

**UPDATED SUMMARY
HOUSE BILL 14-1032**

Second Regular Session - Sixty-ninth Colorado General Assembly

This summary applies to the reengrossed version of this bill as introduced in the second house. It does not reflect any amendments that may be subsequently adopted. This summary reflects only the main points of the legislation.

Juvenile Defense Attorney Interim Committee. A promise to appear in court served upon a juvenile and the juvenile's parent, guardian, or legal custodian shall state: ~~in clear language that is understandable and appropriate to a juvenile:~~

- ! That the juvenile has the right to have *the assistance of counsel*;
- ! That counsel ~~will~~ *can* be appointed for the juvenile ~~or~~ *and* the juvenile's parent, guardian, or legal custodian ~~lacks~~ *lack* adequate resources to retain counsel or *the juvenile's parent, guardian, or legal custodian* refuses to retain counsel for the juvenile;
- ! ~~That, if the juvenile chooses to retain his or her own counsel, then the juvenile and the juvenile's parent, guardian, or legal custodian are advised to choose counsel that is experienced in representing juveniles in the juvenile justice system; and~~
- ! *That, to determine if the juvenile is eligible for court-appointed counsel, or to apply for court-appointed counsel, the juvenile's parent, guardian, or legal custodian is advised to call the office of the state public defender, visit the state public defender's office, or visit the state public defender's internet web site;*
- ! *That, to avoid delay in obtaining counsel, the juvenile's parent, guardian, or legal custodian is advised to apply for court-appointed counsel at least 5 days before the juvenile's promised date of appearance; and*
- ! The contact information for the local office of the state public defender (OSPD), *including the office's telephone number and address, and the address of the office's internet web site.*

When a juvenile is placed in a detention facility, a temporary holding facility, or a shelter facility designated by the court, the screening team shall promptly so notify the court, the district attorney, and the local office of the OSPD.

A juvenile who is detained shall be represented at the detention hearing by counsel. If the juvenile has not retained his or her own counsel, he or she shall be represented by the OSPD or, in the case of a conflict, by the office of alternate defense counsel (OADC). This representation shall continue unless:

- ! The juvenile retains his or her own counsel; or
- ! The juvenile is charged with an offense for which the juvenile may waive counsel and the juvenile has made a knowing, intelligent, and voluntary waiver of his or her right to counsel.

The scheduled time for a detention hearing must allow a juvenile's defense counsel

sufficient time to consult with the juvenile before the detention hearing. This consultation may be performed by secure electronic means if the conditions under which the electronic consultation is held allow the consultation to be confidential. The law enforcement agency that arrested the juvenile shall promptly provide to the court and to defense counsel the affidavit supporting probable cause for the arrest and the arrest report, if the arrest report is available, and the screening team shall promptly provide to the court and to defense counsel any screening material prepared pursuant to the juvenile's arrest.

A detention hearing shall not be combined with a preliminary hearing or a first advisement. Due to the limited scope of a detention hearing, the representation of a juvenile by appointed counsel at a detention hearing does not, by itself, create a *conflict basis for disqualification* in the event that such counsel is subsequently appointed to represent another individual whose case is related to the juvenile's case.

A summons issued by a court to a juvenile shall *state that*:

- ! ~~Explain that the court will appoint counsel for the juvenile if the juvenile does not retain his or her own counsel; and~~ *The juvenile has the right to have a lawyer at the hearing;*
- ! ~~State the contact information for the OSPD that serves the jurisdiction of the court.~~
- ! *The juvenile may be eligible for a lawyer at no charge;*
- ! *To find out if the juvenile is eligible for a lawyer at no charge, the juvenile's parent, guardian, or legal custodian should call or visit the OSPD; and*
- ! *A juvenile is more likely to have a free lawyer present at his or her hearing if his or her parent, guardian, or legal custodian calls or visits