culture of juvenile defense practice at the county/district level by insisting that defenders challenge on the record any perceived failures to observe due process;
- Establish permanent juvenile units with a supervisor;
- Eliminate forced rotation and develop a specialized juvenile defense practice;
- Develop expertise with respect to special populations of youth, including transfer youth, LGBT clients, and youth on immigration holds or facing deportation proceedings;
- Staff first appearance calendars and ensure representation at all initial and detention hearings; and
- Develop a greater understanding of mental health issues, special education, and other ancillary issues and use independent experts more assertively.

The Office of the Alternate Defense Counsel and the Alternate Defense Counsel Commission should:

- Play a much greater leadership role in statewide juvenile defense reform and support contractors at the local level to specialize in juvenile defense;
- Provide contractors with access to juvenile defense listservs, support groups, and other tools for building community and embracing the specialized nature of the practice;
- Develop a greater understanding of mental health issues, special education and other ancillary issues, and use independent experts more assertively;
- Work together with the Office of the State Public Defender in concrete ways to improve and enhance juvenile defense practice and policy; and
- Be vigilant in training on the vital differences between the role of the juvenile defender and that of a guardian *ad litem* (GAL) so that these roles do not become conflated in juvenile court.

Juvenile Court Judges and Magistrates should:

- Ensure individual, not group, advisements of rights;
- Actively work to remove barriers to access to counsel and reduce the number of youth who waive counsel;
- Ensure that each individual youth has a thorough and complete understanding of the waiver process and that all judicial admonitions and colloquies are spoken in developmentally appropriate terms;
- Not accept pleas at initial hearings until the child has had time for a proper consultation with counsel and counsel has had time to conduct at least a preliminary investigation and inform the youth in detail of the direct and collateral consequences of a plea;
- Take leadership to ensure that youth have counsel at detention and pre-trial hearings; and
- Ensure that youth are properly advised of the collateral consequences of adjudication in juvenile court as probation officers and SB 94 staff work toward case resolution.

Juvenile Probation Officers and SB 94 workers should:

- Ensure that counsel receives all reports and evaluations in a timely manner;
- Seek training on the role of juvenile defense counsel;
- Notify counsel in a timely manner if a young person is going to be charged with a technical or other violation of probation;
- Assist youth in accessing counsel at detention and pre-trial hearings;

- Be alert to the fact that youth should be properly advised by counsel of the collateral consequences of juvenile court adjudication; and
- Not be allowed to impose detention time on a youth without a hearing and a judicial order.

Guardians *ad Litem* should:

- Be vigilant about the different roles and responsibilities of the juvenile defender and the GAL, and never serve in both capacities in the same case;
- Advocate for the appointment of defense counsel in delinquency and truancy cases; and
- Never stand in at the last minute for a client they do not know.

The Colorado Commission on Criminal and Juvenile Justice should:

- Establish and support a drafting committee to fully codify and re-write Title 19 to ensure clarity, inclusion of current adolescent development research, reflection of best practices, and protection of due process rights;
- Develop legislative strategies to amend the mandatory protection orders and mandatory out-of-home placement provisions for juveniles;
- Develop strategies to ensure that the rights of youth charged with truancy are protected if they are at risk of detention or other infringements on their liberty; and
- Commission a study on issues related to status offenders.

The Colorado Juvenile Justice and Delinquency Prevention Council should:

- Pass a resolution endorsing the right to counsel and reinforcing the role of counsel at all stages of delinquency court involvement;
- Fund opportunities for professional development and technical support for juvenile defenders, juvenile prosecutors, and juvenile court judges; and
- Monitor truancy, crossover, and other specialty courts for adherence to due process.

State and Local Bar Associations should work with the Colorado Juvenile Defender Coalition to:

- Create pre-file procedural protections for youth in diversion or other pre-trial programs;
- Develop the capacity to take on expungement cases and petitions for removal from the sex offender registry;
- Work with juvenile defense experts and others to promulgate comprehensive juvenile defense practice standards or guidelines; and
- Provide training and support to the juvenile defense bar.

Law Schools should:

- Partner with public defense systems and create juvenile defense clinics to provide representation at truancy court, in post-disposition matters, and at suspension or expulsion hearings, in addition to providing general support to engage in any number of direct, appellate, or specialized policy research or litigation.

Non-profit, Advocacy, and Community Groups should:

- Monitor data collected by the judicial department regarding juvenile defense practice, and the impact of court processing, fees, and waiver of counsel on youth and families;
- Champion the role of juvenile defenders and zealous advocacy for children in juvenile court;
- Support and develop community based alternatives to secure detention and commitment;
- Engage court-involved youth and family in advocacy efforts; and
- Educate youth and families about the consequences of juvenile adjudications.

INTRODUCTION

This Assessment of access to counsel and quality of representation in Colorado delinquency proceedings is part of a nationwide undertaking to review indigent defense delivery systems and evaluate how effectively attorneys in juvenile court are fulfilling constitutional, statutory, and ethical obligations to their clients. This qualitative and systemic analysis is designed to provide a broad range of information about the role of defense counsel in the delinquency system, identify structural or systemic barriers to more effective representation of youth, identify and highlight best practices within the system, and make viable recommendations for ways to improve the delivery of defender services to youth in Colorado's juvenile justice system.

There has never been a comprehensive examination of the strengths and weaknesses of Colorado's juvenile indigent defense system, and this study provides new information and insight into the unique characteristics and attributes of that system.

PURPOSE OF ASSESSMENT

Juvenile indigent defense assessments are comprehensive in scope and designed to furnish policy makers, indigent defense leaders, and other key stakeholders with baseline qualitative and systemic information upon which they can make informed choices regarding the nature and structure of their state's juvenile indigent defense system. The assessment process investigates and presents a complete picture of the strengths and weaknesses of the juvenile defense system with tailored recommendations crafted to address each state's distinctive characteristics. Assessments are designed to help decision makers focus on key trouble spots and highlight best practices.

METHODOLOGY

The National Juvenile Defender Center (NJDC) relied upon its well-tested and highly structured methodology to conduct this juvenile indigent defense assessment. The process began with repeated visits to Colorado for meetings with key stakeholders, policymakers, advocates, and defenders. NJDC prepared a comprehensive briefing binder that identified all the key stakeholders and compiled critical demographic information, crime statistics, detention and commitment rates, employment rates, and other useful data to guide the Assessment planning. This state profile also reflected the geographic, economic, and cultural diversity of the state. Using this information, and with advice and input from on-the-ground experts, a representative sample of counties/judicial districts were selected for extensive site visits. The final sites included 12 counties, crossing 11 judicial districts, and consisted of rural, suburban, and urban jurisdictions. The selected jurisdictions combined represented greater than 70% of the statewide population. To ensure the highest yield of information, all interviewees were assured anonymity. Thus, the names of those interviewed and the jurisdictions visited will remain confidential.

Site-based protocols were developed to guide all court observations and structured interviews, which reflect and incorporate Colorado law and practice. Those standardized interview and observation instruments ensured that investigators were fully prepared to cover a broad range of material and provided with a comprehensive set of questions. Local stakeholders were very helpful in reviewing the protocols to ensure the proper inclusion and framing of Colorado-specific issues.

With support from the Chief Justice, judges across the state were informed of the Assessment and encouraged to cooperate. A highly skilled team was selected and trained. Team members consisted of juvenile public defenders, private lawyers, law school clinicians, and adolescent development experts. Over the course of a twelve-month period, investigators participated in preparatory meetings and then set out across Colorado to observe court proceedings, conduct structured interviews, visit detention centers and training schools, and meet with community leaders. Team members interviewed judges, court personnel, prosecutors, public defenders, Alternate Defense Counsel attorneys, GALs, probation officers, SB 94 workers, youth and their families, and other key statewide juvenile court stakeholders. Investigators also observed hundreds of hours of juvenile delinquency court proceedings. The results of all those interviews and court observations—along with additional forms and documents that were collected—were analyzed and incorporated into these findings and recommendations.

This Assessment represents the distillation of 18 months of work by the investigative team and NJDC staff. Chapter One discusses the evolution of due process, the role of counsel in delinquency proceedings, the critical importance of the attorney-client relationship, and the mandate to view juvenile defense as a specialized practice. Chapter Two lends context to the discussion and describes the structure of the judicial system, indigent defense system, and the juvenile justice system. This Chapter also includes an overview of the Colorado Children's Code pertaining to delinquency representation. Assessment findings and analysis are included in Chapter Three and promising and innovative practices are highlighted in Chapter Four. Chapter Five concludes with a comprehensive set of Core Recommendations which are bolstered and supported by a set of targeted Implementation Strategies.

This Assessment does not focus on GAL practice, nor does it discuss the role or appointment process of counsel in child welfare proceedings, or the representation of youth in county, municipal, or adult criminal court proceedings.

CHAPTER ONE

Due Process and the Juvenile Justice System

The first specialized juvenile court in the United States was created on July 1, 1899, as part of an Illinois legislative act establishing the juvenile court division of the circuit court for Cook County.² The 1899 Illinois legislation codified a more progressive way to treat wayward youth: instead of showing them the error of their ways by punishing them, the state would help youth correct their course and become productive, law-abiding citizens. Because the goal of the newly-created system focused on rehabilitation and not just punishment, the state law required only cursory legal proceedings that placed judicial economy and youth rehabilitation before due process.³ There was no role for defense attorneys—and little role for prosecutors—in that system.

Social workers and behavioral scientists advised the court on the most appropriate disposition of the cases. For the first time, detained youth were separated from adult offenders and placed in training and industrial schools, as well as in private foster homes and institutions.⁴ This type of specialized juvenile court was quickly duplicated in the larger cities of the East and Midwest, so that by 1925, some form of juvenile court existed in all but two states.⁵

Until the 1960s, constitutional challenges to juvenile court practices and procedures were consistently overruled. Children were denied the rights to counsel, public adjudications, and jury adjudications. They did not have any immunity against self-incrimination. They could be convicted on hearsay testimony.⁶ They could also be convicted by only a preponderance of the evidence. Previous case law found that juvenile proceedings were civil in nature and that their purpose was to rehabilitate rather than punish.⁷ Research on the juvenile justice system had begun to show that juvenile court judges often lacked legal training;⁸ that probation officers were undertrained and that their heavy caseloads often prohibited meaningful social intervention; that children were still regularly housed in adult facilities; and that juvenile correctional institutions were often, in reality, overcrowded and violent juvenile prisons serving as little more than breeding grounds for further criminal activity.

In 1963, the United States Supreme Court held that the Sixth Amendment right to counsel requires that indigent adults charged with a felony offense be appointed an attorney at public expense. In that seminal case, *Gideon v. Wainwright*,⁹ a unanimous court wrote that any person too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him, explaining that “lawyers in criminal court are necessities, not luxuries.”¹⁰ In the wake of *Gideon*, in a series of cases starting in 1966, the Supreme Court extended this and other bedrock elements of due process to youth facing delinquency proceedings. Arguably the most important of these cases, *In re Gault*,¹¹ held that juveniles facing delinquency proceedings have the right to counsel under the Due Process Clause of the United States Constitution, applied to the states through the Fourteenth Amendment. The Court observed that youth in juvenile court were getting “the worst of both worlds,” explaining that youth received, “neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”¹²

The Court continued: “[t]he probation officer cannot act as counsel for the child. His role ... is as arresting officer and witness against the child. Nor can the judge represent the child.”¹³ The Court concluded that no matter how many court personnel were charged with looking after the accused child’s best interests, any child facing “the awesome prospect of incarceration” needed “the guiding hand of counsel at every step in the proceedings against him” for the same reasons that adults facing criminal charges need counsel.¹⁴

The introduction of legal advocates into the juvenile court system was meant to infuse the informal juvenile court process with more of the strictly observed constitutional protections of adult criminal court and its concomitant adversarial nature: the Court observed specifically that juvenile respondents needed defenders to enable them “to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client] has a defense and to prepare and submit it.”¹⁵ The Court specifically denounced the typical pre-*Gault* courtroom proceeding in which the child’s due process rights were not protected by juvenile defense counsel, in acknowledgement of the unfortunate reality that the “absence of substantive standards ha[d] not necessarily meant that children receive[d] careful, compassionate, individualized treatment.”¹⁶

Perhaps most importantly, beginning with this line of due process cases, juveniles accused of delinquent acts were to become participants, rather than spectators, in their court proceedings. In addition to the right to counsel, *Gault* also extended to youth the right to notice of the charges against them, the privilege against self-incrimination,¹⁷ and the right to confront and cross-examine

adverse witnesses.¹⁸ In later cases, using fundamental fairness as its touchstone, the Court held that a youth cannot be adjudicated delinquent unless the state proves his or her guilt beyond a reasonable doubt,¹⁹ that a delinquency proceeding constitutes being placed “in jeopardy” and bars future prosecution for the same allegations,²⁰ and that youth have the right to a formal hearing and an attorney before being transferred to adult court for criminal prosecution.²¹ In each of these cases, the Court reaffirmed, that “civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court[.]”²²

As the President’s 1967 Commission on Law Enforcement and the Administration of Justice stated, “[N]o single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel.”²³

ROLE OF COUNSEL IN DELINQUENCY PROCEEDINGS

The defense lawyer plays a critical role for youth in delinquency court by protecting clients from unfairness, promoting accuracy in decision making, providing alternatives for decision makers, and monitoring institutional treatment, aftercare, and re-entry. Throughout the entire court process, the juvenile defender is the singular individual responsible for bringing the child’s perspective before the court.

The role of the juvenile defender has evolved to require a complex and challenging skill set, as well as an acute understanding of what it means to be an advocate for a child client. By the early 1980s, there was professional consensus that defense attorneys owe their juvenile clients the same duty of loyalty as owed to their adult clients.²⁴ That coextensive duty of loyalty requires defenders to represent the legitimate “expressed interests” of their juvenile clients, and not the “best interests” as determined by the individual judge, a probation officer, or a guardian *ad litem*.²⁵ This role is central to the kind of juvenile court *Gault* requires: one in which there is an advocate whose sole responsibility is protecting the due process rights of the child within the well-intentioned efforts of the other system stakeholders.

In order to effectuate this role, juvenile defenders have ethical and professional obligations that are central to their work. Unlike other actors in the system, juvenile defenders must empower their clients to understand and make important and reasoned decisions about their cases, such as whether to accept a plea agreement or exercise the right to trial; whether to exercise the right to remain silent or testify; whether to choose a jury trial or bench trial, when applicable; and whether to advocate for particular services. This kind of empowerment can be difficult with an adult client, but with children, the ability to properly advise and counsel a client is even more challenging because it requires an understanding of developmentally-appropriate communication styles and interview techniques.

Juvenile defenders have the added complication of maintaining client confidentiality when so many players—parents, teachers, mentors, service providers, etc.—have a stake in and an opinion about what should happen in the case. While each of these players can be an ally that helps further the goals of the youth within the case, not every actor will always share the same goals. It is impossible to understand a child in a vacuum, and these other people are vital to the defender’s understanding of the circumstances of the case in context. However, defenders have the difficult task of maintaining relationships with all the people who are important in the child’s life while ensuring that a confidential relationship is maintained.

Every lawyer has an ethical responsibility to represent his or her client with competence and diligence. This requires more than simply being well-versed in the law, rules, and procedures of a juvenile court. For juvenile defenders, the day-to-day interactions with their clients require fluency in areas of child and adolescent development, an understanding of and comfort with age-appropriate communication techniques, and familiarity with non-courtroom advocacy that includes everything from special education systems to mental health providers.

Juvenile defense counsel plays a vital role throughout the duration of the court’s jurisdiction over the young person. The scope and duration of appointment ought to extend from the initial hearing, at the latest, through post-disposition representation. Access to counsel is needed for post-disposition review hearings, sentence modifications, appeals or other collateral reviews, accessing particular services such as drug or mental health treatment, or challenging dangerous or unlawful condition of confinement.

CRITICAL IMPORTANCE OF THE ATTORNEY-CLIENT RELATIONSHIP

The breadth of responsibilities an expressed interest representation requires are difficult, if not impossible, to live up to if the defender does not build a trusting relationship with the client. All codes of professional conduct and defender practice guides acknowledge that good communication is at the heart of the attorney-client relationship. Communicating effectively,

building rapport, and cultivating client engagement take time, which is a luxury many defenders feel they do not have. The reality, however, is that the entire system is better served when defenders are able to develop these kinds of relationships and are able to ensure that children not only understand what is happening, but have the ability to engage thoughtfully in the decision-making process. Juvenile defense counsel cannot assume that he or she knows what is best for the client, but instead must employ a client-centered model of advocacy that actively seeks the client's input, conveys genuine respect for the client's perspective, and works to understand the client in his or her own socioeconomic, familial, and community context. Juvenile defense counsel's abiding purpose is to empower the client to make informed decisions.²⁶ It is only through skilled, developmentally and age-appropriate communication that the lawyer can be prepared to competently advise and represent the client's interests.

Developing a good working relationship with youth under highly stressful circumstances raises unique challenges and requires special awareness and responses by counsel. A defender's ability to both perceive and appropriately address a youthful client's fears and anxieties is central to his or her ability to work effectively with the client to ensure high-quality defense. Youth in delinquency systems often have disabilities that affect critical aspects of their functioning, especially their ability to communicate and comprehend. Juvenile defenders must be alert to the special needs or challenges of each client, while also identifying the client's strengths—be they familial, personal, or potential—and help integrate those strengths into the theory of the case and the disposition planning.

THE MANDATE FOR JUVENILE DEFENSE AS A SPECIALIZED PRACTICE

Children are different from adults; this is a fact that has been regularly upheld by the United States Supreme Court. Juvenile defenders and the public defense delivery system must respond accordingly. Juvenile defense is a highly specialized practice that requires not only the trial skills of an attorney in the criminal system, but also knowledge of a whole host of juvenile-specific procedures, systems, and statutes.²⁷ According to a Colorado Department of Public Safety report, the Colorado juvenile justice system is more complex than the adult criminal justice system.²⁸ The report states that "The juvenile justice system comprises complex processes involving multiple agencies with different objectives and mandates."²⁹

The job of the juvenile defense attorney is enormous. Beyond their complexity, delinquency cases carry consequences with significant and lasting implications for youth and families. A juvenile defender has dual responsibilities to prepare and present not only the criminal case, but must also be skilled in presenting the social case to assist courts in making determinations at every stage of the proceedings. Balancing these sometime competing tensions makes juvenile defense especially challenging. Counsel must be patient and build rapport with his or her client, explaining the confidential nature of their relationship.

At a minimum, juvenile defenders must be aware of the strengths and needs of their juvenile clients and of their clients' families, communities, and other social structures. Juvenile defenders must also understand child and adolescent development to be able to communicate effectively with their clients and to evaluate their level of maturity and competency and its relevance to the delinquency case. Juvenile defenders must have knowledge of and contacts at community-based programs to compose individualized disposition plans. Similarly, they must be familiar with mental health, education, special education, and immigration laws and services. Juvenile defenders must be able to enlist the client's parent or guardian as an ally without compromising due process or the attorney-client relationship. Juvenile defenders must help the client understand the impact of a plea or other juvenile court adjudications, and the direct and collateral consequences that attach to that decision.

Juvenile defense delivery systems must reflect the field's knowledge of the unique attributes of adolescence in defense practices. To do otherwise would be irresponsible because it ignores our understanding of adolescent development, impedes counsel's ability to communicate effectively with a young client, and limits a child's ability to meaningfully assert his or her rights. If counsel must guide youth toward informed decision making, systems must provide juvenile defenders with the training and support needed to perform accordingly. Juvenile defense counsel has an obligation to maximize each client's participation in his or her case, and they can only be expected to do so with ongoing and specialized skills and training. Underscoring this importance, the United States Supreme Court noted in 2010 that there are "special difficulties encountered by counsel in juvenile representation."³⁰ Indeed, "the features that distinguish juveniles from adults also put them at significant disadvantage in criminal proceedings."³¹ The role of a juvenile defender is multifaceted and challenging. It requires extraordinary sensitivity as well as all the legal knowledge and courtroom skills of a criminal defense attorney representing adult defendants.

CHAPTER TWO

Context for Legal Representation of Youth in Colorado

This section of the Assessment briefly describes the overall structure of the judicial, indigent defense, and juvenile justice systems in Colorado in order to pinpoint and frame the context for delinquency court representation, as provided by the Colorado Children's Code. Juvenile defenders work within the indigent defense hierarchy, but practice within the juvenile court setting. Thus, an understanding of the intersection of those systems is highly relevant. While the independence of the indigent defense system is critical, juvenile defenders are also influenced by the issues and trends in juvenile courts, again defining the need for specialized practice in delinquency court. Juvenile defenders, as with all courtroom participants, operate within a structure overseen by Colorado's state constitution and state laws.

STRUCTURE OF THE JUDICIAL SYSTEM

Colorado has 22 judicial districts covering 64 counties, and Article VI of the Colorado Constitution provides for the Supreme Court, a Court of Appeals, County Courts, District Courts, and the Denver Juvenile Court.³²

The Colorado Supreme Court is the court of last resort in the state. The Supreme Court has jurisdiction to review decisions by the Court of Appeals and direct appellate jurisdiction in some cases.³³ In addition, the Supreme Court "holds exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions."³⁴ Seven justices serve on the Supreme Court for ten-year terms.³⁵ The Court of Appeals serves as the intermediate court with jurisdiction over appeals from each of the state's District Courts and Probate Courts, as well as the Denver Juvenile Court.³⁶ District Courts hear juvenile, civil, criminal, domestic relations, probate, and mental health matters. This is not the case, however, in Denver, where juvenile matters are heard in the Denver Juvenile Court, which is a stand-alone juvenile court. The Denver Juvenile Court, created by the state constitution, has exclusive jurisdiction over all juvenile matters within Denver County, including delinquency, dependency and neglect, paternity, support, truancy, adoption, and relinquishment cases.³⁷ The court uses the "one family, one court" approach in which a single judge or magistrate hears all types of cases specific to one family.³⁸

As of July 2011, Colorado had 175 District Court judges.³⁹ With the exception of the Denver Juvenile Court, the juvenile court judges and magistrates rotate. Magistrates can preside over any case or matter within the juvenile court's jurisdiction, with the exception of jury trials and transfer hearings, or if any party makes a motion for a judge to conduct the hearing.⁴⁰ Each county in Colorado also has a county court, which has jurisdiction over misdemeanors, traffic offenses, and traffic infractions.⁴¹ Problem-solving courts, such as truancy courts, provided for by Colorado statute, also exist.⁴²

The prosecuting authority in each judicial district is the District Attorney, who is elected by constituents of the judicial district. Multiple counties comprise nearly all judicial districts. The District Attorney heads a central District Attorney's Office with a team of attorneys who prosecute criminal and juvenile cases. Counties within each judicial district have satellite District Attorney Offices, with the exception of the counties with the lowest populations. The District Attorney Offices are funded mainly at the county level, with some additional funding from the state, typically as grants for specific programs.⁴³ The Colorado District Attorneys' Council provides a central location for District Attorneys to seek prosecution-related resources, including training, legislative assistance, legal research, management assistance, data collection, and data dissemination.⁴⁴ Larger District Attorney Offices typically have juvenile-specific prosecution units and diversion programs, but the smaller offices do not. The high rotation and turnover rate of juvenile prosecutors is well known.⁴⁵ In truancy court, the individual who serves as the prosecuting authority is the attorney for the petitioner school district.⁴⁶

STRUCTURE OF THE INDIGENT DEFENSE SYSTEM

Understanding how the legal system works day to day for youth in Colorado is complex. Colorado has a statewide public defense system designed to uphold the right to counsel and due process as guaranteed by the Colorado and United States Constitutions. The defense system for indigent individuals includes the Office of the State Public Defender (OSPD), and when a conflict arises, appointment through the Office of the Alternate Defense Counsel (OADC).⁴⁷ These offices are both autonomous agencies within the judicial branch of the Colorado state government and each is statutorily responsible for providing defense counsel to indigent persons, both juveniles and adults.⁴⁸ The vast majority of juvenile cases appear to be public defender cases.

As is explained in greater detail in the synopsis of the Colorado Children's Code that follows, Colorado defines an indigent person as one whose financial circumstances prevent the person from having equal access to the legal process and provides for a process by which the system determines indigency.⁴⁹ A juvenile qualifies for state-sponsored defense representation when a delinquency petition is filed or when the juvenile is restrained by court order, process, or otherwise, provided the juvenile and his or her legal custodian are found to be without financial means to afford counsel.⁵⁰

The OSPD serves as primary criminal defense counsel to indigent defendants requesting legal representation. In circumstances in which a conflict of interest precludes the OSPD from representing an indigent defendant, such as a co-defendant, the OADC provides legal representation through contracts with outside attorneys. In some instances when neither the OSPD nor the OADC can take a case, the judge or magistrate may make a judicial appointment from a list of private counsel. Thus, in general, indigent youth in Colorado delinquency court proceedings across the state receive legal counsel through one of three primary mechanisms: OSPD, OADC, or judicial appointment. In addition, in some instances, GALs or Alternate Defense Counsel are appointed to "stand in." This issue is discussed in greater detail in the Findings and Analysis section of the Assessment in Chapter Three.

Office of the State Public Defender and the Public Defender Commission

The Office of the State Public Defender (OSPD) is charged with providing "zealous and effective representation for indigent individuals who are charged with the commission of a crime in Colorado."⁵¹ OSPD is comprised of a centralized statewide administrative office, a centralized statewide appellate office, and 21 regional trial offices, each with its own Office Head. A statewide training director coordinates the training of public defenders throughout Colorado. State funds are appropriated to the OSPD to provide for the representation of indigent persons in criminal and juvenile delinquency cases pursuant to statute and directives from the Colorado Supreme Court.⁵²

The OSPD provides direct defense representation through Deputy State Public Defenders, who are state employees, in the 21 regional offices. Effectively, each of those regional trial offices provides juvenile defense services in their own way. Some have juvenile supervisors and some do not, but all assign attorneys to handle juvenile cases. OSPD's organizational structure emphasizes adult criminal defense practice, so most juvenile "units" are not well defined.

The Public Defender Commission has responsibility for oversight of the OSPD. State statute provides for the Colorado Supreme Court to appoint Commission members.⁵³ The five-member Public Defender Commission, consisting of three attorneys and two lay advocates, is balanced politically and geographically. The Commission is responsible for appointing the State Public Defender for a five-year term, with eligibility for reappointment *ad infinitum*.⁵⁴ The Commission also has the authority to discharge the State Public Defender for cause.⁵⁵ Each Commission member may serve two terms, at the pleasure of the Supreme Court. Each member serves staggered terms to maintain continuity of the Commission.

Office of Alternate Defense Counsel and the Alternate Defense Counsel Commission

The Office of Alternate Defense Counsel (OADC) was established by statute to provide conflict counsel in adult and juvenile cases across the state when the Public Defender's office determines that an ethical conflict exists.⁵⁶ OADC provides legal services by contracting with licensed attorneys and investigators. OADC contract attorneys handling juvenile delinquency cases work at the rate of pay of \$65 per hour.⁵⁷ The maximum total fee per appointment for juvenile cases is \$2500 for a trial and \$1750 without trial.⁵⁸ Attorneys interested in accepting appointments from the OADC must comply with an application process and be accepted by the Director of the Alternate Defense Counsel, who is the final appointing authority.⁵⁹ OADC has made an effort to designate specific attorneys to handle juvenile delinquency cases. OADC also provides juvenile-specific training for attorneys handling juvenile cases⁶⁰ and has some juvenile-specific guidelines in place.

OADC is governed by a nine-member Alternative Defense Counsel Commission, consisting of six attorneys with criminal defense experience and three lay persons.⁶¹ Similar to the Public Defender Commission, the Alternate Defense Counsel Commission is balanced politically and geographically. The Commission is responsible for overseeing and appointing the Alternate Defense Counsel to a five-year term, who is then eligible for reappointment *ad infinitum*.⁶² The Commission also has the authority to discharge the Director of the Alternate Defense Counsel.⁶³ According to statute, ADC Commission members serve for four-year terms. The Commission also advises the Alternate Defense Counsel "concerning the development and maintenance of competent and cost-effective representation."⁶⁴

Judicial Appointments of Counsel

In all cases, the court retains jurisdiction to determine whether a person is indigent based on all available information and can review and override the Public Defender's determination. Additionally, where either the court or OSPD has deemed

the child not eligible for indigent representation but where the parent or legal guardian refuses to retain counsel for the juvenile, the court can appoint private counsel for the child if it finds that counsel is necessary to protect the interest of the juvenile.⁶⁵ In such cases the Judicial Department pays for the costs of counsel and an investigator. As distinguished from OADC, judicially-appointed counsel is authorized to receive a maximum of \$65 per hour with a maximum total fee per appointment of \$2875 with a trial and \$2150 without a trial.⁶⁶

For the fiscal year 2011-2012, the total expenditure for indigent defense in Colorado, including both OSPD and OADC was approximately \$84.2 million.⁶⁷ In fiscal year 2010-2011, the total expenditure was \$78.9 million. Juvenile specific allocations and calculations were not readily available.

OVERVIEW OF THE JUVENILE JUSTICE SYSTEM

The Colorado juvenile justice system is more complex than the adult criminal justice system, according to the Colorado Department of Public Safety report issued in March, 2011.⁶⁸ The report states that “The juvenile justice system comprises complex processes involving multiple agencies with different objectives and mandates.”⁶⁹ Although status offenders and truants should be diverted from juvenile court processing, thousands of status offenders are arrested and processed for things like curfew violations, liquor law violations, running away, and truancy. Truancy filings in Colorado have increased over 31% since 2000 and account for up to 10% of the filings in juvenile courts.⁷⁰ These cases proceed, usually without counsel, in district court and can quickly escalate. Diversion programs differ by jurisdiction but can take place at pre-filing, post-filing or post-adjudication. Colorado has a strong and longstanding commitment to funding a broad range of diversion programs.

It is the responsibility of the district attorney to decide whether to dismiss the matter, handle the matter informally, or file a delinquency petition. The number of delinquency cases filed statewide has decreased 34% between 2002 and 2010 according to the Office of Research and Statistics.⁷¹ Judges have options in terms of entering decrees imposing sentences such as commitment to the Department of Human Services (DHS)/Division of Youth Corrections (DYC); county jail; detention; fines and restitution; probation; placement with a relative, program, or hospital; community based placements; and the court can order parental conditions, school conditions, and evaluations or screenings.

Approximately 541,013 children between the ages of 10 and 17 reside in Colorado.⁷² Of this population, approximately 37,699, or 7%, were arrested during FY 2011.⁷³ The arrests led to 11,286 juvenile filings, 9,399 detention screenings, and 7,654 admissions into pre-adjudicatory staff-secure or supervised detention.⁷⁴ Of the cases that proceeded to adjudication, 4,637 youth received probation and 646 youth were committed to the DYC secure confinement.⁷⁵

Crime in Colorado and nationwide, has been steadily decreasing for many years.⁷⁶ Arrest data collected from 1980 to 2009 depicts a decreasing trend in juvenile violent and non-violent arrest rates. Between 1980 and 2009, juvenile violent arrests in Colorado comprised, on average, 10% of all arrests, with aggravated assaults making up the vast majority of juvenile violent arrests.⁷⁷ Larcenies and thefts comprised the vast majority of property crime arrests.⁷⁸ In 2008, the average age of youth arrested was 15.4 years old, while 4.4% of youth arrested were younger than 13 years old and 31.4% of youth arrested were 17 years old.⁷⁹ In FY 2011, the average age of DYC commitment was 16.8, and the average age at first adjudication was 14.8.⁸⁰

Colorado data collection on racial and ethnic minorities differs at various points in the criminal justice system, creating limitations on reporting minority contact in the juvenile justice system. The limitations impact Hispanic youth in particular, as certain data collection techniques result in recording the race of Hispanic youth as “white” without including additional information on ethnicity.⁸¹ Available data on the racial percentages of youth in the Colorado juvenile justice system is presented in the chart on page 22.

The Annie E. Casey Foundation Kids Count 2012 Report published by the Colorado Children’s Campaign, ranks Colorado 22nd in the United States for well-being, based on a standardized algorithm that includes indicators such as education, poverty level, parental education, parental poverty level, health, and teen birth rates.⁸² In 2010, 18% of Colorado children lived in poverty and 10.3% of children did not have health insurance.⁸³ The average high school graduation rate in 2011 was 73.9%,⁸⁴ down from 83.6% in 2003. Research shows that school disengagement can have negative consequences for adolescent behavior, potentially increasing the risk of crime and delinquency.

Colorado spends on average \$31,440 per prisoner annually, while spending statewide on average \$6,474 per student annually.⁸⁵ The ratio of cost per prisoner to cost per student in Colorado is 2.6.⁸⁶

	Total Youth	White	Black or African-American	Hispanic or Latino	Asian/Native Hawaiian or other Pacific Islanders	American Indian
Population 10-17 years old	541,013	61%	4.8%	29.4%	3.6%	1%
Juvenile Arrests (using DMC data only)	30,446	52%	15%	31%	1%	0.6%
Secure Initial Detention	4,356	38%	15%	44%	1%	1%
Total Adjudications	7,120	74%	10%	13%	0.9%	0.4%
Probation Supervision	4,637	74%	1%	20%	1%	1%
Probation - Sentence Detention	484	66%	2%	27%	1%	1%
DYC - Secure Confinement	646	38%	17%	42%	2%	2%
Direct File to Adult Court	106	64%	23%	8%	1%	0%

Colorado Office of Research and Statistics, DMC Data FY 2010-2011, http://dcj.state.co.us/ors/pdf/Stats%20PDF/FY2011_JuvenileDMC.pdf.

SB 94 – Pretrial Release Program

In 1991, the Colorado legislature passed a bill that created a statewide program aimed at addressing overcrowding in juvenile detention facilities by placing a statutory limit on detention beds and requiring judicial districts to develop plans to ensure they do not exceed that number. The legislation, known as Senate Bill 94 (SB 94), is a statewide grant initiative that seeks to match services to youth in order to reduce secure confinement by providing cost-effective alternatives. How SB 94 services operate is unique to each jurisdiction. The term SB 94 is used to refer to both the legislation and the programs it establishes.

SB 94 has become a highly regarded and deeply-rooted component of the juvenile justice system in Colorado. Through SB 94, state and federal funds are distributed to each of the 22 judicial districts. A juvenile services planning committee, appointed by the chief judge of the judicial district, annually recommends a set of criteria for both detention and commitment reviews and recommends the allocation formula for the distribution of funds. The allocation takes into consideration such factors as the population of the judicial district, the incidence of offenses committed by juveniles in the judicial district, and such other factors as deemed appropriate. Every five years, community-based programs are invited to apply for contracts through a solicitation published by the procurement office of a local city or county government. SB 94 funds are used for professional services, including pre-trial case management, probation, and other interventions deemed appropriate by the planning committee.⁸⁷

“I heard people refer to it as probation before probation.”

Member of Investigative Team

Youth Eligible for SB 94 Services

Pre-adjudicated youth who are not on probation, parole, or committed, but who are at eminent risk of being placed or remaining in detention are eligible for SB 94 services. Youth on probation, at eminent risk of being placed in detention, or committed to DYC are also eligible for SB 94 services.

Screening Processes

At arrest, all youth go through various levels of screening. The initial screening involves the completion of the Juvenile Detention Screening and Assessment Guide (JDSAG), a tool used statewide to determine the appropriate level of detention for youth in the custody of law enforcement, and the Colorado Juvenile Risk Assessment (CJRA). Placement decisions based on the initial screening are usually temporary. More permanent placements are determined after additional screening.⁸⁸

All screening data is entered into Colorado TRAILS, DHS/DYC's case management system. Colorado TRAILS is utilized by corrections staff throughout the state with separate access by state and county child welfare caseworkers, supervisors, and support staff. Information obtained through the screening process, which includes the record of any prior adjudications of the juvenile, is made available to the judge presiding over the detention hearing and is used by the court to make detention and bond decisions.⁸⁹

SB 94 services differ by judicial district and may include case management, community supervision, detention bed management, detention screening and assessment, substance abuse and mental health evaluation and treatment, educational and vocation support, wraparound facilitation, and client/family assistance programs such as Functional Family Therapy (FFT) and Multi-systemic Therapy (MST).

Probation

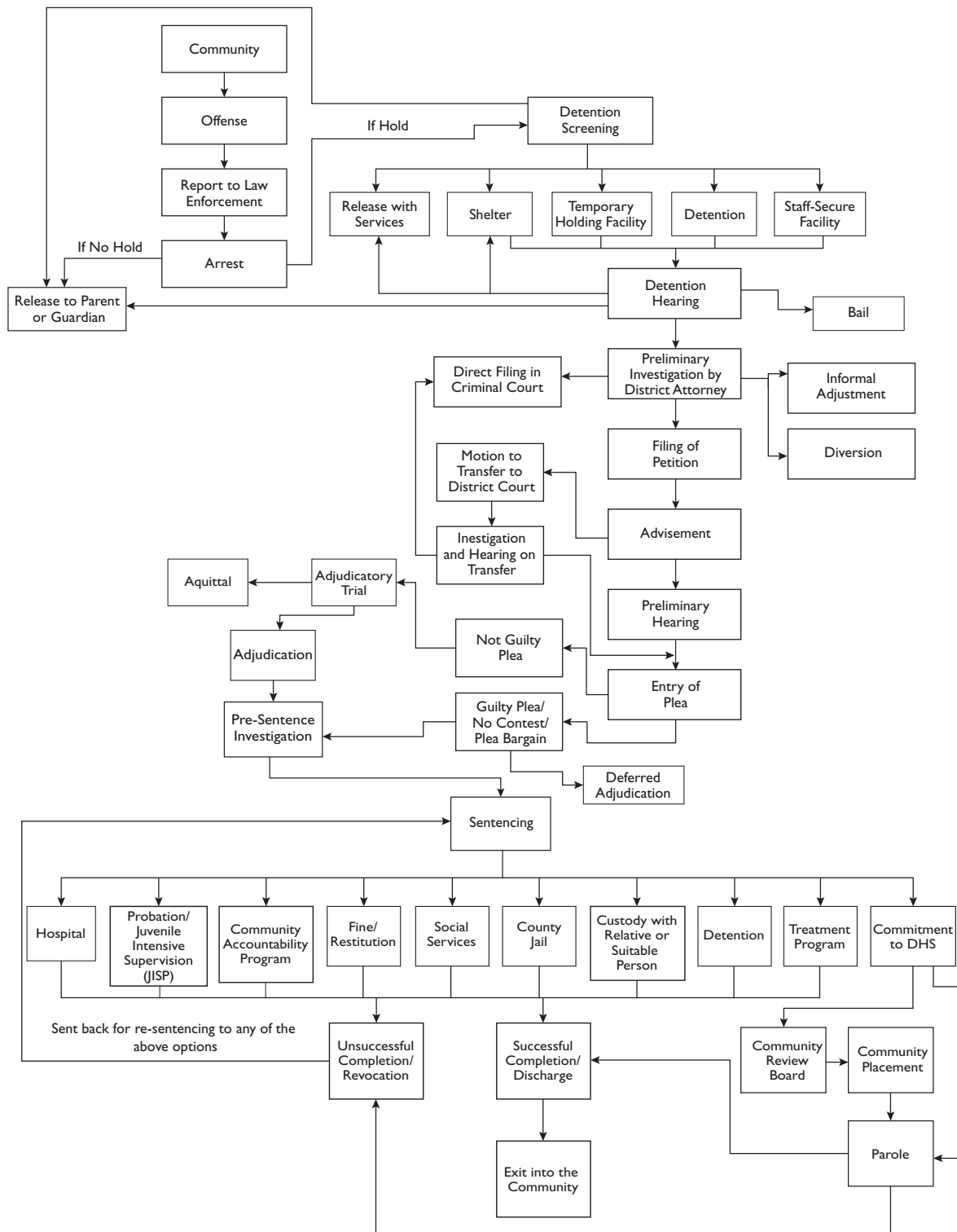
The Colorado Judicial Department administers both juvenile and adult probation across the state. This includes 23 probation departments with over 50 probation offices statewide.⁹⁰ Probation is one of many sentencing options for juveniles that have been adjudicated delinquent.⁹¹ Some juveniles are supervised on probation by the Department of Human Services.⁹² In FY 2011, there were 843 revocations of regular juvenile probation—543, or 64%, for technical violations.⁹³ There were 204 revocations of Juvenile Intensive Supervision Probation—123, or 60%, for technical violations.⁹⁴ In FY 2011, there were 2940 (74%) successful regular juvenile probation terminations and 223 (50%) successful terminations of juvenile intensive supervision probation.⁹⁵ Ten to 14 year-olds made up 23% and 15-17 year olds comprised 64% of the total number of new juveniles on probation—4637 in regular probation and 402 in intensive probation.⁹⁶ Of that total, 24% were female and 76% were male. The gender of 5% is unknown.⁹⁷ By race, new juvenile probation cases broke down as 74% white, 1% black, 1% Asian, 20% Hispanic, 1% Native, and 2% other.⁹⁸

Detention Centers and the Division of Youth Corrections

Juvenile detention facilities are operated by or contracted under the Department of Human Services.⁹⁹ As a general rule, juveniles are to be held as close as possible to the areas in which the alleged offense was committed.¹⁰⁰ Legislation enacted in 2003 capped the number of state-funded detention beds at 479, which is divided among the 22 judicial districts.¹⁰¹ In 2011, the detention bed cap was lowered to 422 based upon lower arrest rates and reduction of youth in secure detention.¹⁰²

The Division of Youth Corrections (DYC) is responsible for state-operated and privately-contracted detention facilities.¹⁰³ The Division of Youth Corrections operates within the state's Department of Human Services and is the government agency responsible for the care and supervision of youth committed by the District Court to the Department of Human Services. DYC operated 16 facilities in 2010, including institutions, secure treatment facilities, training schools and detention centers for youth ages 10 to 21 years old from pre-adjudication through commitment.¹⁰⁴ Due to declining commitment populations, DYC closed two commitment facilities in 2011.¹⁰⁵ In addition to juvenile correctional services and other residential and non-residential services, DYC manages SB 94 pre-trial detention services, administers parole services, and houses youth awaiting adult prosecution.¹⁰⁶

Juvenile Justice System Flowchart



Flowchart adapted from COLORADO OFFICE OF RESEARCH AND STATISTICS, DIVISION OF CRIMINAL JUSTICE, CRIME AND JUSTICE IN COLORADO, 2008-2010 74 fig.4.1 (2011), available at <http://dcj.state.co.us/ors/pdf/docs/CJ08-10.pdf>.

OVERVIEW OF THE COLORADO CHILDREN'S CODE

The Colorado Children's Code is a far-reaching and comprehensive code that guides practitioners in juvenile court.¹⁰⁷ It is important to note that the Children's Code is a complex set of statutes that incorporates, at times, rules of juvenile and criminal procedure, rules of civil procedure, and adult criminal statutes. As a result, the following is a synopsis of key portions of the Children's Code and related rules, but cannot be considered a comprehensive recitation of all it encompasses.

Purpose and Policy of Colorado's Juvenile Justice System

The general intent of the Children's Code is "[t]o secure for each child care and guidance, preferably in his own home, as will best serve his welfare and the interests of society; [t]o preserve and strengthen family ties whenever possible; [t]o remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered;" for the courts to proceed as efficiently as possible to serve each child's best interest, and "[t]o secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a productive member of society."¹⁰⁸

The purpose of the juvenile justice system includes improving public safety by creating a system that appropriately sanctions juveniles who violate the law, taking into account "the best interests of the juvenile, the victim, and the community in providing appropriate treatment to reduce" recidivism and "assist the juvenile in becoming a productive member of society."¹⁰⁹ In certain cases, the legislature intends the juvenile justice system to bring together "victims, the community, and juvenile offenders for restorative purposes."¹¹⁰ All hearings in juvenile court are open to the public, unless the court believes the best interests of the juvenile or the community requires access to be restricted to only those who have a direct interest in the case.¹¹¹

Jurisdiction

The juvenile court has exclusive original jurisdiction in proceedings involving any child 10 to 17 years old who violates any federal or state law, except non-felony state traffic, game and fish, and parks and recreation laws or rules, and specified tobacco, marijuana, and alcohol laws.¹¹² Juvenile court has exclusive original jurisdiction over cases for juveniles involving municipal ordinances that carry a penalty of a jail sentence longer than ten days.¹¹³ The juvenile court may retain jurisdiction over a juvenile until all orders have been fully complied with and pending cases have been completed regardless of age.¹¹⁴

Juvenile court shares original concurrent jurisdiction with the county court over juveniles charged with certain offenses, such as the possession of alcohol or marijuana, the possession of drug paraphernalia; and driving under the influence.¹¹⁵ Should the juvenile court choose to take jurisdiction over such a case, jurisdiction in the county court ends.¹¹⁶

While all children age 10 to 17 are typically within the jurisdiction of the juvenile court, there are two situations in which a youth may be within the jurisdiction of the adult court system: (1) in cases where the prosecution files charges directly in adult court¹¹⁷ and (2) if the juvenile court waives its jurisdiction to the adult system following a transfer proceeding.¹¹⁸

Filing Charges Against a Juvenile in Adult Criminal Court¹¹⁹

Prosecutors have the option to directly file an indictment or information in the district court against juveniles if the child is 16 or older at the time of the alleged offense *and* if the child (1) is charged with a class one or class two felony; (2) is charged with certain statutorily defined sexual assaults; (3) is charged with any violent felony after he or she has previously been adjudicated for a felony offense; or (4) if the child had previously been charged and convicted in the adult system.¹²⁰

In direct file cases, the juvenile may, prior to the deadline for requesting a preliminary hearing, file a motion to transfer the case to juvenile court.¹²¹ If a motion is filed, the judge will schedule a reverse-transfer hearing to be held with the preliminary hearing.¹²² In a direct file case, if, after a preliminary hearing, the criminal division judge does not find probable cause, the judge must remand the case to juvenile court, regardless of any findings in a reverse-transfer hearing.¹²³

Adult court judges are required by statute to consider multiple factors at a reverse-transfer hearing in a direct file case. The judge, based on a weighing of the factors, can either remand the child to juvenile court or continue proceedings in adult court.¹²⁴

Juvenile Court Transfer of Jurisdiction

Colorado has discretionary judicial waiver in cases where the child is either (1) twelve or thirteen years old and alleged to have committed a class one or class two felony or crime of violence as defined by statute, or (2) fourteen or older and alleged to have committed any felony.¹²⁵ The juvenile court may not transfer a child to adult jurisdiction unless, after investigation and a hearing, the court finds that it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction.¹²⁶

Any request for waiver of jurisdiction must be in writing and made within 28 days of the initial advisement.¹²⁷ The court must make certain that the juvenile and his or her parents, guardian, or legal custodian have been fully informed of their right to be represented by counsel at any transfer hearing.¹²⁸ At the hearing, the juvenile court is required to determine whether there is probable cause for an alleged offense which is eligible for waiver and whether the interests of the youth or the community are best served by transfer to adult court.¹²⁹ In deciding whether to waive its jurisdiction, the court must consider similar factors as considered by the criminal court when evaluating whether to retain a direct file case.¹³⁰

Any case that is eligible for direct file may be brought in adult court, regardless of whether a petition has been filed in juvenile court, up until the time the juvenile court holds a transfer hearing. If a case is filed in adult court prior to a transfer hearing, the juvenile court judge no longer has jurisdiction over the matter.¹³¹

In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

- (I) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;
 - (II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
 - (III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;
 - (IV) The maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;
 - (V) The record and previous history of the juvenile;
 - (VI) The likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court;
 - (VII) The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;
 - (VIII) The impact of the offense on the victim;
 - (IX) That the juvenile was twice previously adjudicated a delinquent juvenile for delinquent acts that constitute felonies;
 - (X) That the juvenile was previously adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406, C.R.S.;
 - (XI) That the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony;
 - (XII) That the juvenile is sixteen years of age or older at the time of the offense and the present act constitutes a crime of violence, as defined in section 18-1.3-406, C.R.S.;
 - (XIII) That the juvenile is sixteen years of age or older at the time of the offense and has been twice previously adjudicated a juvenile delinquent for delinquent acts against property that constitute felonies; and
 - (XIV) That the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of a delinquent act.
- (c) The amount of weight to be given to each of the factors listed in paragraph (b) of this subsection (4) is discretionary with the court; except that a record of two or more previously sustained petitions for delinquent acts that constitute felonies or a record of two or more juvenile probation revocations based on acts that constitute felonies shall establish prima facie evidence that to retain jurisdiction in juvenile court would be contrary to the best interests of the juvenile or of the community.¹³²

Right to Counsel

Beyond the right to counsel afforded to juveniles by the Supreme Court of the United States in *In re Gault*,¹³³ children in Colorado have a statutory right to counsel in juvenile court¹³⁴ and the court must make certain the child understands

the right to counsel at the first appearance.¹³⁵ The Public Defender statute authorizes public defense representation for indigent juveniles “upon whom a delinquency petition is filed or who are in any way restrained by court order, process, or otherwise”¹³⁶ and provides that public defenders shall “counsel and defend [the indigent juvenile] ... at every stage of the proceedings following arrest, detention, or service of process.”¹³⁷ There is no statute on the general waiver of counsel beyond a provision in the Public Defender statute that conditions public defender appointment on a lack of an affirmative rejection of such appointment by the juvenile or parent.¹³⁸ Colorado case law requires that in order for a child to waive his or her right to a lawyer, the child must have a parent, guardian, or other legal custodian present who understands and can advise the child about the right he or she is waiving.¹³⁹

If the child and/or parent request counsel and are found to be without sufficient financial means, counsel will be provided.¹⁴⁰ To qualify for a public defender, the juvenile or his or her parent must submit an application to the Public Defender’s office and be screened for indigence.¹⁴¹ If the juvenile requests counsel and the juvenile’s parents are deemed financially capable, but refuse to retain counsel, the court shall appoint counsel.¹⁴² The court may appoint counsel without a request by the juvenile or parent if the court deems it necessary to protect the interest of the juvenile or of other parties.¹⁴³ When the court appoints counsel, that appointment continues until the court’s jurisdiction terminates or the juvenile or parent has sufficient funds to retain counsel or no longer refuse to retain counsel.¹⁴⁴

In truancy matters, juveniles may be appointed an attorney at the discretion of the court. If the court deems it in the best interest of the child, the court may appoint defense counsel, a guardian *ad litem*, or both.¹⁴⁵

Custody and Detention

A child may be taken into temporary custody by a law enforcement officer executing a lawful warrant or without a court order when there are reasonable grounds to believe that he or she has committed a delinquent act.¹⁴⁶ A probation officer may also take a child into custody if the child has violated conditions of probation.¹⁴⁷ As an alternative to taking the child into temporary custody, in jurisdictions that have established policies that permit it, a law enforcement officer may have a child sign a written promise to appear in court on a specified charge at a particular date and time and then release the child.¹⁴⁸

The statutory presumption is that children taken into temporary custody will be released to a parent or other responsible adult unless the court or law enforcement officer determines that the juvenile’s immediate welfare or the protection of the community requires that the child be detained.¹⁴⁹ Otherwise, law enforcement is only authorized to detain a child in temporary custody as long as reasonably necessary to obtain basic identification information and to contact his or her parents.¹⁵⁰ If the child is not released, he or she must be taken to the court or the place of detention, temporary holding facility, or shelter without unnecessary delay.¹⁵¹

When a juvenile is not released pending charges, the officer must notify the district’s screening team which, in turn, notifies the juvenile’s parent/guardian of the juvenile’s temporary custody status and that all parties are entitled to a hearing.¹⁵² The screening team is a person or persons delegated by the chief judge in each judicial district to serve as an officer of the court in determining whether a juvenile in temporary custody should be released to a parent, guardian, or other legal custodian or should be admitted to a detention or shelter facility.¹⁵³ The screening team completes the intake process by utilizing the Juvenile Detention Screening and Assessment Guide (JDSAG). The JDSAG is not administered to every youth arrested. Those arrested for minor offenses are sometimes released without a JDSAG screening, particularly if the youth is arrested for a more minor offense that would be unlikely to lead to admission in a secure detention facility.¹⁵⁴

If a law enforcement agency has requested a detention hearing be held, and the youth is alleged to have committed a crime of violence or certain weapons offense, the youth shall not be released from temporary custody prior to a detention hearing.¹⁵⁵ The screening team must promptly notify the court, and the court must hold a detention hearing within 48 hours (excluding weekends and holidays) to determine whether continued detention is warranted.¹⁵⁶ Upon a showing of good cause, the court may extend the 48 hour limit.¹⁵⁷

At the detention hearing, the court may consider any information having probative value, and may order continued detention only in the narrowly defined circumstances where the juvenile is a danger to himself or herself or to the community.¹⁵⁸ A rebuttable presumption of danger exists where the juvenile allegedly committed a crime of violence, as defined by statute, or committed one of several statutorily defined weapons offenses.¹⁵⁹ At the conclusion of the hearing, the court may order that the juvenile be released to the custody of a parent with or without bail, placed in a shelter facility, placed in a pre-adjudication program, or detained without bail.¹⁶⁰ If the court orders further detention, the order must contain specific findings including that the out-of-home-placement is in the juvenile and community’s best interest, and that reasonable efforts have been made to prevent the need for removal.¹⁶¹

If a child placed in detention appears mentally ill or is developmentally disabled as defined by statute, the court or detention staff must refer the child for a mental health hospital or community board screening.¹⁶² Such a screening must not extend the time within which a detention hearing must be held.¹⁶³

Unless the district attorney consents, a juvenile charged with a felony or a class one misdemeanor cannot be released without a bond or on a personal recognizance bond, if: (1) the juvenile has been found guilty of a delinquent act constituting a felony or class one misdemeanor within one year prior to his or her detention; or (2) the juvenile is currently at liberty on another bond of any type; or (3) the juvenile has a pending delinquency petition alleging a felony anywhere in the state for which probable cause has been established.¹⁶⁴

In lieu of a bond, a juvenile that the court deems to be a danger to himself or herself or to the community may be released and placed in a pre-adjudication services program¹⁶⁵ established by the county, city, or judicial district.¹⁶⁶ The pre-adjudication service programs vary from jurisdiction to jurisdiction but may include different levels of community-based supervision.¹⁶⁷ Conditions of such release programs may include telephone supervision, office visits to the pre-adjudication service agency, periodic home and school visits, drug testing, mental health or substance abuse treatment, domestic violence or child abuse counseling, electronic or global position monitoring, work release, and juvenile day reporting and day treatment programs.¹⁶⁸

Both the district attorney and the juvenile can apply for a modification of the amount, type, or conditions of bail at any time.¹⁶⁹

Initial Stages of the Case

When law enforcement refers an allegation to the district attorney, the district attorney must determine whether the interests of the juvenile or of the community requires further action; and the district attorney may refer the matter to any state agency for an investigation and recommendation, or file a petition in juvenile court.¹⁷⁰

If a juvenile is detained or placed in a pre-adjudication services program, the district attorney must file a petition within 72 hours (excluding weekends and holidays) of the detention hearing.¹⁷¹ The juvenile shall be held or shall participate in the program pending a hearing on the petition.¹⁷² If the petition is not filed within 72 hours, the court shall order the juvenile be released, unless the court extends the time for good cause.¹⁷³

After a petition has been filed, the court must issue a summons stating the substance of the charges and the constitutional and legal rights of the juvenile, including the right to have an attorney present at a hearing on the petition unless the child and respondent appear voluntarily.¹⁷⁴ The summons will set a date for the hearing within 30 days of the summons being issued and, if the child is detained or not in the physical custody of a parent or guardian, will direct whoever has control over the child to ensure the child is present.¹⁷⁵ If the juvenile had been released by law enforcement on a promise to return to court, the summons and a copy of the petition will be provided to the juvenile at the appointed date and time of the first appearance, as outlined in the signed promise to return.¹⁷⁶

At the first court appearance after the filing of the petition, sometimes known as the advisement hearing, the court is required by statute to advise the juvenile and the parent, guardian, or other legal custodian of their constitutional and legal rights including: the nature of the allegations contained in the petition; the 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; and that the juvenile need not make a statement and that any statement made may be used against the juvenile.¹⁷⁷

The judge must also inform the youth that, in certain circumstances, he or she has a right to a preliminary hearing and a right to a jury trial.¹⁷⁸ The judge must advise the juvenile that any plea of guilty must be voluntary and not the result of undue influence or coercion and must explain the sentencing alternatives available to the court if the juvenile pleads guilty or is found guilty. The court will also advise the juvenile of the right to bail; the amount of bail, if any; and that the juvenile may, as provided by statute, be subject to transfer to the criminal division of the district court to be tried as an adult.¹⁷⁹

In all juvenile court cases, the judge must issue a mandatory protection order against the juvenile and the juvenile's parents or legal guardian, restraining them "from harassing, molesting, intimidating, retaliating against, or tampering with any witness to or victim of the" act charged in the petition.¹⁸⁰ The protection order, issued on a standardized form and provided to the protected parties, remains in effect until final disposition of the case, including the pendency of any appeal.¹⁸¹ The

standardized form may contain additional conditions not authorized by statute such as a prohibition against the possession of alcohol. The juvenile, the parents or legal guardians, and the district attorney may petition the court to modify or dismiss the protection order at any time.¹⁸² A violation of a mandatory protection order is punishable as contempt of court,¹⁸³ but has also been prosecuted as a restraining order violation when a minor is accused of alcohol possession.¹⁸⁴

If the district attorney elects to proceed against the child as an aggravated juvenile offender, as defined by statute, the petition must allege in a separate count that the juvenile is an aggravated juvenile offender and that increased commitment is authorized if that aggravator is proven.¹⁸⁵ At the advisement hearing, the court must advise the juvenile of the effect and consequences of such an allegation and the juvenile will be required to admit or deny any previous adjudications or probation revocations alleged in the petition, which constitute the ground for the aggravated juvenile offender count.¹⁸⁶

If the case is the first for the juvenile in any jurisdiction, the district attorney has the discretion to use restorative justice practices.¹⁸⁷ Restorative justice practices emphasize repairing the harm to the victim and the community, and consequences can include apologies and community service.¹⁸⁸ The district attorney has the discretion to dismiss the charges - subject to approval of the court - if the child successfully completes a restorative justice agreement.¹⁸⁹

The district attorney may request at any time, before, during, or after filing a petition, that the court permit the matter to be handled as an informal adjustment for a period of six months.¹⁹⁰

As an alternative to filing a petition, pursuing a trial, or proceeding to a disposition, the district attorney is authorized by statute, to allow a juvenile to participate in a diversion program that, if possible, integrates restorative justice practices.¹⁹¹ The goal of diversion is “to prevent further involvement of the juvenile or child in the formal legal system” by providing the juvenile with “individually designed services” in the community.¹⁹²

Juveniles who are alleged to have committed class 1, 2, or 3 felonies, or class 4, 5, or 6 felonies that require mandatory sentencing, or certain statutorily-defined crimes of violence or sexual offenses, may demand a preliminary hearing.¹⁹³ All other juveniles who are accused of felonies that do not automatically qualify for a preliminary hearing will receive a preliminary hearing, upon request, if they are in custody.¹⁹⁴ At the advisement hearing, after the filing of the petition, the district attorney must provide discovery material to the defense.¹⁹⁵ Any juvenile requesting a preliminary hearing must file that request within ten days of the advisement hearing.¹⁹⁶

The preliminary hearing must be held within 30 days of filing the motion if the juvenile is detained, or as promptly as the court’s calendar permits if the youth is not in custody.¹⁹⁷ At the preliminary hearing, the prosecution has the burden of establishing probable cause, and if the court finds that probable cause exists, the matter will be scheduled for an adjudicatory trial. If the court determines that probable cause has not been established, the petition is dismissed, and the juvenile discharged from any orders stemming from the prosecution.¹⁹⁸ The juvenile may file a request for a review of a magistrate’s preliminary hearing finding.¹⁹⁹

Juveniles who are not in custody and not charged with felonies that are statutorily entitled to a preliminary hearing are required to participate in a “dispositional hearing,” before a judge or magistrate.²⁰⁰ The purpose of this hearing is for the court and the parties to evaluate the case for potential resolution and serves as a judicial “check-in” of sorts between the detention or preliminary hearing and trial.

Discovery and Pre-trial Motions

The Colorado Juvenile Rules of Procedure outline pre-trial motions practice and guidelines for furnishing discovery.²⁰¹ Pre-trial motions must be in writing, except those made orally by leave of court.²⁰² Any defense or objection which can be addressed without trial of the general issues may be raised by motion. No written responsive pleadings are required.²⁰³

Discovery in juvenile cases is governed by the criminal discovery rule.²⁰⁴ Documents and information the state must disclose include police reports and statements of all witnesses, physical evidence, the names and addresses of the witnesses then known to the district attorney whom he or she intends to call at trial, statements made by the juvenile, and the youth’s prior criminal history.²⁰⁵ With some exceptions, the prosecutor must provide discovery as soon as practicable but not later than 21 days after the respondent’s first appearance at the time of or following the filing of charges. The defense also has reciprocal discovery obligations.²⁰⁶ Both parties have a continuing duty to disclose throughout the adjudicatory process.

In prescribed situations, “if either the prosecuting attorney or the defense claims that discoverable material was not furnished,” or was incomplete, “the prosecuting attorney or the defense may file a motion concerning these matters and the motion shall be promptly heard by the court”.²⁰⁷

In general, juveniles have a right to have their parent, guardian, or legal or physical custodian present for any custodial interrogation by law enforcement. If no parental figure or attorney is present, the state may not use any statements made by the juvenile against him or her in court.²⁰⁸

Pleas and Deferred Adjudication

If the juvenile enters a plea of not guilty to the allegations in the petition, the case will be set for trial.²⁰⁹ If the juvenile wants to plead guilty, the court must first determine that the juvenile understands the rights he or she is giving up by pleading guilty and that:

1. The juvenile understands the nature of the alleged delinquent act, the elements of the offense to which he or she is pleading guilty, and the effect of the plea;
2. The juvenile’s plea of guilty is voluntary and is not the result of undue influence or coercion on the part of anyone;
3. The juvenile understands and waives his or her right to trial on all issues;
4. The juvenile understands the possible sentencing alternatives available to the court;
5. The juvenile understands that the court has sole discretion over what the final sentence will be, regardless of what other parties may have said; and
6. There is a factual basis for the plea of guilty.²¹⁰

If the juvenile pleads guilty, the court has the option to defer adjudication for one year, if the juvenile and the district attorney agree, and place the child on supervision. Upon full compliance with the conditions of supervision, the court will withdraw the finding of guilt and dismiss the case with prejudice.²¹¹ In the case of juveniles who plead to sexual offense cases, however, the court may enter a deferred adjudication for up to two years, and may extend the deferral for up to five years for good cause.²¹² In all cases, probation will supervise the youth during the period of the deferred adjudication and, if the youth fails to comply with the terms of supervision, the court can issue an order of adjudication and hold a hearing comparable to a probation revocation hearing.²¹³

Adjudication

All hearings, including adjudicatory hearings, are presided over by a judge or magistrate. Juveniles have a statutory right to a jury trial only where the juvenile is alleged to be an aggravated juvenile offender, or to have committed an act that would constitute a crime of violence, as defined by statute.²¹⁴ Juveniles accused of other felonies may request a jury trial, the order of which is discretionary with the court. In those cases, the juvenile, district attorney, or court may request a jury trial of no more than six members.²¹⁵ If neither party requests a jury trial, the court may deem the right to a jury waived.²¹⁶ A juvenile charged as an aggravated offender has a right to file a written request that the adjudication of the act be by a jury of twelve persons.²¹⁷ Juveniles accused of misdemeanors, petty offenses, or violations of court orders have no right to a jury trial.²¹⁸

The adjudicatory trial must be held within 60 days following the entry of a plea of not guilty.²¹⁹ A juvenile’s request for a jury trial waives the 60-day requirement and the juvenile’s speedy trial rights are governed by the adult criminal code and rules of criminal procedure.²²⁰ If a juvenile is detained without bail, unless the juvenile requests a jury trial, the adjudicatory hearing must be held within 60 days of the entry of the order holding the youth without bond or the entry of a plea, whichever date is earlier.²²¹

Hearings in juvenile court are open to the general public unless the court determines that it is in the best interest of the child or the community to exclude the general public from the hearing.²²² The court may conduct hearings in an informal manner but a verbatim record is to be taken of all proceedings.²²³ The statutes and rules governing evidentiary considerations in adult criminal proceedings also apply to delinquency trials.²²⁴

The question of the juvenile’s guilt is determined by a reasonable doubt standard at trial.²²⁵ Upon a not-guilty verdict, the petition is dismissed and the juvenile is released from any custody or restrictions.²²⁶ If the juvenile is found guilty, the court may move directly to sentencing that same day or may continue the sentencing hearing to a later date in order to receive reports or other

evidence necessary for sentencing, but the court must set sentencing for no later than 45 days following the trial's completion.²²⁷ Sentencing hearings for juveniles in custody take priority on the court's calendar.²²⁸ The juvenile has a right to file a motion for a new trial pursuant to the rules of criminal procedure.²²⁹ If a juvenile is in custody, the youth may apply for post-trial bail.²³⁰

A youth who is found to be incompetent—*i.e.*, a youth who the court finds that, as a result of a mental disability or developmental disability, does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding in order to assist in the defense, or that, as a result of a mental disability or developmental disability, does not have a rational and factual understanding of the proceedings—shall not be tried or sentenced.²³¹ If the issue of competency is raised at the time charges are filed or at any time thereafter and the juvenile is not represented by counsel, the court may immediately appoint counsel and may also appoint a guardian *ad litem* to assure the best interests of the juvenile are addressed in accordance with existing law.²³²

Sentencing Hearing

Prior to the sentencing hearing the probation department will conduct a pre-sentence investigation unless waived by the court upon its own determination or on the recommendation of the prosecution or the juvenile.²³³ The pre-sentence investigation shall take into consideration and build upon the intake assessment done by the screening team and may include details of the offense, statements made by victims of the offense, a recommendation regarding restitution, a record of the juvenile's previous offenses, any history of substance abuse, the educational history, including any special education history and current individualized educational program, employment history, family and peer relationships, an assessment of the juvenile's needs, and a recommendation and proposed treatment plan for the juvenile.²³⁴

Prior to sentencing the court may order the juvenile, with some exceptions, to participate in an assessment to determine whether the juvenile would be suitable for restorative justice practices as part of the sentence.²³⁵

At the sentencing hearing the court is required to consider evidence on the question of the proper disposition best serving the interests of the juvenile and the public.²³⁶

The judge has discretion—within prescribed parameters based on the nature of the offense, age of the child, and whether or not the youth is a special offender or was adjudicated as an aggravated offender—to sentence the juvenile to a range of options, including any one or combination of the following:²³⁷

- Commitment to the DHS/DYC for a determinate period of up to two years followed by a mandatory six month period of parole which may be extended by the parole board.²³⁸ The committed youth's placement is at the discretion of DHS/DYC and may, be at the Lookout Mountain school, the Mount View school, or any other training school or facility;²³⁹
- If the juvenile is younger than 12, commitment to DHS/DYC is only possible if the offense is a class 1, 2, or 3 felony;²⁴⁰
- Confinement in the county jail for six months, or a community correctional facility or program for no more than one year, if 18 at the time of sentencing;²⁴¹
- A period of detention or placement in an alternative services program;²⁴²
- Placement with and transfer of legal custody to a relative or other suitable person;²⁴³
- Probation with conditions, or placement in an intensive supervision program or supervised work program.²⁴⁴ For high-risk youth, the court may, as a condition of probation, order participation in the community accountability program run by the division of youth corrections;²⁴⁵
- Grant legal custody and placement of the juvenile to county department of social services or a child placement agency;²⁴⁶ or
- Placement of the juvenile in a hospital, mental health facility, or similar suitable placement where appropriate.²⁴⁷

In addition, the court may impose a fine of up to three hundred dollars; order the juvenile to pay restitution; require the youth to complete an anger management treatment program or other appropriate treatment program; and order an evaluation to determine whether the juvenile would be suitable for restorative justice practices that would be a part of the juvenile's sentence

in cases other than those involving unlawful sexual behavior, domestic violence, stalking, or a violation of a protection order.²⁴⁸

The sentence imposed may include the juvenile's parent or guardian.²⁴⁹ The court may order parents to pay restitution up to \$25,000 per delinquent act of their child, participation in parenting programs, and/or joint community service with the juvenile, in addition to other sentencing options.²⁵⁰

If a child is adjudicated as a "mandatory sentence offender"²⁵¹ or a "repeat juvenile offender"²⁵² he or she must be sentenced to out-of-home placement of not less than one year, unless the court finds an alternative sentence or out-of-home commitment for less than one year would be more appropriate.²⁵³ If such a juvenile is 18 years of age or older at the time of sentencing, the court may sentence the youth to up to two years in county jail.²⁵⁴

If a child is adjudicated as a "violent juvenile offender"²⁵⁵ and is older than 12 years of age, he or she must be sentenced to a minimum of one year out-of-home placement.²⁵⁶ If the violent juvenile offender is between the ages of 10 and 12, the court may impose an alternative sentence if appropriate.²⁵⁷ If the child is 18 or older at the time of sentencing, the court may sentence the youth to up to two years in county jail.²⁵⁸

If a child is adjudicated as an "aggravated juvenile offender"²⁵⁹ and is convicted of any crime other than a class 1 or 2 felony, he or she may be committed to DHS for up to five years. For those convicted of a class 2 felony, the sentence must be commitment of not less than three years but not more than five years. For those convicted of a class 1 felony, the sentence must be commitment of not less than three years but not more than seven years. With all aggravated juvenile offenders, once they reach 18 years old, they may be transferred to the adult department of corrections if DHS certifies the youth is no longer benefiting from its programs and the court orders the transfer.²⁶⁰

As this Assessment was conducted, Colorado amended the aggravated juvenile offender statute to give courts discretion to impose consecutive or concurrent sentences for aggravated juvenile offenders adjudicated delinquent for first or second degree murder in juvenile court.²⁶¹ When a committed juvenile reaches the age of 20 years and six months, DHS shall file a motion with the court regarding further jurisdiction of the juvenile.²⁶² Upon the filing of such a motion, the court shall notify the interested parties, appoint counsel for the juvenile, and set the matter for hearing where the court shall reconsider the length of the remaining sentence.²⁶³ The court shall also order the juvenile to submit to a psychological evaluation and risk assessment by a mental health professional to determine whether the juvenile is a danger to himself or herself or others, which the court shall consider in addition to other factors.²⁶⁴ At the hearing, the court has discretion to authorize early release, place the juvenile on adult parole, transfer the juvenile to the adult Department of Corrections, the youthful offender system (YOS), a community release program, or order the juvenile remain in the custody of the department of human services until age 21.²⁶⁵

Juveniles who are adjudicated or who receive a deferred adjudication for certain statutorily enumerated unlawful sexual behavior will also be required to register as sex offenders in Colorado, unless they meet the narrow exception for registry exemption.²⁶⁶ Juveniles may affirmatively petition the court for a discharge from this obligation after statutorily prescribed periods.²⁶⁷

Post-Disposition

In any case in which the sentence is placement out of the home, except for juveniles committed to DHS, the court shall, at the time of placement, set a review within 90 days to determine if continued placement is necessary and is in the best interest of the juvenile and of the community.²⁶⁸ For juveniles who are committed to community residential programs through DHS, the court will hold a review every six months to determine the juvenile's status and continued need for commitment.²⁶⁹ Alternatively, if there is no objection, the court may require DHS "to conduct an administrative review" in lieu of a court hearing. Whether administrative or judicial, notice of the hearing shall be given to the juvenile, the juvenile's guardian, service providers, GAL (if appointed,) and all attorneys of record.²⁷⁰

Juveniles who are on parole and who are facing parole revocation or modification, as well as those who are seeking parole, may be represented by an attorney at any parole hearing.²⁷¹ Juveniles who are alleged to have violated their terms of probation have a statutory right to counsel at hearings on the alleged violation.²⁷²

A Juvenile Parole Board has the authority to "grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole" for juveniles in DHS custody.²⁷³ Each individual parole hearing consists of two members of the Parole Board. The hearing panel may act in the best interests of the juvenile and public.²⁷⁴ The hearing panel may require the juvenile to attend school or work to attain a high school diploma or GED.²⁷⁵ If the two individuals disagree, at least a quorum of the entire Board must decide upon the appropriate action.²⁷⁶ A two-member panel may not conduct parole interviews for aggravated juvenile offenders or violent

juvenile offenders—only a quorum of the board may decide upon the appropriate action in those cases.²⁷⁷ A juvenile parole board administrator ensures that all Board members are trained as to the various aspects of the juvenile justice system.²⁷⁸ Where the Board determines parole is appropriate, the statutorily-established length of supervision is six months.²⁷⁹ For certain juveniles adjudicated of more serious offenses, the time may be extended for an additional 15 months.²⁸⁰ The juvenile and his or her parents or guardians must be informed that they may be represented by counsel in any hearing in front of the Board.²⁸¹

Appeals

The Colorado Appellate Rules govern appellate procedure of juvenile cases.²⁸² The juvenile's initials must replace his or her full name on the appeal record and juvenile "appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time."²⁸³

The court of appeals has jurisdiction over appeals from final judgments of the district courts and the juvenile court of the city and county of Denver.²⁸⁴ Originally, interlocutory appeals were not available to any party in juvenile court.²⁸⁵ The state legislature, however, passed a statute in 1987 expressly allowing for the prosecution to be able to take interlocutory appeals on issues of law in delinquency cases, such as the granting of a motion to suppress evidence or to suppress a confession or admission prior to trial.²⁸⁶ Because no statute allows for the juvenile to file an interlocutory appeal, no similar right to interlocutory appeal exists for accused children. Therefore, juvenile respondents may only appeal final orders in delinquency court.

Truancy and Status Offense Cases

The juvenile court has jurisdiction over judicial proceedings in truancy cases.²⁸⁷ A child who is habitually truant is a child who has four unexcused absences from public school in any one month or ten unexcused absences from public school during any school year.²⁸⁸

Court proceedings shall be initiated to compel compliance with the compulsory attendance statute only as a last-resort approach for addressing the problem of truancy and only after a school district has attempted other options, including providing written notice to the parent and child that proceedings will be initiated if the child does not comply with the compulsory attendance law.²⁸⁹

The court has the discretion to issue an order against the child or the child's parent or both, compelling the child to attend school or compelling the parent to take reasonable steps to assure the child's attendance.²⁹⁰ If the child does not comply with the valid court order issued against the child or against both the parent and the child, the court may order an investigation and order the child to show cause why he or she should not be held in contempt of court.²⁹¹ A child found in contempt of court for violating a truancy order may receive sanctions ranging from community service or placement in a community supervision program to incarceration in a juvenile detention facility.²⁹²

Status offenders—*i.e.* juveniles charged with or adjudicated for conduct which would not be a crime if committed by an adult, such as possession or consumption of alcohol and purchasing cigarettes—shall not be detained unless they are alleged to have violated a valid court order, and then for not more than one business day, unless the court has held a detention hearing and determined that there is probable cause to believe the youth has violated a valid court order.²⁹³ Status offenders cannot be held in a secure area of a jail or lockup facility.²⁹⁴

A status offender held in detention based on a finding of probable cause that he or she violated a valid court order must be adjudicated within 72 hours of the detention order. A juvenile adjudicated of being a status offender in violation of a valid court order, can only be placed in a secure detention or correctional placement, after the court has reviewed a written report from a public agency that is not a court or law enforcement agency.²⁹⁵ The report is for the purpose of providing the judge with information about the youth's behavior and circumstances that brought the youth before the court, and must assess whether all less restrictive dispositions have been exhausted or are clearly inappropriate.²⁹⁶

Expungement

Some juveniles have the right to petition the juvenile court to expunge their records; expungement can also be initiated by the juvenile probation or parole departments, or by the court itself.²⁹⁷ A youth is eligible for expungement:

- immediately following a finding of not guilty at an adjudicatory trial;
- one year after contact with law enforcement that did not result in a referral to another agency or one year after the completion of a diversion program;

- four years after the termination of the court's jurisdiction, the release of the petitioner from commitment to DHS, or unconditional release from parole supervision; or
- for an adjudication as a repeat or mandatory juvenile offender, ten years after "the date of the termination of the court's jurisdiction over the juvenile or the juvenile's unconditional release from parole supervision, whichever date is later, if ... the juvenile has not further violated any criminal statute."²⁹⁸

Youth who are not eligible for expungement include those adjudicated as aggravated juvenile offenders or violent juvenile offenders, adjudicated for enumerated sex offenses, adjudicated for a crime of violence as defined by statute, or those whose cases were direct filed and were sentenced in adult court.²⁹⁹

Expungement under Colorado law means that the record is treated as if it had never existed, except that the juvenile's basic identifying information shall remain open to the district attorney, local law enforcement, and DHS.³⁰⁰ The probation department and the court will also have access to expungement information should the youth ever be convicted and sentenced on another matter.³⁰¹

Sex Offender Registration

Sex offender registration applies to any juvenile adjudicated delinquent, or who receives a deferred adjudication, based on the commission of any act that may constitute unlawful sexual behavior, as defined by statute,³⁰² encompassing essentially all crimes that are sexual in nature.³⁰³

A juvenile may petition the court to excuse the duty to register only if (1) he or she has not previously been charged with unlawful sexual behavior, (2) the behavior for which the juvenile has now been adjudicated is either a misdemeanor unlawful sexual contact or indecent exposure, and (3) an evaluator proscribed by statute recommends that registration is not necessary.³⁰⁴ Any juvenile seeking to be excused from the registration requirement must provide notice to the district attorney and the victim of the offense, who have the opportunity to testify at a hearing on the motion.³⁰⁵

Juveniles who have completed their sentence and have not been subsequently convicted of unlawful sexual behavior or a crime in which the underlying factual basis includes unlawful sexual behavior may petition the court for an order to discontinue the registration requirement and for an order removing his or her name from the sex offender registry.³⁰⁶ In determining whether to grant the removal from the registry following the completion of a sentence, the court shall consider whether the person is likely to commit a future sexual offense based on recommendations from the person's probation or community parole officer, treatment provider, the prosecuting attorney for the jurisdiction in which the person was tried, the recommendations included in the person's presentence investigation report, and any input from the victim.³⁰⁷

If a juvenile is eligible for removal from the sex offender registry upon completion of his or her sentence, the petitioner must notify by certified mail "[e]ach local law enforcement agency with which the petitioner is required to register; [t]he prosecuting attorney for the jurisdiction in which each such local law enforcement agency is located; and [t]he prosecuting attorney who obtained the conviction for which the petitioner is required to register."³⁰⁸ The court shall set a date for a hearing and shall notify the victim of the offense if the victim has requested notice and provided contact information.³⁰⁹

A 2011 amendment to the registry removal statute mandates courts consider discontinuing a juvenile's duty to register at least 63 days prior to the completion of their deferred adjudication³¹⁰ or 63 days prior to the completion of their sentence.³¹¹ Courts must notify the parties and the victim that the court will consider whether to discontinue the duty to register and must set the matter for a hearing if any party or victim objects.³¹²

Finally, if a juvenile is eligible to petition to discontinue registration and is still serving a commitment to DHS/DYC and has yet to be released on parole, the department may petition the court to set a hearing at least 63 days before the juvenile is scheduled to appear before the parole board.³¹³ The court's order regarding registration shall be incorporated into the parole plan.³¹⁴

Colorado case law holds that because the duty to register as a sex offender is not a direct consequence of the entry of a guilty plea, but a collateral one, courts need not advise defendants of the registration duty.³¹⁵

Beyond a duty to register, every juvenile who has been adjudicated delinquent of a sexual offense must "submit to an evaluation for treatment, an evaluation for risk, procedures required for monitoring of behavior to protect victims and potential victims, and an identification." The juvenile must pay for his or her own evaluation, identification, treatment, and monitoring, unless he or she is unable.³¹⁶

CHAPTER THREE

Assessment Findings and Analysis

In jurisdiction after jurisdiction, the NJDC investigative teams were met with professionalism, cooperation, candor, reflective thinking, and honesty. This Assessment is a synthesized set of those findings with recommendations broken out and targeted toward the public defenders, alternate defense counsel, and other key stakeholders. It is worth noting that while this Assessment is not focused on youth in the adult system, everywhere the investigative teams went, juvenile justice professionals expressed concern and wanted to talk about this population of youth. It is also worth noting that while some juvenile courtrooms were described as “chaotic” or “loud,” almost all of the investigators commented on the clean, often state-of-the-art courthouses, with spacious courtrooms, technology, security, and ample meeting rooms for attorneys and clients across the state. Likewise, most public defender offices were spacious and clean, though sometimes located in hard to reach places.

In Colorado, there are pervasive disparities as to how and when children access counsel and the quality of representation youth receive when facing delinquency proceedings across the state. In addition, there are enormous incongruities among practitioners as to how they investigate, prepare, and handle their cases. In general, statewide, attorneys who defend children charged with delinquent acts do not typically engage in the type of legal advocacy envisaged by the United States or Colorado Constitutions, the Colorado Children’s Code, or ethical codes of professional conduct. In practice, the assessment investigators witnessed federal and state constitutional protections were extremely relaxed when the defendant is in juvenile court.

“Juvenile Defenders are punished if they try to be aggressive.”

Juvenile Defender

Without question, most lawyers who defend children—and many other professionals—share an authentic and abiding concern for the youth with whom they work. This concern, however, does not automatically translate into any genuine protection or realistic acknowledgement of a child’s due process rights throughout the juvenile court process. A significant percentage of youth pass through the delinquency system without effective legal advocates or adequate safeguards to protect their interests. The concern for the child’s perceived best interests often overshadows even the hint of due process, as the court and practitioners default to a pre-*Gault*, *parens patriae* style of system that has long been deemed unconstitutional.³¹⁷

“Defenders need to be at the table. We are missing a key player.”

Juvenile Court Judge

Even the most skilled defender sometimes finds the systemic and institutional barriers to quality representation to be overwhelming, but they need not be insurmountable. This section of the Assessment describes some of the barriers that directly or indirectly impinge upon due process and the fundamental rights of children in Colorado.

SYSTEMIC BARRIERS TO PROVIDING JUVENILE DEFENSE SERVICES

While Colorado has a highly regarded, well-resourced, statewide indigent defense system, there is not a comparable, uniform, properly-resourced, or efficient juvenile indigent defense system at the state or county/district levels. Each of the counties/districts bears responsibility for setting up its own juvenile defense delivery system, and in many jurisdictions, the system is simply inadequate. With little state oversight or leadership these systems have been left to flounder and falter. No single issue causes these problems; it is a conglomerate of factors converging over time. Solutions to these neglected systems will be multifaceted as well. Some of the systemic barriers to providing juvenile defense services include:

Inadequate Resource Allocation and a Lack of Strong, Engaged Leadership

While the indigent defense system in Colorado is relatively well-funded in comparison to public defense systems in other states, the resources and attention allocated to juvenile defense practice are insufficient at best. The lack of focus paid to juvenile delinquency practice by the Office of the State Public Defender (OSPD) has an enormous

impact on the morale of juvenile practice across the state and severely diminishes the visibility and effectiveness of the juvenile public defenders at the local level.

By all accounts, leadership at the state level on matters pertaining to juvenile defense is sorely lacking. During the assessment period, defenders and other professionals across the state called for the Public Defender Commission and the OSPD to pay greater attention to this largely neglected area of practice. Leadership needs to become engaged, informed, and moved to action. A strong public defense system refines its delivery system to meet the legal needs of two distinct populations – youth and adults. The OSPD needs to be intentional about juvenile defense and should provide leadership and opportunities to advance the practice.

Juvenile Defense as a Specialized Practice

The lack of recognition or commitment to invest in juvenile defense as a specialized practice is apparent in Colorado and hurts youth. This serves as a disincentive to the many dedicated lawyers and public defenders across Colorado who want to specialize and create strong, stable juvenile defense units. Routinely, public defenders are told that the needs of the office drive them elsewhere. That will remain true unless and until juvenile defense reform becomes a priority within OSPD. The Office of the Alternate Defense Counsel (OADC) should also take additional steps to prioritize juvenile defense and highlight the need for specialized practitioners.

“Juvenile Court is a
training ground.”

Juvenile Court Judge

High Turnover

Uniformly across the state, juvenile judges and other court personnel complained about the rapid turnover of public defenders in juvenile court. “They don’t even have a chance to learn the job” one judge lamented. Since placement in juvenile court is not valued by the OSPD, the local culture is one of “get in and out of juvenile court as fast as you can.” Most public defenders consider it very low prestige and low reward to be in juvenile court. Judges described the turnover as “horrendous” and “ridiculous” and stated that “juvenile court is just a weigh-station for public defenders between county court and district court.” It would be hard to overstate the degree to which judges and others complained about this problem. In the majority of jurisdictions visited, juvenile defenders are only in juvenile court on average between three to six months, while simultaneously handling adult felony cases to get in their trial hours in order to move “up” to criminal court.

The high turnover leads to a lack of continuity in representation, which has a negative impact on the attorney-client relationship that cannot be exaggerated. In jurisdiction after jurisdiction, cases were reported where a single child had four different public defenders in a six month period, or another who had seven in a year. While new juvenile defenders may know the law, they are unfamiliar with the unique characteristics and attributes of youth, the programs and services available, and how to construct legal arguments that fold in and incorporate adolescent development. Like any specialized area of practice, there is a learning curve, and high turnover makes it difficult, if not impossible, for expertise to develop. Moreover, a succession of lawyers demonstrates to the juvenile client that his or her case is unimportant and that no lawyer is truly invested in his or her representation. This kind of turnover would be difficult on an adult client. Given, however, the special skills that are required to communicate in a developmentally appropriate way with juvenile defendants and the challenge of building and maintaining rapport so that the communication between the attorney and juvenile client remains open and fruitful, this level of turnover can create insurmountable obstacles between the client and the attorney.

“PDs get out of juvy as fast
as they can. They move up
the ranks quickly.”

Juvenile Prosecutor

High turnover also creates a chronic void in building and sustaining a specialized practice. The disincentives to advancing and actualizing due process for youth are great and the defenders are not there long enough to do their job well.

Role Confusion

A juvenile defender is not a guardian *ad litem* (GAL). They serve wholly different functions, have different ethical obligations and duties, and operate under a different set of laws and standards of proof. It is the duty of the juvenile defender to represent the client's expressed or stated interests. The juvenile defender must be highly skilled and be able to help the client cope with and understand complex legal matters. The juvenile defender must give the client a meaningful opportunity to participate in his or her own defense and must have time to counsel and engage the child. The juvenile defender is a critical check on the power of the state as it imperils the client's liberty interest. One judge stated, however, that there is "universal confusion and consternation about the role of the juvenile defender as distinct and different from the GAL in Colorado."

The GAL also requires specialized skills and training. It is the duty of the GAL to provide best interests representation. That is, it is the GAL's job to apply a more subjective view of the situation and assist the court in making a determination based on what he or she feels is in the child's best interest. The GAL's ultimate responsibility is to the court, not the child, and as a result, GALs in Colorado are not bound by the attorney-client privilege with regard to their child clients.³¹⁸

The ways in which these roles are co-mingled and confounded in juvenile courts across Colorado was alarming. GALs were sometimes encouraged by judges to take on defender responsibilities alongside their duty to represent the child's best interest. It was often the judge that would ask the GAL to "stand in" for a plea. One investigator observed twin 13 year old brothers taking a plea to a sex offense and the Court asked a GAL to stand in and represent them for purposes of the plea. She did so. She had never met the boys nor talked to them before or during the proceeding. When the assessment team investigator asked the GAL afterwards who advised those twin brothers about the sex offender registry, the GAL simply stared blankly. Investigators often observed GALs merely obliging requests by the court to stand in as a substitute for defense counsel.

Lack of Professional Standards and Accountability

There is no statewide approach or agreed upon set of juvenile defense practice guidelines or standards in Colorado, thus practice varies widely. The OSPD does not have any standards or specific guidelines that govern juvenile defense that the investigative teams could identify. The OSPD looks to a series of goals established by widely accepted standards and guidelines of national organizations. These goals fall within several crucial core areas including: workload and caseload; staffing; adequate pay; relative equity of resources for the defense in comparison to the prosecution; recruitment and retention of qualified staff; employee training and development; and effective integration of technology.³¹⁹ While all relevant and important, none of this addresses juvenile justice issues or incorporates a specific focus on juvenile defense.

In contrast, the OADC is to be commended for not only having guidelines describing the role of counsel,³²⁰ but also having specific guidelines describing the role of defense counsel in juvenile matters.³²¹ While those guidelines could be enhanced and fine-tuned, they go a long way toward improving delinquency representation and demonstrate OADC leadership on these issues.

The juvenile indigent defense system in Colorado suffers from benign neglect. It is not that people willfully work against the system; there is just no concerted effort to work for it. The lack of statewide leadership, coupled with the lack of professional standards or a dedicated focus on juvenile defense, has left defenders floundering. It is this type of neglect that fosters a constant minimization of juvenile court practice – the sentiment that it's just "kiddie court," and not a place for real lawyers. This lack of system accountability diminishes juvenile defense across the state and wreaks direct and collateral harm to youth who depend on it to protect their legal interests. To protect children and their due process rights, there needs to be greater statewide uniformity in policy and practice.

"The first four months is just figuring out how to get by, then the rest is just getting by."

Juvenile Defender

"I really don't spend a lot of time studying juvenile legal issues. Maybe I should, but truthfully, I don't."

Juvenile Defender

Lack of Professional Relevance and Visibility

Without a comprehensive juvenile indigent defense system in place, the individual lawyer is often left to fend for him or herself. With high caseloads, little to no investigative support, and no social workers or administrative support, it is hard for the juvenile defender to maintain the professional relevance and visibility inherent in fulfilling his or her duties. The investigative teams often witnessed proceedings that were rushed or truncated and juvenile defenders were regularly appointed too late in the process to make a difference. When SB 94 workers, prosecutors, and probation officers are collaborating on a speedy resolution, it is difficult for the juvenile defender to push back and perform the independent analysis required without any back-up or support from their office or the court.

BARRIERS THAT LIMIT ACCESS TO COUNSEL

Even when a semblance of a system is in place, if there is not a shared vision and commitment to the right to counsel and the role of juvenile defense counsel, many barriers emerge that limit or thwart a child's access to counsel, including:

Advisement of Rights

The advisement of rights is a critically important part of the juvenile court process. Each jurisdiction visited conducted these advisements differently. In some jurisdictions, the district attorney meets with the youth and family before court starts and advises them of their rights while usually offering a plea deal before any petition has been filed and before any meaningful access to defense counsel has been provided. Not only is this practice somewhat akin to the fox guarding the henhouse, it is contrary to the spirit of the United States Supreme Court's recognition of the importance of defense counsel at the negotiation stage.³²² Moreover, both the court rules and the statutes place the obligation of advisement on the court.³²³ Investigators did not observe any juvenile defenders objecting to or challenging this process. In some jurisdictions, the judge advises the youth of their right to counsel but encourages them to talk to the district attorney prior to making any determinations to hire a lawyer or seek the services of a public defender. This practice places a premium on efficiency at the expense of a meaningful ability of a child or parent to exercise due process rights.

In several jurisdictions, these advisements were observed to be given *en masse* to a group of youth assembled in the jury box, rather than to individual youth. These mass advisements demonstrate no concern for the varying and individualized abilities of youth to process information, particularly under stress. The process for and advisements on the right to counsel across the state should be more uniform, more formalized, and should not be handled by the district attorney.

Timing and Manner of Appointment of Counsel

The timing and manner of appointment of counsel carries huge implications. The mechanisms that are put in place must account for the duties and responsibilities of the juvenile defender by appointing counsel early and affording counsel time to have a meaningful opportunity to engage the client. Counsel must be readily available so that prompt appointment can be assured the first time a child appears before a judge or magistrate and well before the child has any direct conversation with a prosecutor regarding a plea deal. Because the procedures for determining indigence are cumbersome and cause delays in appointing counsel, the indigence of the child should be presumed, at least for the purpose of the initial appointment.

In Colorado, the process for the assignment of counsel plays out differently within each jurisdiction. Typically, it is the juvenile court judge or magistrate, not a designee or court administrator's office, making the appointment from the bench. Thus, judges and magistrates bear an extra burden to ensure that the timing and appointment process runs early and smoothly and that the process is fair and meaningful to the child.

Colorado statute does not provide for a right to counsel until the advisement hearing – *i.e.* the first hearing after the petition is filed. By statute, this can be as many as 30 days following the filing of a petition. For children who are detained, often at initial detention hearings where no counsel is provided, that is a significant deprivation of liberty without any access to an attorney. In some jurisdictions, judges did appoint counsel at the pre-petition detention hearing, but this practice was not universal. In many areas, the practice appeared to be that defense counsel was provided at the detention hearing if counsel happened to be on hand. The Public Defender statute provides for representation of indigent juveniles “who are in any way restrained by court order, process, or otherwise”³²⁴ and provides that public defenders shall “counsel and defend [the indigent juvenile] ... at every stage of the proceedings following

arrest, detention, or service of process.”³²⁵ While this authority extends to pre-petition detention hearings, the OSPD has not consistently provided representation at these hearings.

The lack of pre-trial procedural protections can only be addressed through the early appointment of counsel, and many important rights of accused youth can only be preserved through prompt action by counsel. Whatever the theory of representation, it stands to reason that if counsel is appointed too late in the process, that representation is rendered relatively meaningless. In Colorado, there is an intense amount of handling, questioning, screening, assessing, and other activity that begins very early on. The vast majority of cases come to final resolution at the initial hearing, often in the form of a plea, before counsel has ever been considered, appointed, or had any opportunity to advise or counsel the youth at least about the attendant, long-term consequences of a juvenile adjudication. Juvenile defense counsel must have a visible and vocal presence at all detention hearings, and this was not observed to be the case, sometimes as a result of late appointment.

Indigence Determinations

Indigence determinations and other legal fees and court costs are influential in limiting access to counsel in Colorado. There are many problems associated with the indigence determinations, not the least of which is the conflict that is created between the holder of the right to counsel (the child) and the payor of the bill (the parent or guardian). Financial pressures can understandably influence parents to seek a low or no-cost solution for their children. Due to this inherent conflict, arguably all children should be presumed indigent throughout the duration of their case.

The process and procedures for determining indigence vary widely and operate with varying degrees of efficiency across Colorado, so like many things, it depends on where you live. Some jurisdictions strictly follow the indigence determination scheme outlined by the Public Defender statute and Supreme Court orders. But this process can be cumbersome and time consuming, leading to frustration and delays for those who choose to exercise their right to free counsel. Parents do not come prepared with all the paperwork and cases need to be re-set. It is inefficient practice. Even former clients on probation must be re-screened. Sadly, one public defender reported seeing her former client being interrogated by a gang officer but did not intervene because the client had not yet been re-screened. While this process is seen by some as uniform and straightforward, juvenile defenders describe it as a “nightmare.”

The amount and extent of fees and surcharges also vary from jurisdiction to jurisdiction. In many places, families are often forced to choose between incurring costs they cannot afford or not acquiring representation for their child. In other jurisdictions, however, judges take advantage of the provision in the appointment statute that allows for them to appoint counsel in any case where they deem the interests of justice dictate to streamline the appointment process. There is no question that both judges and public defender offices are looking the other way and limiting the assessment of certain fees because of the inherent conflict it presents.

Across the board in Colorado, probation officers, judges, advocates, court administrators, and most defense attorneys stated that insisting parents retain counsel for their children forces a conflict. Investigators often reported that costs associated with obtaining a lawyer are the single strongest deterrent to a youth’s exercise of his or her right to counsel. Given this conflict and given that children rarely have resources of their own, a universal presumption of indigence for children could rectify this problem. Alternatively, if there is to be a process for determining a youth’s indigence, it needs to be streamlined so that it takes hours, not days.

“A presumption of indigence for children would be good practice and would result in better decisions being made.”

Juvenile Court Judge

“I would rather not have to find a way around the system. I simply believe all kids should be represented and the public defender should be routinely appointed.”

Juvenile Court Judge

Waiver of Counsel

Immaturity, disabilities, trauma, and anxiety can all limit a youth's ability to make informed choices and decisions regarding important court proceedings. Young people often find the courtroom setting very intimidating and do not understand certain terminology and lingo, further underscoring the critically important role of juvenile defense counsel. In some Colorado jurisdictions, judges and magistrates are fastidious about the appointment of counsel, and in other jurisdictions, far less attention is paid. In many jurisdictions, there is simply a presumption that counsel is not needed. It was likewise observed that in some jurisdictions judges and magistrates will not accept a waiver of counsel without thoroughly testing the knowing and voluntary nature of that waiver, while in other jurisdictions, few questions were asked. Regardless, many youth were appearing in court without a lawyer to seal plea agreements that had been negotiated without counsel and often prior to any official appointment or waiver of such counsel by the juvenile.

Investigators found that judicial admonitions regarding the right to counsel and waivers of counsel were delivered inconsistently, despite the fact that the Supreme Court of the United States has affirmatively found plea negotiations to be a critical stage of a prosecution that requires access to counsel.³²⁶ Investigators often observed and were routinely told of district attorneys negotiating plea agreements with youth unrepresented by counsel. The use of uncounseled plea negotiations with juveniles is especially troubling given the wide range of developmental science data suggesting that youth are more likely than adults to comply with authority figures,³²⁷ more likely than adults to perceive risks differently,³²⁸ and less likely than adults to consider the long-term consequences of their decisions.³²⁹ Investigators witnessed the use of group advisements regarding the right to counsel. The developmental research suggests that children process information differently and that their capacity for comprehension may be diminished under times of stress, thus suggesting that the explanation of rights for youth must be carefully tailored, and individualized.³³⁰

Across the state, juvenile court stakeholders repeatedly estimated that as many as 75% to 90% of juveniles waive counsel and enter into uncounseled plea agreements. Though waiver of counsel was not observed in all jurisdictions, when it did occur, it was observed in urban, suburban, and rural areas alike. Many factors contribute to high rates of waiver of counsel. For young people, the systemic incentives to waive counsel are great. Many youth reported being unaware of their right to counsel and when they could see or talk to a lawyer. Parents often viewed counsel as unnecessary or unaffordable, and discouraged their children from seeking appointments. Youth felt pressure from parents, probation officers, judges, and others to resolve cases quickly. While precipitous resolution might focus attention on the social service needs, it also tends to circumvent due process, accelerating the rate of uncounseled plea agreements based on charges that remain uncontested.

In some counties, counsel is technically available but children must be forceful in their requests for early appointments, virtually an impossible thing for an inexperienced young person to do. The typical scenario that investigators observed was that, by the time counsel became available, most youth had been interviewed, screened, and assessed by any number of people and already agreed to enter into a plea agreement, ultimately resulting in an adjudication that had been negotiated without the benefit or input of counsel. Probation officers reported that youth who do waive counsel in Colorado, usually do so without a full understanding of the long-term collateral consequences that attach to juvenile adjudications. Probation officers stated that youth frequently ask them about the cases, the anticipated outcome, and things the children did not understand in court. This puts probation officers in the awkward, and often untenable, position of providing information and advice that should be coming from defense counsel.

There may be some youth who, despite the availability and input of counsel, want to proceed *pro se*. 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.

Compensation

The compensation scheme at the public defender's office is attached to moving "up and out" of juvenile court. Defenders in juvenile court do not make, and will never be able to make, as much as their counterparts in adult criminal court. This built-in disincentive drives lawyers away from juvenile court practice. Juvenile defense needs to be viewed as the highly skilled and specialized practice it is, equally as intellectually challenging and akin to appellate or capital work. Until that happens, the pay schematic will continue to undercut and devalue the defense of children.

Caseloads

Juvenile defenders across the state report having a wide array of caseloads, ranging from a crippling 400-500 to a very modest 50 cases per year. Public defender caseloads are typically higher than those of the ADC, and reportedly interfered with their ability to deliver effective legal services. Importantly, in the culture of the public defender office, you are not “a real lawyer” until you get sufficient trial hours under your belt in criminal court. Thus, the public defender might indeed be overwhelmed with cases, but they are rarely juvenile cases. Juvenile public defenders interviewed by the investigative teams regularly carry adult cases on top of their juvenile cases as their only means to facilitate advancement within the organization.

“Obviously, my goal is to get
into adult felonies.”

Juvenile Defender

In jurisdiction after jurisdiction, judges and others complained about the routine unavailability of the public defenders, both in the courtroom and outside of it. Juvenile justice social workers expressed frustration at having to fill the vacuum left by lawyers who have little to no contact with their clients. SB 94 workers, probation officers, and other court social service providers complained that public defenders never show up at treatment team or case review meetings. This absence of defense attorneys means that children often have no professional voice representing their stated interests or ensuring their legal rights are being respected at these meetings. This allows for children to be processed more expeditiously through the system, but violates their rights to due process.

On-site investigations revealed that whatever the cause, high caseloads prevented lawyers from having meaningful contact with their clients. This had a direct impact on their ability to represent their client effectively. Public defenders and OADC lawyers were observed in many jurisdictions meeting their clients for the first time in the courtroom just a few moments before their cases were called. The harm associated with high caseloads was evident to many who work in juvenile court. Compounding the defender’s burden is the fact that many do not have the support staff, investigators, or other resources necessary to more effectively manage their caseloads.

Children represented by overworked attorneys quickly come to the conclusion that their attorneys do not care about them and will not make efforts on their behalf. Lawyers operating under such pressure often fail to fully investigate or prepare cases and clients understandably become passive and mistrusting. The IJA/ABA Standards state that “[i]t is the responsibility of every defense office to ensure its personnel can offer prompt, full and effective counseling and representation to each client. A defender office should not accept more assignments that its staff can adequately discharge.”³³¹

Use of Mechanical Restraints in the Courtroom

During the assessment period, investigators observed the routine use of mechanical restraints including handcuffs, shackles, and belly chains for all detained children across the state. Investigators observed that the restraints remained on even when youth were seated in the courtroom, sometimes affixing the child to a ring or post on the floor to secure them in place. The handcuffs and shackles placed serious limitations on the child’s ability to talk and write notes to counsel, pick up and review forms, and served only to further humiliate and demean the child.

While there may indeed be legitimate needs and reasons to use mechanical restraints on youth, investigators observed no extenuating circumstances or out of control youth anywhere. It was simply automatic, routine practice in Colorado for every detained child to be transported and attend court in full restraints. Ironically, the sheriff’s office told the assessment investigators that their employees removed the shackles and handcuffs of adult defendants prior to their entering the courtroom, but not for children. When asked why, one guard laughed and stated “Well, I guess we worry the kids are faster than us.” When asked if there were many instances of kids running, he admitted that it had not ever happened to his knowledge.

This practice was highly disconcerting. Equally discouraging was the utter silence from juvenile defenders on this issue. In jurisdiction after jurisdiction, none of the attorneys even requested that the handcuffs, shackles, or belly chains be removed, despite the fact that most courtrooms had several armed officers in attendance at all times.

PRACTICE OBSERVATIONS AT CRITICAL STAGES

Investigators spent countless hours over several months in courtrooms across the state observing delinquency proceedings. Many attorneys were observed trying their best, in spite of the barriers they faced, but as many or more were observed silently standing beside their clients, missing opportunities to make arguments, motions, or to communicate with their client. When those attorneys were interviewed, many of them presented a defeated attitude, “Why bother, the case is going to turn out the same anyway....” Other analyses of on-site observations of critical stages of the juvenile court process included:

Preparation and Client Contact

The attorney-client relationship is fundamental to effective representation, and it takes time to establish. The juvenile defender “should seek from the outset to establish a relationship of trust and confidence with the client.”³³² It is critical, at every stage, that counsel “employ a client-centered model of advocacy that actively seeks the client’s input, conveys genuine respect for the client’s perspective, and works to understand the client in his/her own socioeconomic, familial, and ethnic context.”³³³

A recurring problem in many jurisdictions across Colorado is the failure of attorneys to engage in meaningful consultation with their clients prior to court hearings, whether that youth is detained or not. Investigators came away with the impression that most juvenile defenders do not adequately prepare delinquency cases, in part because they have little to no relationship with their client. Most defenders interviewed confirmed that they have inadequate time to meet, work with, and prepare their clients for court proceedings. Lawyers reported numerous reasons for this breakdown: late appointments, delayed or lengthy indigence determinations, clients not showing up for appointments or responding to letters from counsel, high caseloads, demands of other non-juvenile cases, and inadequate access to support staff, social workers, or investigators, to name a few.

While it is the ethical obligation of the juvenile defender to have a meaningful consultation with the client, this failure is largely attributable to the manner and overall operation of the court. The National Council of Juvenile and Family Court Judges states that in a court of excellence, counsel will be appointed prior to the detention or initial hearing, and must have time to consult with and prepare the client.³³⁴ The Council acknowledges that delays in appointment “create less effective juvenile delinquency court systems.”³³⁵ Judges play a critical role in ensuring that juvenile defense counsel has more than an opportunity for just a quick consult with the child – the attorney needs to be able to gain the trust and confidence of the child.

Defense Advocacy Consistently Poor at Pre-Trial Proceedings

It was often difficult for investigators to be certain what type of proceedings they were observing in court. If trained legal experts become confused, it is not difficult to imagine children and their families are as well. Many cases are set for pre-trial conferences, where, according to those interviewed, the cases sometimes languish for months or even years until they eventually plead out. Some of these youth would be at home, others in out-of-home placements, but in each there had not been a determination of guilt. In other cases, even though they reside on a certain docket, the proceedings seem to collapse and combine on the spot. Investigators commonly saw youth in court on an initial appearance enter a plea and move to disposition, all in a single hearing. The cases would be over, and no juvenile defender would ever be involved or appointed. At most proceedings when juvenile defenders were present, their performance was lackluster. While the Colorado Children’s Code intends for the juvenile court to be more informal than adult court,³³⁶ this does not mean due process should be suspended.

Although most of the courthouses across the state are relatively new, clean and spacious, juvenile defenders were often observed talking to their clients and their families in open court, in the witness box, or the hallway, even though private meeting space was usually available. The lack of formality created a casual atmosphere that is inconsistent and misleading when critical decisions are being made and youth are waiving significant rights.

The strong presence of SB 94 encourages a lot of front end activity on cases that don’t include counsel, or where counsel has yet to be appointed. According to the Colorado Children’s Code, the right to counsel attaches at the first hearing after the filing of a petition.³³⁷ Since there is a strong desire to address service needs, the petition sometimes does not emerge for several days or weeks, if at all, but the child is nonetheless involved with assessments, evaluations, and pre-adjudication services without the aid of counsel. If youth don’t succeed with certain pre-adjudication services, negative information is often shared with the court, arguably prejudicing the case. It is very difficult for juvenile defenders to work with their clients and put the case together when so much has already transpired.

Another big problem in the pre-trial context is the issuance of standard, mandatory protection orders in all cases. The routine use of these mandatory pre-trial protection orders impose significant conditions on youth, violations of which can be cause for detention. These mandatory orders can impose evaluations, restrictions, curfews, stay-away orders and other serious limitations beyond statutory authority that, if violated, can get a youth in serious trouble. Information gathered during the evaluations can be used against the youth during future proceedings. While juvenile defenders cannot be held responsible for the impact of such laws, they do have an important perspective and information to share about the due process concerns that arise from these practices.

Juvenile defenders reported that they do not routinely make it a practice to visit their detained clients, thus significantly undermining the attorney/client relationship. Even detention center administrators and staff said that legal visits did not occur often enough. Detention center staff reported that many youth have questions about their cases, the length of detention, the tests and evaluations that might be performed, and want to talk to their lawyers, but most cannot even remember who they are or how to get in touch with them.

A significant number of youth are in both the juvenile justice and child welfare systems (so-called crossover youth) with a large number of workers and agencies involved. Juvenile defenders have to be very diligent and ensure enough time to collect records and gather information from these different systems to discuss with their clients. Many crossover youth end up with GALs but not defense attorneys, leaving them vulnerable and at risk of unnecessary prosecution because no one is advising the youth of his or her rights.

Detention Hearings

The role of juvenile defense counsel at detention is critical and in Colorado, often falls far short of what is necessary to protect the rights of youth. Juvenile defenders need to argue against detention and present alternative programs that address the court's concerns for the child in the least restrictive setting. In most jurisdictions, until very recently, public defenders were not present at detention hearings. It is common knowledge across the state that defense advocacy at detention has been sorely lacking.

While investigators reported that some magistrates made a probable cause finding at the detention hearing, in those circumstances it was universally a perfunctory statement without any discussion of the evidence or basis for such a finding. While there is an initial statutory presumption that children should be released, that presumption is regularly overrun as shackled children are left to fend for themselves at detention hearings against the full resources of the state, while others are presumed held without bond.

In some jurisdictions, GALs are asked to step in and sometimes OADC or private attorneys are judicially appointed on the spot. With few exceptions, however, the level of defense advocacy observed at detention hearings across Colorado was consistently uninspired. The current function of counsel at detention hearings is perfunctory at best and the system is not accustomed to defense advocacy at detention.

In the detention hearings that were observed, on most occasions, counsel made few or no arguments. Sometimes, juvenile defenders did challenge the sufficiency of the evidence or presented detention alternatives to the court, but this was not routine or even common. The evidentiary hearings are usually based solely on the reading of the police report and there is generally no questioning of the sufficiency or accuracy of that report.

Juvenile defenders repeatedly asked the investigative team what difference detention advocacy would make. They felt that, regardless of the evidence (or lack thereof), their efforts to gain a client's release would be pointless. This defeatist attitude harms youth. Studies demonstrate that youth who are detained pre-trial are more likely to be committed after adjudication.³³⁸ It is also necessary for defenders to be able to argue against the indiscriminate use of detention. In one jurisdiction, for example, probation officers are given the authority to lockup youth in detention without any court hearing or judicial determination, a practice that ought to be challenged as violating due process.

"Kids deserve a better voice – they need more. I'm not sure that they get a fair shake in court or clearly comprehend what's happened."

Detention Center Administrator

On the policy front, juvenile defenders are not engaged in detention reform. With the exception of defender advocacy organizations, few defenders are paying attention at the county level to the critical legal needs youth present at detention. Effective detention advocacy ensures that costly detention beds are reserved for those cases where public safety truly demands the highest level of supervision.

Defense Seldom Conducts Independent Investigation

Conducting prompt and independent investigation is one of the most important duties of a juvenile defender, and should be done prior to counseling a client about a possible plea. Prompt investigation gives counsel a quick sense as to the strengths and weaknesses in the case, including the reliability or admissibility of potential evidence against the child. Independent defense investigation tests the facts presented or conclusions being drawn by the state and is vital to a fair juvenile justice system. But if counsel is not being appointed in a timely manner, counsel has little incentive or ability to move forward with independent investigation. This inherent conflict chills due process for youth.

Occasionally, public defenders access investigators in juvenile cases at the local level, but those services are usually reserved for serious cases and not used routinely. OADC attorneys tend to fend for themselves; while they will ask the central office for access to experts, they rarely ask for investigative assistance.

Motions Practice

The filing of relevant motions is fundamental to effective defense work, especially juvenile defense. The intensity of pre-trial motions practice varies widely across the state ranging from vigorous to non-existent. It is not routine for pre-trial motions to be filed in most juvenile courts across Colorado. When they are filed, however, it is typically filed by assistant public defenders or a law school clinician.

In jurisdictions where motions practice was more routine, lawyers appeared for argument well-prepared and determined to win. Investigators noted some of the best legal advocacy they observed statewide occurred in argument over motions. It was noted by investigators, however, that the child was not always present for motions hearings.

Most lawyers argued that they have little time for motions in juvenile court. With so many decisions “pre-ordained” as stated by one lawyer, “what’s the point?” Defenders also stated that time constraints were the biggest reason they did not file more motions. Juvenile defenders also said that magistrates and judges do not like it when they file motions, and these lawyers feel chastised, worrying that the judges will take their frustrations out on counsel or their clients. Finally, with ineffective assistance of counsel arguments infrequently raised in juvenile court, many lawyers simply do not feel compelled to raise legal issues.

Extremely High Rates of Plea Agreements

In an overwhelming majority of jurisdictions visited, those interviewed estimated that the vast majority of youth waive their rights to counsel and an adjudicatory hearing and plead guilty. Investigators consistently and uniformly observed this in practice. In some jurisdictions, defenders were appointed and actively set cases for trial, but most did not move to trial. Young clients are intimidated and feel pressure to resolve cases quickly, and often do so without the opportunity to obtain advice from counsel about possible defenses or mitigation. Many youth enter into uncounseled plea agreements. Youth and parents were uninformed about the direct and collateral consequences of their plea agreements, often resulting in relief that they could go home but at a loss and confused as to what happened, what would happen next, and what was expected of them in the interim. Research indicates that adult defendants routinely have difficulty understanding the court’s admonitions when entering pleas; there is no reason to believe that an adolescent would understand it better.³³⁹

Some judges and magistrates tried harder than others to adjust plea colloquies and incorporate developmentally appropriate language. Some judges and magistrates would try to test the child’s understanding of the terms and agreements set forth in the pleas, but others would not. If a child waived counsel, juvenile defenders played no role at the plea colloquy, so the child and family were often observed fending for themselves.

“Juvenile court is stip
and ship.”
*Juvenile Defender comment
referring to rates of stipulation
and confinement.*

In Colorado, if a youth has three delinquency adjudications, there is a presumption of mandatory, out-of-home placement, irrespective of whether or not that child was represented by counsel.³⁴⁰ Uncounseled pleas are included in this three-strike mandate. Investigators repeatedly observed youth entering into plea agreements without knowledge of how it could affect them and it was often not raised by the court.

Bench Trials/Jury Trials

It is a rare occurrence that cases go to a bench trial, and an even rarer occurrence that they go to a jury. Across the state, judges could count on one hand the number of juvenile bench trials they had presided over. In fact, juvenile court culture pushes magistrates, who hear the bulk of the cases, to resolve them without trial. Several magistrates across Colorado reported feeling the judges' annoyance if there were too many requests for trials. Trials are brought before the judges, although in some jurisdictions magistrates were presiding over felony trials as well. It is common parlance for defenders to talk about judges imposing a "trial tax," interpreted as a punishment, on those who exercise their constitutional right to a trial.

Although Colorado is a state that permits jury trials for juveniles under certain statutory circumstances, it happens very infrequently. Investigators did not observe any jury trials while on-site.

Little Individualized Defense Advocacy at Disposition

Disposition is at the heart of the juvenile court system and juvenile defenders have a vital role to play at this stage. After a youth is adjudicated, Colorado law allows for a disposition to be imposed immediately or at a separate hearing. In most cases observed, the juvenile court went directly from adjudication to disposition, giving the juvenile defender little time to prepare the client for disposition or to present independent information unless he or she was prepared to do so in advance. Generally, the juvenile court followed the recommendation of the SB 94 workers or probation, which was uncontested by counsel.

It is imperative that, prior to disposition, a child is counseled about the direct and collateral consequences that attach to a juvenile adjudication. These consequences may have lifelong implications, and it is necessary to inform and advise the child before moving forward. The young person must also be counseled on the future potential to expunge arrest and court records.³⁴¹ With rare exception, investigators did not observe adequate, independent defense advocacy at disposition. In many instances, counsel was not even present.

The need for the presentation of an individualized disposition plan by defense counsel is critical. Defenders, if doing their jobs properly, will be privy to information not available to other stakeholders that might hold direct bearing on placement or other services. It is imperative that the juvenile defender work with the client to prepare an independent, tailored disposition plan for the court that addresses anticipated concerns. Sometimes parents can play a supportive, overbearing, or non-existent role at disposition. The juvenile defender must help the child navigate the justice system with this in mind. Investigators observed juvenile defenders routinely giving great deference to the wishes of the parent without consulting their child client, in direct contravention of their ethical duties.

Juvenile defenders in more rural communities complained that access to resources and services are extremely scarce, limiting what they can offer as a disposition alternative.

Post-Disposition Representation of Adjudicated Youth Virtually Non-Existent

Post-disposition representation of youth across Colorado is virtually non-existent, despite the Children's Code's provision for indigent legal representation until the juvenile court's jurisdiction over the case ends.³⁴² That means that nearly all children in secure or non-secure out of home placements, or any child under continuing supervision like probation, have little to no access to the legal assistance to which they are entitled. The post-disposition representation that does occur is neither systematic nor organized. Post-disposition issues that ought to be addressed by counsel concern things like abusive or unlawful conditions of confinement, representation at review, violation of probation, or institutional disciplinary hearings, appeals, expungement, special sex offender registry reviews, and a host of other legal issues that impact adjudicated youth. The investigative teams revealed uniform support across the state for strategies to develop greater post-disposition access to counsel.

No Uniform System for Juvenile Appeals

There is no statewide system in place for juvenile appeals. While Colorado statute provides the OSPD with the authority to handle "any appeals or other remedies before or after conviction that the state public defender considers

to be in the interest of justice,”³⁴³ the statewide public defender appellate division has a policy of not handling juvenile appeals. Trial attorneys, therefore, must take their own appeals if they are to happen at all. Appellate practice across the state is extremely limited. In 2008, there were 21 juvenile appeals statewide out of approximately 14,000 delinquency filings.³⁴⁴

In addition, the appellate courts will only consider appeals from final judgments. In many delinquency cases a final order is set in abeyance as the system keeps the case in a pre-trial posture seeking to negotiate a resolution. The date of final judgment triggers the appellate deadlines, thus without that final disposition order, no appeal can be raised.

Work Uninformed by Knowledge of Developmental Science and Other Research

Kids are different. Kids should not be treated like adults. This is something that scientists, parents, and the Supreme Court of the United States have long recognized. Because kids are different, the practice of defending them is also different. Because juvenile defense is a specialized practice, counsel must keep abreast of science and scholarly literature that can inform both daily practice and related policies. So many advances that have occurred over the last decade have found their way into United States Supreme Court decisions and state law regarding the duties of indigent defense counsel and the unique nature and attributes of children. Age and developmental maturity must be considered at all levels of juvenile practice. Juvenile defenders must learn, incorporate, and present this information to contextualize and individualize the child before the juvenile court.

Investigators saw little evidence of this across Colorado. Juvenile defenders were unsure about how to effectively analyze screening and assessment instruments; utilize experts; interpret IQ or other test scores; incorporate developmental research into legal arguments; or challenge arrest and charging processes or false confessions. Developmental science is relevant at all stages of juvenile court proceedings and it is the ethical duty of the juvenile defender to bring that knowledge to the attention of the court.

Youth Prosecuted as Adults

While the focus of this Assessment is on the juvenile indigent defense system, in countless interviews held across the state, stakeholders repeatedly raised concerns about the prosecution of youth in the adult criminal system. The investigative team’s on-the-ground interviews and observations were conducted prior to the changes in Colorado’s direct file laws in April of 2012. Prior to the new legislation, many more youth were eligible for direct file into the adult system than are currently. Investigators saw no juvenile transfer hearings in juvenile court during their period of observation. This Assessment is unable to ascertain whether that was because most children who were eligible for transfer were also eligible for direct file into the adult system, thereby obviating any need for a transfer hearing, or whether transfer hearings were rare for other reasons. Given that more youth who were originally eligible for direct file must now be processed in the juvenile system unless the court grants a waiver of jurisdiction, it is possible that transfer hearings may become more common. Any client facing a transfer hearing needs a juvenile defender to get involved aggressively in the process. Transfer hearing investigation, preparation, and litigation is a complicated area of practice and is often best handled by a specialist. Related concerns for youth subject to transfer hearings include that once he or she is transferred to adult court, the juvenile court waives further jurisdiction over the child in all future matters.

ADDITIONAL OBSTACLES TO FAIRNESS

Systemic barriers, limitations on access to counsel, and the dearth of specialized juvenile defense systems are further impacted by other obstacles that prevent adherence to due process. While these obstacles extend far beyond the juvenile defender, they nonetheless contribute to an environment that often minimizes the role and duties of the juvenile defender.

For many people, juvenile court retains the unflattering distinction as “kiddie court” – a second rate forum compared to adult criminal court. Juvenile court is too often used as a training ground and most prosecutors and public defenders desire to move quickly. The juvenile indigent defense system must develop and assert a new paradigm reflecting the expanded body of juvenile jurisprudence and developmental research

“The juvenile defenders and the juvenile prosecutors are really green. Clients always suffer from green lawyers.”

Juvenile Magistrate

that directly impacts the rights of children and the role of counsel in delinquency proceedings. Until then, additional obstacles to fairness for children in conflict with the law include:

Juvenile Court Culture: Remnants of *Parens Patriae*

More than 45 years after the United States Supreme Court guaranteed children the right to counsel in *In re Gault*,³⁴⁵ many juvenile court judges and magistrates in Colorado have only half-heartedly embraced the spirit and intent of that decision. Ironically, though they seem in most instances to support due process and access to counsel, many juvenile court judges and magistrates do not take leadership to ensure that counsel is appointed in an early and timely manner; that barriers to indigence are removed; that sufficient time is allocated for meaningful consultation with clients; and that courts will not accept uncounseled plea agreements.

In many jurisdictions, the child and family are advised by the court to speak with the district attorney *before* they decide to hire a lawyer or talk to a public defender. Again, the drive for efficiency and what objectively may be seen as what is in the child's best interest easily devolves into the trampling of children's due process rights, and potentially the adjudication of children who are innocent or who are less culpable than the charges allege. While Supreme Court jurisprudence allows for an informal approach to juvenile courts, it cautions that it should not come at the expense of due process.³⁴⁶ Paternalistic good intentions and fundamental fairness do not necessarily go hand-in-hand.

Impact of Inadequate Access to Counsel on Minority and Immigrant Youth

In many jurisdictions, there was inadequate access to counsel and defense-related services for Spanish-speaking clients. Access to Spanish-speaking interpreters in court was apparent in some jurisdictions but not universal, and few or no Spanish-speaking defenders were available. Judges, lawyers, probation officers, and SB 94 workers alike expressed the need for more Spanish-speaking defense attorneys and service providers, and that those defenders, programs, and interventions need to be culturally competent.

Hispanic youth represent approximately 30% of the youth population of Colorado, but 44% of the securely detained youth and 42% of the committed youth statewide.³⁴⁷ Similarly, black youth make up just under 5% of Colorado's youth population, but 15% of its securely detained youth and 17% of its youth in secure confinement.³⁴⁸ Racial or ethnic minority youth represent greater than 50% of the detained and committed population of youth across the state of Colorado.³⁴⁹

Beyond issues of language and race, issues of citizenship and immigration complicate the juvenile system. Juvenile justice professionals across the state, including juvenile defenders, expressed concerns about how to help or handle cases where there is an Immigration and Customs Enforcement (ICE) hold on the child and/or the family. These youth have a special need for early access to counsel that many believe is unmet. Youth must be sufficiently advised early in the process of the consequences of pleading guilty as a non-citizen, which include deportation.

Juvenile Sex Cases and the Registry

Across the state, lawyers, judges, prosecutors, and others report an increase in juvenile sex offender cases. These types of cases have become a big problem. It is not clear if there is a growing problem due to changed behaviors, or if, as many of those interviewed assumed, these cases are being charged and prosecuted more liberally. Some juvenile defenders report that sex cases make up about 15-20% of their caseload. These cases get serious and difficult very fast, according to the defenders, and include a range of charges on things like sexting, rough housing (oftentimes between siblings), or consensual sex between underage minors. In many jurisdictions, the district attorneys insist on a confession before they will make an offer to resolve these cases.

If adjudicated, these youth will be placed on the sex offender registry with huge consequences to their future. Youth must be properly and fully advised of the legal consequences attendant to a sex offense-related conviction, even if they are permitted to return home. Investigators in Colorado recorded no challenges to youth being placed on the registry. Many investigators observed cases where youth were not being advised at all about the registry or the special

“The public defense system does not have people specifically trained on juvenile issues. We need to change the mindset about Kiddie Court.”

Juvenile Court Judge

nature of pleading to a sex case. In addition, most defenders did not know about, and therefore did not represent youth in proceedings that could have removed certain juveniles from the sex offender registry prior to the completion of their sentences.³⁵⁰ These hearings can be highly adversarial, involving opposition by the district attorney or the victim. Given the stakes and the adversarial nature of these hearings, representation by defense counsel is absolutely critical.

Comprehensive Service System but Insufficient Attention to Due Process

Colorado is without question a state that devotes a great deal of attention, resources, and services to its children. Of course not every jurisdiction has the array of services and community options that it needs, but comparatively, there is a lot with which to work. On the one hand, the investigative team was impressed by the display of workers and agency representatives that attend court hearings and are involved in the lives of children. On the other hand, it sometimes appeared to be overkill, with eight or ten workers assembling in court around one child. The number of people involved did not seem to make the proceeding go more smoothly or particularly assist the children involved – too often the number of voices was deafening. And the only voice that could not be heard was that of the child.

“Social workers from the bench – many judges overstep and there is not adequate protection of due process.”

Juvenile Court Judge

SB 94 workers are highly influential in most jurisdictions; after 20 years, they have become the backbone of the juvenile court system in many of the counties and districts the teams visited. The overarching role of SB 94 and the over-eagerness and predilection the system has to intervene in the lives of children and families is sometimes misguided. Not every child needs services, treatment, or punishment. SB 94 workers admitted the undue influence they have over children and families because of their early access and authority. However, a good system of services is by no means a substitute for due process, and in far too many instances investigators reported that the balance between constitutionally mandated representation and access to appropriate interventions, services, or placements at the appropriate time, was lost.

“You can really bury a family with too many services.”

Juvenile Defender

Mental Health Issues

From a juvenile defense perspective, the lawyers interviewed had inadequate information or understanding about the range of mental health issues that needed to be addressed and raised in juvenile court. In general, the lawyers did not use experts or make mental health-related legal arguments effectively. Competency was sometimes an issue, but where controversial restoration services were used to restore competency, investigators noted that defenders never challenged such services. Coupled with the high turnover rate in the OSPD, a lack of specialized expertise around mental health cases from the defense viewpoint is quite apparent.

In almost all jurisdictions, key stakeholders complained that there were not enough inpatient or outpatient mental health services and that too many youth end up in the justice system as a result. It was especially notable that investigators were told that a high percentage of youth in the correctional facilities they visited were on a range of medications, mostly mood stabilizers.

Truancy Court

There are good intentions behind truancy court, but, as one magistrate stated, it's simply “the feeder to delinquency court.” Youth are usually not provided with counsel at truancy court, yet they can be detained or held in contempt for failure to comply with court orders. The truancy officer from the school presents the case like the prosecutor and then the judge or magistrate imposes a disposition. Statements taken from youth in school are used against them. It is described as an informal, non-adversarial forum, yet the consequences, which can include a loss of liberty, are not minor.

CHAPTER FOUR

Promising Approaches and Innovative Practices

The American Bar Association identified at least six vital characteristics found in high quality juvenile defender programs.³⁵¹ These characteristics can be implemented and incorporated into defense practices in many ways, but they must be present and are central to a fair and effective juvenile indigent defense system. They include:

1. Limited caseloads;
2. Support for entering the case early, and flexibility to represent the client in related collateral matters;
3. Comprehensive initial and ongoing training and available resource materials;
4. Adequate non-lawyer support and resources;
5. Hands-on supervision and coaching of attorneys; and
6. A work environment that supports and values the role of the juvenile defender in the fair administration of justice.

In Colorado, both through interviews with various stakeholders and first-hand observations, investigators learned about several innovative and promising practices in small pockets across the state. While these practices were not the norm, they were notable and presented opportunities for replication and further exploration. Some of the programs, initiatives, and activities described below strengthen and enhance juvenile indigent defense practice in individual cases, while others address large scale policy or systemic issues.

- **Colorado Juvenile Defender Coalition**

The Colorado Juvenile Defender Coalition (CJDC) is a non-profit organization dedicated to ensuring excellence in juvenile defense and justice for all children in Colorado. The organization provides high quality CLE programming, produces practical materials, and engages in policy development, litigation, and advocacy. CJDC's work has led to comprehensive reform of Colorado's direct file law. Most importantly, CJDC strives to elevate the practice of juvenile defense in Colorado through strategic activities aimed at enhancing practice and policy. CJDC works in close partnership with the community and key stakeholders across the state. Its commitment, expertise, and leadership in juvenile defense and advocacy are a great asset to Colorado's juvenile defense improvement work.

- **Office of Alternate Defense Counsel Juvenile Specific Guidelines: 1.1 Role of Defense Counsel and 1.2 Role of Defense Counsel in Juvenile Matters**

These aspirational guidelines represent significant leadership on the part of the Office of the Alternate Defense Counsel. While not exhaustive, the effort to promulgate and adopt these juvenile guidelines is a step forward toward improving the representation of delinquent youth.

- **Active Motions Practice**

Some of the best legal advocacy investigators observed in juvenile court was related to motions practice. Juvenile defenders around the state should set up a listserv to communicate with one another and increase collaboration. Sharing the pre-trial and other motions filed and argued across the state would significantly advance juvenile representation.

- **Advocacy to Keep Youth off the Sex Offender Registry**

Public defenders are receiving expert support and training regarding how to keep juvenile clients off sex offender registries, which is a promising first step toward increasing defense advocacy to protect youth from the serious consequences of sex offender registration. Other juvenile defenders have taken the initiative to assist clients in petitioning for removal from the sex offender registry.

- **Advisement Package and Training Regarding the Collateral Consequences of a Juvenile Adjudication**

Public defenders in one county developed an advisement package and client intake form to ensure youth were aware of the collateral consequences of a juvenile adjudication.

- **Successful Shackling Challenge**

Due to advocacy and leadership of three deputy public defenders, one judge ordered that in-custody juveniles would no longer be restrained by handcuffs, waist restraints or leg restraints in the courtroom. That court will now make individual determinations in each case and there now exists a rebuttable presumption that children who are in custody for court proceedings are not a flight risk, not a threat to themselves or others, and are capable of exhibiting appropriate and respectful behavior while in court.

- **Colorado Criminal Defense Bar**

The Bar has been a state leader in hosting training for juvenile defenders and has become engaged in policy development on these issues. Much of this work has been done in close partnership with the Alternate Defense Counsel and Colorado Juvenile Defender Coalition.

- **Center for Juvenile Justice**

The Center for Juvenile Justice (CJJ) is a non-profit organization which provides free/low-cost legal defense to indigent youth accused of crimes and status offenses. The organization employs a holistic approach to representation including collaboration with family, probation, police, courts, therapists, social workers, and agencies involved with youth. Legal services are provided by supervised law students who are serving in externships and field placements through their schools.

- **The Criminal Defense Clinic at the University of Denver Sturm College of Law**

The Criminal Defense Clinic at the University of Denver Sturm College of Law has recently begun taking juvenile cases under the supervision of a professor with juvenile defense experience. As of this writing, a third of the Criminal Defense Clinic's docket is juvenile delinquency cases in and around the Denver area. Allowing students the opportunity to practice in juvenile court underscores the message that juvenile defense is a specialized area of practice for a new generation of lawyers, allows students who think they might be interested in juvenile defense to try out practicing in the area, and affords intensive, juvenile-specific training to law students who know they want to specialize in juvenile defense.

- **Restorative Justice Children's Code Provisions**

Colorado's Children's Code includes numerous provisions supporting and encouraging the use of restorative justice practices as an alternative to formal juvenile court processing.

- **Growing Up Locked Down**

Colorado served as a host site for this research on youth in solitary confinement in adult jails and prisons that took place in five states. The use of solitary confinement causes anguish, provokes serious mental and physical health problems, and works against rehabilitation for teens according to a recently released Human Rights Watch report.³⁵²

- **Innovative Service Delivery Systems**

While not defense focused, Project IMPACT is a state leader in blending and braiding dollars most effectively to serve youth in the juvenile justice system at the local level. They have long emphasized local collaboration and local control of juvenile justice services. Their philosophy supports expansive use of community based alternatives and limited use of state institutional care in creative, comprehensive and cost-effective ways.

CHAPTER FIVE

Core Recommendations and Implementation Strategies

A strong juvenile defense system is critical to upholding constitutionally required due process protections for youth. Youth do not have uniform access to or appointment sufficiently early in the process, and the quality of representation across the state is, at best, uneven. Despite the weaknesses in the juvenile defense system, the investigators routinely noted the high level of skill and professionalism exhibited in the courts, detention centers, institutions, and a range of programs and service centers visited across the state. Coloradans care deeply about their youth and about strong communities.

To guarantee the fair and effective representation of youth through all phases of the delinquency process, the public defense system in Colorado must take serious steps to re-evaluate its commitment to the representation of youth, and then re-allocate resources accordingly. Juvenile defenders must become more pro-active in fulfilling their duties and ethical obligations. Judges and other system professionals must embrace the role of the juvenile defender as vital in protecting the due process rights of children. Given geographical challenges and resource considerations, juvenile defenders will have to work with others to address and solve these problems – they cannot possibly be expected to solve these problems alone.

The judicial, legislative, and executive branches of government must work together with the public defense system, juvenile defense experts, and the community to build a modern and true juvenile defense system in Colorado. The time is now to improve this system and give it the attention it sorely lacks.

The Core Recommendations that follow represent the principal areas in which work is needed to improve both access to counsel and quality of representation for youth in the delinquency system. The Implementation Strategies derive from the Core Recommendations and provide more detailed suggestions to relevant state and local organizations and entities, including indigent defense leaders, juvenile defenders, other juvenile justice system stakeholders, and policymakers.

CORE RECOMMENDATIONS

Colorado has an obligation to treat youth in the justice system with dignity, respect, and fairness. In order to ensure the practical realization of due process and systemic accountability, Coloradans must tackle the following areas:

1. **Stop Marginalizing Juvenile Defense:** Juvenile defense must be recognized as a specialized area of practice and ongoing, specialized training must be made available to all attorneys handling delinquency cases.
2. **Ensure Timing and Appointment of Counsel:** Youth must receive early and timely access to counsel, and must have time for a meaningful consultation with counsel, prior to waiving that or any other rights, such as those forfeited when entering into plea agreements.
3. **Restrict Waiver of Counsel:** There must be a concerted effort to ensure that youth do not waive counsel prematurely, and if there is to be such a waiver, the court must make every effort to ensure that waiver is knowing and voluntary. The court must make certain that youth fully appreciate the short- and long-term direct and collateral consequences of waiving counsel and entering a plea. Courts must also strive to ensure that judicial colloquies with youth regarding their decision to waive counsel are thorough, comprehensive, and easily understood.
4. **Establish a Presumption of Indigence:** No child should be denied counsel because of a lack of resources. The indigence determination process creates barriers that prevent youth from receiving access to counsel in a timely manner and often forces youth into conflicts of interest with parents and attorneys. All children should be presumed indigent for the purpose of the *immediate* appointment of counsel at or before the first hearing. It is preferred, however, that all children, by virtue of their status as children, be presumed indigent throughout the life of the entire delinquency case.
5. **Eliminate Routine Use of Mechanical Restraints in the Courtroom:** The routine and indiscriminate handcuffing and shackling of all in-custody youth in the courtroom should be stopped. The use of mechanical restraints should be limited to the rare circumstance where a clear and present showing made on the record demonstrates that the child is a risk of flight or a danger to him/herself or others.
6. **Reallocate Resources:** Resources must be reallocated to support adequate juvenile defense practice and specialized units with training and supervision at the county/district level. These units should have a strong local presence and

operate with support, vision, and guidance from the state's administrative office. An effective structure for handling delinquency appeals is urgently needed and must be developed.

7. **Ensure Access to Counsel in Truancy Court:** Youth in truancy court who may be subject to detention or loss of liberty must have access to defense counsel.
8. **Create the Position of Chief Juvenile Defender:** Within the Office of the State Public Defender a new high level statewide position should be established to strengthen and enhance juvenile defense practice and policy across the state. The Chief Juvenile Defender would report to the Public Defender and provide leadership, develop standards, conduct training, identify gaps in research and practice, and ensure that the Office of the State Public Defender, the Public Defender Commission, and other key stakeholders have regular access to relevant and timely information about ongoing juvenile defense matters.
9. **Promulgate and Adopt Statewide Standards of Juvenile Defense Practice in Delinquency Proceedings:** Given the rapid changes and developments in juvenile jurisprudence, it is imperative to provide juvenile defenders with guidelines and performance expectations that are consistent with the evolution of the law and meet ethical practice demands. Statewide standards, accompanied by an implementation and enforcement strategy, would go a long way in enhancing the juvenile defense function and evening out justice by geography.
10. **Ensure Representation at all Critical Stages:** The continuity of representation must be ensured throughout the duration of the juvenile court process from the initial and detention hearings through any and all post-disposition stages.

IMPLEMENTATION STRATEGIES

Addressing the Core Recommendations requires simultaneous action by many different groups. Governmental and non-governmental organizations and communities must work together to increase understanding of the role of the juvenile defender, improve the quality of representation, and engage in systems reform, advocacy, data collection, and monitoring. The Implementation Strategies laid out below address specific challenges in Colorado and offer ideas for consideration. Coloradans must work together to ensure that any child brought before the justice system receives the fairness and due process to which they are entitled. Specifically:

The Judicial Branch should:

- Establish a statewide Juvenile Rules Committee to address specific juvenile defense practice issues and make recommendations to the Colorado Supreme Court;
- Appoint an Advisory Committee to oversee the recommendations in this Assessment, including the development of statewide juvenile defense guidelines or standards, and report back to the Colorado Supreme Court;
- Issue a Chief Justice directive clarifying the role and expectations of juvenile defense counsel in delinquency proceedings;
- Issue a Chief Justice directive calling for the elimination of the indiscriminate shackling of youth in juvenile courts across the state;
- Collect data in key metrics including appointment of counsel, the circumstances surrounding waiver of counsel, juvenile defense practice needs in rural areas, and the impact of vast fees and surcharges on youth and families;
- Develop expedited statewide procedures or protocols for expunging juvenile arrest and court records and getting youth off the sex offender registry; and
- Ensure judicial forms for mandatory protection orders do not exceed statutory authority.

The Legislative Branch should:

- Amend the right to counsel statute to clarify and ensure representation at all critical stages from the initial hearing, including first appearance and detention hearings, through post-disposition placement and sex offender registry reviews;
- Consider enacting a presumption of indigence for children throughout the duration of the case or, at a minimum, for the purpose of early appointment of counsel; and

- Ensure accountability and oversight of agencies and departments responsible for Colorado’s juvenile indigent defense systems.

The Executive Branch should:

- Work with the public defense system to develop mechanisms and shared responsibility for post-disposition representation; and
- Ensure non-legal department personnel, such as SB 94 employees, are not dispensing legal advice or acting in a quasi-attorney role.

The Office of the State Public Defender and Public Defender Commission should:

- Take leadership on issues and matters related to juvenile defense and create a high level, statewide, chief juvenile defender position to promote statewide uniformity and efficiency;
- Develop an effective statewide system for juvenile appeals;
- Take leadership on supporting and enhancing juvenile defense practice at the county/district level;
- Create an effective statewide system for petitioning youth off the sex offender registry and ensuring that juvenile sex offenders are represented at hearings on petitions for removal or exemption from the registry;
- Ensure adequate coverage and representation at initial hearings including first appearance and detention hearings and work with the Office of the Alternate Defense Counsel to ensure rapid coverage if conflicts arise;
- Challenge the lack of pre-file procedural protections in juvenile court;
- Develop mechanisms for providing post-disposition representation;
- Increase opportunities for juvenile defense-specific training and technical support; and
- Work with the Office of the Alternate Defense Counsel to improve and enhance juvenile defense practice and policy.

County/District Public Defender Trial Offices should:

- Change the culture of juvenile defense practice at the county/district level by insisting that defenders challenge on the record any perceived failures to observe due process;
- Establish permanent juvenile units with a supervisor;
- Eliminate forced rotation and develop a specialized juvenile defense practice;
- Develop expertise with respect to special populations of youth, including transfer youth, LGBT clients, and youth on immigration holds or facing deportation proceedings;
- Staff first appearance calendars and ensure representation at all initial and detention hearings; and
- Develop a greater understanding of mental health issues, special education, and other ancillary issues and use independent experts more assertively.

The Office of the Alternate Defense Counsel and the Alternate Defense Counsel Commission should:

- Play a much greater leadership role in statewide juvenile defense reform and support contractors at the local level to specialize in juvenile defense;
- Provide contractors with access to juvenile defense listservs, support groups, and other tools for building community and embracing the specialized nature of the practice;
- Develop a greater understanding of mental health issues, special education and other ancillary issues, and use independent experts more assertively;

- Work together with the Office of the State Public Defender in concrete ways to improve and enhance juvenile defense practice and policy; and
- Be vigilant in training on the vital differences between the role of the juvenile defender and that of a guardian *ad litem* (GAL) so that these roles do not become conflated in juvenile court.

Juvenile Court Judges and Magistrates should:

- Ensure individual, not group, advisements of rights;
- Actively work to remove barriers to access to counsel and reduce the number of youth who waive counsel;
- Ensure that each individual youth has a thorough and complete understanding of the waiver process and that all judicial admonitions and colloquies are spoken in developmentally appropriate terms;
- Not accept pleas at initial hearings until the child has had time for a proper consultation with counsel and counsel has had time to conduct at least a preliminary investigation and inform the youth in detail of the direct and collateral consequences of a plea;
- Take leadership to ensure that youth have counsel at detention and pre-trial hearings; and
- Ensure that youth are properly advised of the collateral consequences of adjudication in juvenile court as probation officers and SB 94 staff work toward case resolution.

Juvenile Probation Officers and SB 94 workers should:

- Ensure that counsel receives all reports and evaluations in a timely manner;
- Seek training on the role of juvenile defense counsel;
- Notify counsel in a timely manner if a young person is going to be charged with a technical or other violation of probation;
- Assist youth in accessing counsel at detention and pre-trial hearings;
- Be alert to the fact that youth should be properly advised by counsel of the collateral consequences of juvenile court adjudication; and

Not be allowed to impose detention time on a youth without a hearing and a judicial order.

Guardians *ad Litem* should:

- Be vigilant about the different roles and responsibilities of the juvenile defender and the GAL, and never serve in both capacities in the same case;
- Advocate for the appointment of defense counsel in delinquency and truancy cases; and
- Never stand in at the last minute for a client they do not know.

The Colorado Commission on Criminal and Juvenile Justice should:

- Establish and support a drafting committee to fully codify and re-write Title 19 to ensure clarity, inclusion of current adolescent development research, reflection of best practices, and protection of due process rights;
- Develop legislative strategies to amend the mandatory protection orders and mandatory out-of-home placement provisions for juveniles;
- Develop strategies to ensure that the rights of youth charged with truancy are protected if they are at risk of detention or other infringements on their liberty; and
- Commission a study on issues related to status offenders.

The Colorado Juvenile Justice and Delinquency Prevention Council should:

- Pass a resolution endorsing the right to counsel and reinforcing the role of counsel at all stages of delinquency court involvement;
- Fund opportunities for professional development and technical support for juvenile defenders, juvenile prosecutors, and juvenile court judges; and
- Monitor truancy, crossover, and other specialty courts for adherence to due process.

State and Local Bar Associations should work with the Colorado Juvenile Defender Coalition to:

- Create pre-file procedural protections for youth in diversion or other pre-trial programs;
- Develop the capacity to take on expungement cases and petitions for removal from the sex offender registry;
- Work with juvenile defense experts and others to promulgate comprehensive juvenile defense practice standards or guidelines; and
- Provide training and support to the juvenile defense bar.

Law Schools should:

- Partner with public defense systems and create juvenile defense clinics to provide representation at truancy court, in post-disposition matters, and at suspension or expulsion hearings, in addition to providing general support to engage in any number of direct, appellate, or specialized policy research or litigation.

Non-profit, Advocacy, and Community Groups should:

- Monitor data collected by the judicial department regarding juvenile defense practice, and the impact of court processing, fees, and waiver of counsel on youth and families;
- Champion the role of juvenile defenders and zealous advocacy for children in juvenile court;
- Support and develop community based alternatives to secure detention and commitment;
- Engage court-involved youth and family in advocacy efforts; and
- Educate youth and families about the consequences of juvenile adjudications.

ENDNOTES

1. *In re Winship*, 397 U.S. 358, 365-66 (1970).
2. U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 93-95 (2006). Colorado was the second state in the nation to establish a separate juvenile court, doing so 110 years ago this March. Laoise King, *Colorado Juvenile Court History: The First Hundred Years*, COLORADO LAWYER, 32 Colo. Law. 63 (2003).
3. U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 95-96 (2006).
4. *Id.* at 95.
5. *Id.* at 94.
6. Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 794-95 (1966), cited in *In re Gault*, 387 U.S. 1, 11 (1967).
7. *Gault*, 387 U.S. at 17.
8. *Id.* at 15 n. 14.
9. 372 U.S. 335 (1963).
10. *Id.* at 344.
11. 387 U.S. 1.
12. *Id.* at 18 n.23 (internal quotations and citation omitted).
13. *Id.* at 36.
14. *Id.*
15. *Id.*
16. *Id.* at 18.
17. *Id.* at 55.
18. *Id.* at 56-7.
19. *In re Winship*, 397 U.S. 358 (1970).
20. *Breed v. Jones*, 421 U.S. 519 (1975).
21. *Kent v. United States*, 383 U.S. 541 (1966).
22. *Winship*, 397 U.S. at 365-66.
23. THE PRESIDENT'S COMM'N OF LAW ENFORCEMENT AND THE ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME ON A FREE SOCIETY, 86-87 (1967), cited in *Gault*, 387 U.S. at 41 n.65.
24. Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245, 255-56 (2005).
25. *Id.*
26. NAT'L JUVENILE DEFENDER CENTER, ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT 9 (2009).
27. NAT'L JUVENILE DEFENDER CENTER & NAT'L LEGAL AID & DEFENDER ASS'N, TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS (2nd ed. 2008), available at http://www.njdc.info/pdf/10_Core_Principles_2008.pdf.
28. CRIME AND JUSTICE IN COLORADO, 2008-2010, OFFICE OF RESEARCH AND STATISTICS, DIVISION OF CRIMINAL JUSTICE 73 (2011), available at <http://dcj.state.co.us/ors/pdf/docs/CJ08-10.pdf> [hereinafter CRIME AND JUSTICE IN COLORADO].
29. *Id.* at 75.
30. *Graham v. Florida*, 130 S.Ct 2011, 2032 (2010).
31. *Id.*
32. COLO. CONST. art. VI.

33. COLO. CONST. art. VI, §2. “The Supreme Court also has direct appellate jurisdiction over cases in which a statute has been held to be unconstitutional, cases involving decisions of the Public Utilities Commission, writs of habeas corpus, cases involving adjudication of water rights, summary proceedings initiated under the Election Code, and prosecutorial appeals concerning search and seizure questions in pending criminal proceedings. All of these appeals are filed directly with the Supreme Court, and, in these cases bypass the Court of Appeals. The Supreme Court also has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions.” Judicial Branch, State of Colorado, *Colorado Supreme Court*, http://www.courts.state.co.us/Courts/Supreme_Court/Index.cfm (last visited Dec. 18, 2012) [hereinafter *Colorado Supreme Court*].
34. *Colorado Supreme Court*, *supra* note 33.
35. *Id.*; COLO. CONST. art. VI, §7.
36. COLO. CONST. art. VI; *Colorado Supreme Court*, *supra* note 33.
37. COLO. CONST. art. VI, §1; COLO. REV. STAT. §19-1-104 (2012).
38. JUDICIAL BRANCH, STATE OF COLORADO, DENVER JUVENILE COURT, SECOND JUDICIAL DISTRICT OVERVIEW (2012), *available at* http://www.courts.state.co.us/userfiles/File/Court_Probation/Supreme_Court/Judicial_Nominating_Commissions/Overviews/02_Overview.pdf.
39. COLORADO JUDICIAL BRANCH, ANNUAL STATISTICAL REPORT: FY 2011 17 (2011), *available at* http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/Annual%20Report%20FY2011.pdf.
40. COLO. REV. STAT. § 19-1-108(1) (2012). This request cannot be made at hearings advising the juvenile of his or her rights, detention hearings, or preliminary hearings held pursuant to § 19-2-705.
41. COLO. CONST. art. VI.
42. § 22-33-108.
43. *See, e.g.*, OFFICE OF THE DISTRICT ATTORNEY, EIGHTEENTH JUDICIAL DISTRICT OF COLORADO, FINANCIAL STATEMENTS: DECEMBER 31, 2011, *available at* <http://www.da18.org/Portals/0/Uploads/PDFs/18th%20Judicial%20DA%202011%20Audited%20FS.pdf>.
44. COLORADO DISTRICT ATTORNEY’S COUNCIL, <http://www.cdacweb.com/> (last visited Dec. 18, 2012).
45. *See, e.g.*, DENVER DA, http://www.denverda.org/Office_Overview.htm (last visited Dec. 18, 2012); 4TH JUDICIAL DISTRICT ATTORNEY, JUVENILE PROSECUTION, <http://www.4thjudicialda.com/ProsecutionUnits5.aspx> (last visited Dec. 18, 2012); LARIMER COUNTY DISTRICT ATTORNEY: JUVENILE DISTRICT COURT, <http://larimer.org/da/juvenile.htm> (last visited Dec. 18, 2012).
46. § 22-33-108(4).
47. §§ 21-1-101, 21-2-101.
48. *See* §§ 21-1-104, 21-2-103, 19-2-706(2).
49. SUPREME COURT OF COLORADO, OFFICE OF THE CHIEF JUSTICE, CHIEF JUSTICE DIRECTIVE 04-04, APPOINTMENT OF STATE-FUNDED COUNSEL IN CRIMINAL AND JUVENILE DELINQUENCY CASES AND FOR CONTEMPT OF COURT 2; *passim* (2011), *available at* http://www.courts.state.co.us/Courts/Supreme_Court/Directives/04-04amended06-11withAttachmentBrevised3-1-12.pdf [hereinafter CHIEF JUSTICE DIRECTIVE FOR THE APPOINTMENT OF COUNSEL]; *see also* *People v. Steinbeck*, 186 P.3d 54, 56-7 (Colo. App. 2007) (citing to the Chief Justice Directive).
50. *See* §§ 21-1-104, 21-2-103, 19-2-706(2).
51. OFFICE OF THE COLORADO STATE PUBLIC DEFENDER, <http://pdweb.coloradodefenders.us/> (last visited Dec. 18, 2012).
52. §21-1-103; CHIEF JUSTICE DIRECTIVE FOR THE APPOINTMENT OF COUNSEL, *supra* note 49. The Chief Justice Directive explains that the OSPD has attorneys on staff (deputy public defenders) to accept appointments.
53. § 21-1-101, *et seq.*
54. § 21-1-101 (2), (3).
55. §§ 21-1-101 (2), (3), 21-2-101 (2), (3).
56. Established pursuant to § 21-2-101.
57. *See* CHIEF JUSTICE DIRECTIVE FOR THE APPOINTMENT OF COUNSEL, *supra* note 49 at attachment D.
58. *See* CHIEF JUSTICE DIRECTIVE FOR THE APPOINTMENT OF COUNSEL, *supra* note 49 at attachment D(2). This does not include allowable costs for paralegals and investigators. As distinguished from OADC, judicial paid appointments for Court Appointed Counsel is \$65 per hour with a maximum total fee per appointment of \$2875 with a trial, \$2150 without a trial. *Id.*
59. *See* COLORADO ALTERNATE DEFENSE COUNSEL, <http://www.coloradoadc.org> (follow “FAQs” hyperlink; then follow “Attorneys” hyperlink) (last visited Dec. 18, 2012).

60. See JUDICIAL BRANCH, STATE OF COLORADO, OFFICE OF ALTERNATE DEFENSE COUNSEL FISCAL YEAR 2011-2012 BUDGET REQUEST 13, *available at* <http://www.coloradoadc.org/docs/OADC%20FY2011-2012%20Budget%20Request%20final.pdf>. OADC offered juvenile specific trainings from 2008 – 2012. In 2008, seven juvenile training hours were offered with 54 attendees. In 2009, seven hours were offered with 70 attendees. In 2010, there was no juvenile training hours recorded. In 2011, there were seven hours with 75 attendees and in 2012, six hours were offered with 75 attendees. *Id.*
61. § 21-2-101 (2), (3) (2012).
62. *Id.*
63. *Id.*
64. § 21-2-101 (4).
65. §19-2-706 (2); see CHIEF JUSTICE DIRECTIVE FOR THE APPOINTMENT OF COUNSEL, *supra* note 49 at 1.
66. See CHIEF JUSTICE DIRECTIVE FOR THE APPOINTMENT OF COUNSEL, *supra* note 49 at attachment D(2).
67. STATE OF COLORADO JOINT BUDGET COMMITTEE, APPROPRIATIONS REPORT: FISCAL YEAR 2011-2012 286, *available at* http://www.state.co.us/gov_dir/leg_dir/jbc/FY11-12apprept.pdf. (Allocated as follows: OSPD \$60,968,494, OADC \$23,232,674).
68. CRIME AND JUSTICE IN COLORADO, *supra* note 28 at 83.
69. *Id.* at 86.
70. CRIME AND JUSTICE IN COLORADO, *supra* n. 28 at 136; COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 19: District Court Juvenile Filings by Type*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/District%20Court/Table19.pdf (last visited 12/18/2012).
71. CRIME AND JUSTICE IN COLORADO, *supra* n. 28 at 101.
72. Data accurate as of 2011, according to state-based information. COLO DEP'T OF LOCAL AFFAIRS, https://dola.colorado.gov/demog_webapps/pag_parameters.jsf (last visited 12/18/2012). Confirmed with 2010 U.S. census data and the Colorado Office of Research and Statistics, which used that number to compute their DMC data, COLORADO OFFICE OF RESEARCH AND STATISTICS, *Juvenile Minority Contact at Different Points Across the Colorado Juvenile Justice System*, http://dcj.state.co.us/ors/pdf/Stats%20PDF/FY2011_JuvenileDMC.pdf (last visited 12/18/2012) [hereinafter *Colorado DMC Data*]. Alternatively, the Colorado Department of Human Services provides a slightly higher number of 543,413, according to COLORADO DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS, JUDICIAL DISTRICT PROFILE REPORT: FISCAL YEAR 2010-2011 1 (2012), *available at* http://www.colorado.gov/cdhsdyc/Resources-Publications/JD_ProfilesFY10-11.pdf.
73. COLORADO DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS, JUDICIAL DISTRICT PROFILE REPORT: FISCAL YEAR 2010-2011 1 (2012), *available at* http://www.colorado.gov/cdhsdyc/Resources-Publications/JD_ProfilesFY10-11.pdf. Alternative numbers suggest lower arrest rates for the year 2011. The Colorado Bureau of Investigation reports 34,131 statewide juvenile arrests in 2011. COLORADO BUREAU OF INVESTIGATION, http://crimeinco.cbi.state.co.us/cic2k11/state%20totals/statewide_juvenile_arrests.html (last visited 12/18/2012). The Colorado Office of Research and Statistics reported 30,446 arrests from July 1, 2010 through June 30, 2011 (FY 2011).
74. All three numbers come from COLORADO DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS, JUDICIAL DISTRICT PROFILE REPORT: FISCAL YEAR 2010-2011 1 (2012), *available at* http://www.colorado.gov/cdhsdyc/Resources-Publications/JD_ProfilesFY10-11.pdf. 433 outcomes from screenings (what happened as a result of the screening) were not reported. For FY 2011, the Colorado Office of Research and Statistics reported 4951 misdemeanor filings and 10088 felony juvenile filings, for a total of 15,039 filings. *Colorado DMC Data*, *supra* note 72. Additionally, the Colorado Judicial Branch reported 11,286 filings in FY 2011. COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 20 - Juvenile Delinquency Filings by Type of Case for FY 2011*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/District%20Court/Table20.pdf (last visited 12/18/2012).
75. These numbers come from *Colorado DMC Data*, *supra* note 72, and the DYJ commitment numbers are the same in COLORADO DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS, JUDICIAL DISTRICT PROFILE REPORT: FISCAL YEAR 2010-2011 1 (2012), *available at* http://www.colorado.gov/cdhsdyc/Resources-Publications/JD_ProfilesFY10-11.pdf.
76. CRIME AND JUSTICE IN COLORADO, *supra* n. 28 at 11.
77. *Id.* at 95.
78. *Id.* Note that this data is only available for more serious arrests for which fingerprints were taken.
79. *Id.* at 98.
80. COLORADO DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS, JUDICIAL DISTRICT PROFILE REPORT: FISCAL YEAR 2010-2011 2 (2012), *available at* http://www.colorado.gov/cdhsdyc/Resources-Publications/JD_ProfilesFY10-11.pdf.
81. Reporting on racial and ethnic minorities is complicated by limitations on data collection at different points in the criminal justice system. This particularly affects Hispanic youth, whose race may be recorded as "white" without additional data on ethnicity. COLORADO JUVENILE DEFENDER COALITION, RE-DIRECTING JUSTICE: THE CONSEQUENCES OF PROSECUTING YOUTH AS ADULTS AND THE NEED TO RESTORE JUDICIAL OVERSIGHT

- 33 (2012), available at <http://cjd.cdc.org/wp/wp-content/uploads/2012/03/re-directing-justice-full-report.pdf>; see, e.g., *Colorado DMC Data*, *supra* note 72, revealing that judicial race data often does not distinguish between race and ethnicity.
82. Annie E. Casey Foundation, *Kids Count: Data Across States*, <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?ind=7288> (last visited 12/18/2012).
83. Annie E. Casey Foundation, *Kids Count: Children in Poverty: U.S. Census Bureau, American Community Survey: Single-Year Estimates (Percent) – 2011* <http://datacenter.kidscount.org/data/bystate/Rankings.aspx?state=CO&ind=459> (last visited 1/2/2013); Annie E. Casey Foundation, *Kids Count: Uninsured Children Under 19: Colorado Health Institute/ACS (Percent) – 2010*, <http://datacenter.kidscount.org/data/bystate/Rankings.aspx?state=CO&ind=5946> (last visited 1/2/2013).
84. Annie E. Casey Foundation, *Kids Count: High School Graduation Rates by County (Percent) – 2011*, <http://datacenter.kidscount.org/data/bystate/Rankings.aspx?state=CO&ind=6375> (last visited 1/2/2013).
85. Colo. Dep't of Corrections, *Cost Per Offender by Facility*, <http://www.doc.state.co.us/sites/default/files/opa/FY%202011-12%20Cost%20Per%20Day%20Final.pdf> (last visited 1/2/13); COLO. GEN. ASSEMBLY JOINT BUDGET COMM., DEP'T OF EDUC. FY 2013-14 STAFF BUDGET BRIEFING 6 (2012), available at http://www.state.co.us/gov_dir/leg_dir/jbc/2012-13/edubrf.pdf.
86. Children's Defense Fund, *Children in Colorado Fact Sheet*, <http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cits/2012/2012-colorado-children-in-the-states.pdf> (last visited 12/18/2012).
87. COL. DEP'T OF HUMAN SERV., DIV. OF YOUTH CORR., SENATE BILL 94 REFERENCE MANUAL 16 (2009), available at http://www.colorado.gov/cdhdsyc/Resources-Publications/SB94_ReferenceManualFINAL_2009_Rev7-09.pdf.
88. *Id.* at 20.
89. See, e.g., THE CENTER FOR RESEARCH STRATEGIES & THE AURORA RESEARCH INST., EVALUATION OF THE SENATE BILL 94 PROGRAM: INNOVATIVE, LOCAL IMPLEMENTATION, ANNUAL REPORT: FISCAL YEAR 2011-2012 7 (2012), available at http://www.colorado.gov/cdhdsyc/Resources-Publications/SB94_2012_Annual_Report.pdf; COLO. REV. STAT. § 19-2-905 (2012).
90. *General Probation Information*, JUDICIAL BRANCH OF THE STATE OF COLO., <http://www.courts.state.co.us/Probation/Index.cfm> (last visited 12/19/2012).
91. COLO. REV. STAT. §§ 19-2-907, 19-2-925 (2012).
92. *Probation FAQs*, JUDICIAL BRANCH OF THE STATE OF COLO., <http://www.courts.state.co.us/Probation/FAQs.cfm> (follow "Are all adults and juveniles who are on Probation required to be supervised by the Probation Department?" hyperlink) (last visited 12/19/2012).
93. COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 73: Juvenile Probation Successful/Unsuccessful Terminations*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/Juvenile%20Probation/Table73.pdf (last visited 12/19/2012).
94. COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 94: Colorado State Probation Intensive Programs Juvenile Intensive Supervision Probation (JISP) Type of Revocation*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/JISP/Table94.pdf (last visited 12/19/2012).
95. COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 73: Juvenile Probation Successful/Unsuccessful Terminations*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/Juvenile%20Probation/Table73.pdf (last visited 12/19/2012); COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 92: Colorado State Probation Intensive Programs Juvenile Intensive Supervision Probation (JISP) Successful/Unsuccessful Terminations*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/JISP/Table92.pdf (last visited 12/19/2012).
96. COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 71: Colorado State Juvenile Probation New Clients by Age*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/Juvenile%20Probation/Table71.pdf (last visited 12/19/2012); COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 38: Grand Totals – Probation Adult Regular, Private, Juvenile Regular, Intensive Programs, Monitoring and Investigations for FY2010 and FY2011*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/Colorado%20Probation/Table38.pdf (last visited 12/19/2012).
97. COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 70: Colorado State Juvenile Probation New Clients by Gender*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/Juvenile%20Probation/Table70.pdf (last visited 12/19/2012).
98. COLORADO JUDICIAL BRANCH, *Annual Statistical Report: FY 2011, Table 72: Colorado State Juvenile Probation New Clients by Ethnic Group*, http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2011/Juvenile%20Probation/Table72.pdf (last visited 12/19/2012).
99. COLO. REV. STAT. § 19-2-402 (2012).
100. § 19-2-402.5.

101. S.B. 03-286, 2003 Leg., 64th Gen. Assemb. (Colo. 2003); CRIME AND JUSTICE IN COLORADO, *supra* n. 28 at 102.
102. S.B. 11-217, 2011 Leg., 68th Gen. Assemb. (Colo. 2011).
103. *Juvenile Detention - History and Current*, COLO. DEP'T OF HUMAN SERVS., <http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251581931131> (last visited 12/19/2012).
104. *Youth Corrections*, COLO. DEP'T OF HUMAN SERVS., <http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251580877620> (last visited 12/19/2012).
105. Kirk Mitchell, *With Fewer Kids Held, Colorado to Close Two Juvenile Detention Facilities*, DENV. POST, Oct. 6, 2011, http://www.denverpost.com/recommended/ci_19050999#ixzz2GpxiZ6lM.
106. *Youth Corrections*, COLO. DEP'T OF HUMAN SERVS., <http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251580877620> (last visited 12/19/2012).
107. COLO. REV. STAT. tit. 19 (2012).
108. § 19-1-102.
109. § 19-2-102.
110. *Id.*
111. § 19-2-110.
112. § 19-2-104.
113. *Id.*
114. § 19-2-104(6).
115. § 19-2-104(5).
116. *Id.*
117. § 19-2-517.
118. § 19-2-518.
119. It is important to note that the explanation of the direct file regime herein is based on the law as amended on April 20, 2012. NJDC's on-the-ground observations were conducted prior to this date, when Colorado's direct file law allowed for broader categories of cases to be filed directly in adult court.
120. § 19-2-517(1)(a).
121. § 19-2-517(3)(a).
122. *Id.*
123. § 19-2-517(1.5).
124. § 19-2-517(3)(c).
125. § 19-2-518(1)(a).
126. § 19-2-518(1)(a)(I)(B).
127. *See* COLO. R. JUV. P. 3.2 (not that the rule goes on to allow for the District Attorney to move for transfer any time prior to adjudication, if good cause is shown).
128. §§ 19-2-518(1)(b), 19-2-518(4)(a).
129. § 19-2-518(3).
130. § 19-2-518(4)(b).
131. § 19-2-518(2).
132. § 19-2-518 (4)(b)(I)-(XIV), (c).
133. 387 U.S. 1 (1967).
134. § 19-1-105.
135. COLO. R. JUV. P. 3; *see* §§ 19-2-108, 19-2-514(4) (defining "first appearance" as the first post-petition hearing).
136. § 21-1-103.
137. § 21-1-104.
138. § 21-1-103(2)(b).

139. *People in Interest of J.F.C.*, 660 P.2d 7, 8 (Colo. App. 1982). *See also People v. Simpson*, 51 P.3d 1022, 1026 (Colo. App. 2001).
140. § 19-2-706(2)(a).
141. § 21-1-103.
142. § 19-2-706(2)(a).
143. § 19-2-706(2)(c).
144. § 19-2-706(2)(d).
145. § 19-1-105(2).
146. § 19-2-502(1).
147. § 19-2-502(3).
148. § 19-2-507(5).
149. § 19-2-507(2).
150. § 19-2-507(4)(a).
151. § 19-2-507(4)(b).
152. § 19-2-507(1).
153. COLO. R. JUV. P. 3.7(a); § 19-1-103(94.5).
154. THE CENTER FOR RESEARCH STRATEGIES & THE AURORA RESEARCH INSTITUTE, EVALUATION OF THE SENATE BILL 94 PROGRAM: INNOVATIVE, LOCAL IMPLEMENTATION, ANNUAL REPORT: FISCAL YEAR 2011-2012 4 (2012), *available at* http://www.colorado.gov/cdhsdyc/Resources-Publications/SB94_2012_Annual_Report.pdf.
155. § 19-2-508(3)(c)(I).
156. § 19-2-508(2).
157. § 19-2-508(3)(a)(I).
158. § 19-2-508(3)(a)(III).
159. *Id.*
160. § 19-2-508(3)(a)(IV).
161. § 19-2-508(3)(VII).
162. § 19-2-508(3)(b)(I).
163. *Id.*
164. § 19-2-509(1).
165. § 19-2-509(2).
166. § 19-2-302.
167. § 19-2-302(4).
168. *Id.*
169. §§ 19-2-509(3), 16-4-107.
170. § 19-2-510.
171. §§ 19-2-508(3)(a)(V), 19-2-512.
172. § 19-2-508(3)(a)(V).
173. *Id.*; COLO. R. JUV. P. 3.1.
174. § 19-2-514(1), (2).
175. § 19-5-514(4).
176. § 19-2-514(2).
177. § 19-2-706; COLO. R. JUV. P. 3.

178. §§ 19-2-705, 19-2-706; COLO. R. JUV. P. 3; (providing the right to request a preliminary hearing when the allegation is a class one, two, or three felony, for certain class four, five, and six felonies, and for certain sexual assault allegations); § 19-2-107 (allowing for jury trial demands when the allegations involve an aggravated juvenile offender or an act that would constitute a crime of violence, as defined by statute).

179. § 19-2-706; COLO. R. JUV. P. 3.

180. § 19-2-707 (1)(a).

181. § 19-2-707 (1)(a), (c).

182. § 19-2-707 (3).

183. § 19-2-707(2).

184. § 18-6-803.5.

185. §§ 19-2-601(1)(a), 19-2-516(4).

186. § 19-2-601(2).

187. § 19-2-512(2).

188. § 19-1-103(94.1).

189. § 19-2-512(2).

190. § 19-2-703 (such an informal adjustment requires the juvenile to waive his or her right to a speedy trial).

191. § 19-2-704, 19-2-303.

192. § 19-2-103(44).

193. § 19-2-705.

194. § 19-2-705(1.5)(b).

195. § 19-2-705(1)(a); COLO. R. JUV. P. 33.3; COLO. R. CRIM. P. 16.

196. § 19-2-705(1)(a).

197. § 19-2-705(1)(b) (providing an extension of the 30-day time limit for good cause).

198. § 19-2-705(1)(d).

199. § 19-2-705(2).

200. § 19-2-705(1.5)(a).

201. COLO. R. JUV. P. 3.2.

202. COLO. R. JUV. P. 3.2(d).

203. COLO. R. JUV. P. 3.2.

204. COLO. R. JUV. P. 3.3; COLO. R. CRIM. P. 16.

205. COLO. R. CRIM. P. 16(I).

206. COLO. R. CRIM. P. 16(II).

207. COLO. R. CRIM. P. (V)(b).

208. COLO. REV. STAT. § 19-2-511 (1).

209. § 19-2-708; COLO. R. JUV. P. 3(c).

210. COLO. R. JUV. P. 3(b)

211. § 19-2-709.

212. § 19-2-709(1.5).

213. § 19-2-709(4).

214. §§ 19-1-105, 19-2-107(1).

215. § 19-2-107(1).

216. § 19-2-107(3).

217. § 19-2-601(3).

218. § 19-2-107(2).

219. § 19-2-708.

220. §§ 19-2-107(4), 19-2-108, 18-1-405; COLO. R. CRIM. P. 48(b).

221. § 19-2-509(4)(b).

222. § 19-1-106(2).

223. §§ 19-1-106(2), 19-1-106(3)

224. § 19-2-802 (2012) (unless the Juvenile Code specifically provides otherwise as to a particular rule of evidence).

225. § 19-2-804(1).

226. § 19-2-804(2).

227. § 19-2-804(3).

228. § 19-2-906(3)(c).

229. § 19-2-902 (2012).

230. §§ 19-2-904, 16-2-201.

231. §§ 19-2-1301, 16-8.5-101.

232. § 19-2-1301(4).

233. § 19-2-905.

234. *Id.*

235. § 19-2-905(4).

236. § 19-2-906.

237. § 19-2-907.

238. § 19-2-909(1)(b).

239. § 19-2-909(2).

240. § 19-2-909(1)(a).

241. § 19-2-910.

242. § 19-2-911.

243. § 19-2-912.

244. § 19-2-913.

245. § 19-2-914.

246. § 19-2-915.

247. § 19-2-916

248. §§ 19-2-917, 19-2-918, 19-2-918.5, 19-2-907(l).

249. § 19-2-907(3).

250. § 19-2-919.

251. § 19-2-516

252. *Id.*

253. § 19-2-908(1)(a), (b).

254. *Id.*

255. § 19-2-516.

256. § 19-2-908(1)(c).

257. § 19-2-908(1)(c)(I)(A).

258. § 19-2-908(1)(c)(I)(B).

259. § 19-2-516.

260. § 19-2-601(5)(b).

261. § 19-2-601(5)(a)(I)(D).

262. § 19-2-601(8)(a)(I).

263. *Id.*

264. §§ 19-2-601(8)(a)(II), (8)(c).

265. § 19-2-601(8)(b).

266. § 16-22-103(4), (5).

267. § 16-22-113.

268. § 19-2-906(4).

269. § 19-2-906.5(2)(a).

270. *Id.*

271. § 19-2-1002(8).

272. § 19-2-925(4).

273. §§ 19-2-206, 19-2-1002.

274. § 19-2-1002(3).

275. § 19-2-1002(1).

276. § 19-2-1002(3)(a)(I).

277. § 19-2-1002(3)(a)(II).

278. § 19-2-1002(4).

279. § 19-2-1002(5)(a).

280. *Id.*

281. § 19-2-1002(8).

282. §§ 19-1-109(1), 19-2-903(1).

283. § 19-2-903(1).

284. §§ 19-1-109, 13-4-102 (1); *People in Interest of B.W.*, 601 P.2d 1086 (Colo. App. 1979).

285. *People v. P.L.V.*, 472 P.2d 127 (Colo. 1970).

286. § 16-12-102; *People v. S.X.G.*, 269 P.3d 735 (Colo. 2012).

287. § 22-33-108.

288. § 22-33-107.

289. § 22-33-108.

290. § 22-33-108(6).

291. § 22-33-108(7)(a).

292. § 22-33-108(7).

293. COLO. R. JUV. P. 3.8.

294. § 19-2-508(8)(a).

295. COLO. R. JUV. P. 3.8.

296. *Id.*

297. § 19-1-306(2)(a).

298. § 19-1-306(6).

299. § 19-1-306(7)

300. § 19-1-306 (1), (3).

301. § 19-1-306.

302. § 16-22-103(4).

303. § 16-22-102(9).
304. § 16-22-103(5)(a).
305. § 16-22-103(5)(b).
306. § 16-22-113(1), (1)(e).
307. § 16-22-113 (1)(e).
308. § 16-22-113(2)(a).
309. § 16-22-113(2)(c).
310. § 16-22-113(1.3)(a).
311. § 16-22-113 (1.3)(b)(I).
312. § 16-22-113(1.3)(a), (b)(I).
313. § 16-22-113(1.3)(b)(II).
314. § 16-22-113(1.3)(b)(III).
315. *People v. Montaine*, 7 P.3d 1065 (Colo. App. 1999). *But see In re C.P.*, 967 N.E.2d 729 (Ohio 2012), finding that automatically subjecting certain juveniles to mandatory, lifetime sex-offender registration and notification requirements violates both federal and state prohibitions against cruel and unusual punishment, and violates due process under both the state and federal constitutions.
316. §§ 16-11.7-104, 16-11.7-105.
317. *In re Gault*, 387 U.S. 1, 11 (1967).
318. *People v. Gabriesbeski*, 262 P.3d 653, 659-60 (Colo. 2011).
319. COLORADO STATE PUBLIC DEFENDER, FISCAL YEAR 2011-12 BUDGET HEARING 9-14 (2010), available at http://www.state.co.us/gov_dir/leg_dir/jbc/2010-11/judhrghospd.pdf.
320. GUIDELINES ON INDIGENT DEFENSE 1.1 (Alternate Defense Counsel of Colorado), available at <http://www.coloradoadc.org/docs/GuidelinesIndigentDefense.pdf>.
321. *Id.* at 1.2
322. *See Lafler v. Cooper* 132 S.Ct. 1376, 1384 (2012); *Missouri v. Frye* 132 S.Ct. 1399, 1407-08 (2012); *Padilla v. Kentucky*, 130 S. Ct. 1473, 1486 (2010).
323. COLO. REV. STAT. § 19-2-706 (2012); COLO. R. JUV. P. 3.
324. § 21-1-103.
325. § 21-1-104.
326. *Lafler*, 132 S.Ct. at 1384; *Frye*, 132 S.Ct. at 1407-08.
327. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 353-354 (2003); Allison Redlich & Gail Goodman, *Taking Responsibility for an Act Not Committed*, 27 LAW & HUM. BEHAV. 141 (2003).
328. Jason Chein et al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14 DEVELOPMENTAL SCIENCE F1 (2011); Laurence Steinberg et al., *Age Differences in Sensation-seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 DEVELOPMENTAL PSYCHOLOGY 1764 (2008).
329. Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEVELOPMENT 28 (2009); Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333 (2003).
330. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333 (2003); Jodi Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29 LAW & HUM. BEHAV. 723 (2005); Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134 (1980).
331. JUVENILE JUSTICE STANDARDS: A BALANCED APPROACH, STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES §2.2(b)(iv) (Inst. for Judicial Admin. & Am. Bar Ass'n, 1996).
332. JUVENILE JUSTICE STANDARDS: A BALANCED APPROACH, STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES §3.3(a) (Inst. for Judicial Admin. & Am. Bar Ass'n, 1996).
333. NAT'L JUVENILE DEFENDER CENTER, ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT 9 (2009).
334. NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 90 (2005).

335. *Id.*
336. See *People v. J.J.H.*, 17 P.3d 159, 163 (Colo. 2001).
337. COLO. REV. STAT. § 19-2-706 (2012).
338. ELIZABETH CALVIN, NAT'L JUVENILE DEFENDER CENTER, LEGAL STRATEGIES TO REDUCE THE UNNECESSARY DETENTION OF CHILDREN 56 (2004), available at http://www.njdc.info/pdf/detention_guide.pdf.
339. Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333 (2003).
340. § 19-2-908(a).
341. See § 19-1-306(2)(a) for the statute on expungement of juvenile delinquency records.
342. § 19-2-706(2)(d).
343. § 21-1-104(1)(b).
344. COLORADO JUDICIAL BRANCH, ANNUAL STATISTICAL REPORT FY 2011, TABLE 20: DISTRICT COURT JUVENILE DELINQUENCY FILINGS BY TYPE, available at http://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2008/Table20.pdf; COLORADO JUDICIAL BRANCH, DIVISION OF PLANNING AND ANALYSIS, COLORADO COURT OF APPEALS: JUVENILE AND ADULT CRIMINAL APPEAL FILINGS 1999 TO 2008 (on file with author).
345. 387 U.S. 1 (1967).
346. *In re Winship*, 397 U.S. 358, 365-66 (1970).
347. *Colorado DMC Data*, *supra* note 72.
348. *Id.*
349. *Id.*
350. COLO. REV. STAT. § 16-22-113(1.3) (2012).
351. PATRICIA PURITZ ET AL., ABA JUVENILE JUSTICE CENTER, A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 12 (1995), available at <http://www.njdc.info/pdf/cfjfull.pdf>.
352. HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES (2012).

APPENDIX A

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 28th 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
1. Income Guidelines 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	
2. Expenses vs. Income (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	
3. Charge (most severe) vs. Assets which could be used to pay defense costs (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	
TOTAL POINTS				
150 or greater		Less than 150		
☐ 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.)		☐ 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 _____

INCOME ELIGIBILITY GUIDELINES						
(amended January, 2012)						
Family Size	Monthly Income*	Monthly Income plus 10%	Monthly Income plus 75%	Yearly Income*	Yearly Income plus 10%	Yearly Income plus 75%
1	\$1,164	\$1,280	\$2,036	\$13,963	\$15,359	\$24,434
2	\$1,576	\$1,734	\$2,758	\$18,913	\$20,804	\$33,097
3	\$1,989	\$2,187	\$3,480	\$23,863	\$26,249	\$41,759
4	\$2,401	\$2,641	\$4,202	\$28,813	\$31,694	\$50,422
5	\$2,814	\$3,095	\$4,924	\$33,763	\$37,139	\$59,084
6	\$3,226	\$3,549	\$5,646	\$38,713	\$42,584	\$67,747
7	\$3,639	\$4,002	\$6,367	\$43,663	\$48,029	\$76,409
8	\$4,051	\$4,456	\$7,089	\$48,613	\$53,474	\$85,072
* 125% of poverty level as determined by the Department of Health and Human Services						
For family units with more than eight members, add \$330 per month to "monthly income" or \$3,960 per year to "yearly income" for each additional family member.						
Source: FEDERAL REGISTER (77FR4035, 01/26/2012)						

**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 ¹**

<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

¹ 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 if there is a question concerning the current authorized rate.

JUDICIAL PAID APPOINTMENTS

MAXIMUM HOURLY RATES ¹

<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

Appointment Type	With Trial / Without Trial	Effective Date
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.

¹ 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 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 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 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 1st 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 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

SUMMARY OF FEES	Activity:	
	6.0 hours @ \$65 per hour	\$390.00
	0.4 hours @ \$25 per hour	\$10.00
	TOTAL FEES	\$400.00
TOTAL MILEAGE	57 miles @ \$0.45 per mile (or rate defined by §24-9-104 C.R.S.)	\$25.65
SUMMARY OF OTHER EXPENSES	Copies: Police report and complaint = 12 pgs @ \$0.10	\$1.20
	Postage	\$0.44
	TOTAL OTHER EXPENSES	\$1.64
	TOTAL BILLING	\$427.29

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.

APPENDIX B

Colorado Rules of Juvenile Procedure

Part One through Part Three only.

Part One. Applicability

RULE 1. SCOPE OF RULES

These rules govern proceedings brought in the juvenile court under Title 19, 8B C.R.S. (1987 Supp.), also hereinafter referred to as the Children's Code. All statutory references herein are to the Children's Code as amended. Proceedings are civil in nature and where not governed by these rules or the procedures set forth in Title 19, 8B C.R.S. (1987 Supp.), shall be conducted according to the Colorado Rules of Civil Procedure. Proceedings in delinquency shall be conducted in accordance with the Colorado Rules of Criminal Procedure, except as otherwise provided by statute or by these rules.

Part Two. General Provisions

RULE 2. PURPOSE AND CONSTRUCTION

These rules are intended to provide for the just determination of juvenile proceedings. They shall be construed to secure simplicity in procedure and fairness in administration.

RULE 2.1. ATTORNEY OF RECORD

(a) An attorney shall be deemed of record when the attorney appears personally before the court, files a written entry of appearance, or has been appointed by the court.

(b) The clerk shall notify an attorney appointed by the court. An order of appointment shall appear in the file.

RULE 2.2. SUMMONS--SERVICE

(a) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g).

(b) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Civil Procedure, subsequent pleadings and notice may be served on such parties by regular mail.

RULE 2.3. EMERGENCY ORDERS

(a) On the basis of a report that a child's or juvenile's welfare or safety may be endangered, and if the court believes action is reasonably necessary, the court may issue an ex parte order.

(b) Where the need for emergency orders arises, and the court is not in regular session, the judge or magistrate may issue such orders orally, by facsimile, or by electronic filing. Such orders shall have the same force and effect. Oral orders shall be followed promptly by a written order entered on the first regular court day thereafter.

(c) Any time when a child or juvenile is subject to an emergency order of court, as herein provided, and the child or juvenile requires medical or hospital care, reasonable effort shall be made to notify the parent(s), guardian, or other legal custodian for the purpose of gaining consent for such care; provided, however, that if such consent cannot be secured and the child's or juvenile's welfare or safety so requires, the court may authorize needed medical or hospital care.

RULE 2.4. LIMITATION ON AUTHORITY OF JUVENILE MAGISTRATES

No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review of the magistrate's order or judgment.

Part Three. Delinquency

RULE 3. ADVISEMENT

(a) At the first appearance before the court, the juvenile and parent, guardian, or other legal custodian shall be fully advised by the court, and the court shall make certain that they understand the following:

- (1) The nature of the allegations contained in the petition;
- (2) The 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;
- (3) The juvenile need make no statement, and that any statement made may be used against the juvenile;
- (4) The juvenile has the right to a preliminary hearing, as set forth in Section 19-2-705, C.R.S.;
- (5) The juvenile's right to a jury trial, as provided by Section 19-2-107, C.R.S.;
- (6) That any plea of guilty by the juvenile must be voluntary and not the result of undue influence or coercion on the part of anyone;
- (7) The sentencing alternatives available to the court if the juvenile pleads guilty or is found guilty;
- (8) The juvenile's right to bail as limited by Sections 19-2-508 and 19-2-509, C.R.S., and the amount of bail, if any, that has been set by the court; and
- (9) That the juvenile may be subject to transfer to the criminal division of the district court to be tried as an adult, as provided by Section 19-2-518, C.R.S.

(b) If the juvenile pleads guilty to the allegations in the petition, the court shall not accept the plea without first determining that the juvenile is advised of all the matters set forth in (a) of this Rule and also determines that:

- (1) The juvenile understands the nature of the delinquent act alleged, the elements of the offense to which the juvenile is pleading guilty, and the effect of the juvenile's plea;
- (2) The plea of guilty is voluntary on the juvenile's part and is not the result of undue influence or coercion on the part of anyone;
- (3) The juvenile understands and waives his or her right to trial, including the right to a jury trial, if authorized by statute, on all issues;
- (4) The juvenile understands the possible sentencing alternatives available to the court;
- (5) The juvenile understands that the court will not be bound by representations made to the juvenile by anyone concerning the sentence to be imposed; and

(6) There is a factual basis for the plea of guilty. If the plea is entered as a result of plea agreement, the court shall satisfy itself that the juvenile understands the basis for the plea agreement, and the juvenile may then waive the establishment of a factual basis for the particular charge to which the juvenile is pleading guilty.

(c) If the juvenile pleads not guilty to the allegations in the petition, the court shall set the matter for an adjudicatory trial.

RULE 3.1. PETITION INITIATION, FORM AND CONTENT, TIME LIMIT FOR FILING PETITION

(a) A petition concerning a juvenile who is alleged to be delinquent shall be initiated in accordance with Section 19-2-512 and 513, C.R.S.

(b) If the petition is not filed within seventy-two (72) hours (excluding Saturdays, Sundays, and official court holidays) after a juvenile is taken into custody and not released to a parent, guardian or legal custodian, said juvenile shall be released upon order of court; provided that upon application to the court by the district attorney or any interested party and for good cause shown, the above time period may, in the discretion of the court, be extended for a reasonable period of time to be fixed by said court.

RULE 3.2. RESPONSIVE PLEADINGS AND MOTIONS

(a) No written responsive pleadings are required. Jurisdictional matters of age and residence of the juvenile shall be deemed admitted unless specifically denied.

(b) Any defense or objection which is capable of determination without trial of the general issues may be raised by motion.

(c) Defenses and objections based on defects in the institution of the action or in the petition, other than it fails to show jurisdiction in the court, shall be raised only by motion filed prior to the entry of a plea of guilty or not guilty. Failure thus to present any such defense or objection constitutes a waiver, but the court for good cause shown may grant relief from the waiver. Lack of jurisdiction shall be noticed by the court at any time during the proceedings.

(d) All motions shall be in writing and signed by the moving party or his counsel, except those made orally by leave of court.

(e) A request for waiver of jurisdiction to the district court for criminal proceedings shall be in writing and filed within 28 days of the initial advisement. Upon application to the court by the district attorney, and for good cause shown, a request may, in the discretion of the court, be filed at any time prior to the adjudicatory trial.

RULE 3.3. DISCOVERY

Disclosure by the prosecution and by the juvenile to the prosecution shall be governed by Crim.P. 16. "Prior criminal convictions" shall include juvenile adjudications.

RULE 3.4. COURT ORDER FOR NONTESTIMONIAL IDENTIFICATION

Any request for a court order for nontestimonial identification shall be governed by Crim.P. 16 and Crim.P. 41.1.

RULE 3.5. JURY TRIAL

(a) In any action in delinquency in which a juvenile is alleged to be an aggravated juvenile offender, as described in section 19-2-516, C.R.S. or is alleged to have committed an act that would constitute a crime of violence, as defined in section 18-1.3-406, C.R.S., if committed by an adult, the juvenile or the district attorney may demand a trial by a jury of not more than six persons except as provided in section 19-2-601(3)(a), C.R.S., or the court, on its own motion, may order a jury trial, with the exception that a juvenile is not entitled to a trial by jury when the petition alleges a delinquent

act which is a misdemeanor, a petty offense, a violation of a municipal or county ordinance, or a violation of a court order. When requesting a jury trial pursuant to this rule, a juvenile is deemed to have waived the right to have an adjudicatory trial within 60 days and is subject instead to an adjudicatory trial within 6 months. Unless a jury is demanded pursuant to subsection (1) of section 19-2-107, C.R.S., it shall be deemed waived.

(b) Examination, selection, and challenges for jurors shall be as provided by C.R.C.P. 47, except that the grounds for challenge for cause shall be as provided by Crim.P. 24.

RULE 3.6. PROBATION REVOCATION

Revocation of probation proceedings shall be governed by Crim.P. 32(f).

RULE 3.7. DETENTION

(a) The chief judge in each judicial district or the presiding judge of the Denver juvenile court shall designate a person(s) as officer(s) of the court with authority to determine whether a juvenile taken into temporary custody should be released to a parent, guardian, or other legal custodian, or admitted to a detention or shelter facility pending notification to the court and a detention hearing.

(b) The court shall maintain control over the admission, length of stay, and release of all juveniles placed in shelter or detention, except for admission into detention pursuant to Section 19-2-508(3)(c), C.R.S.

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.



National Juvenile Defender Center

1350 Connecticut Ave. NW, Suite 304
Washington, DC 20036
202.452.0010 (phone)
202.452.1205 (fax)
www.njdc.info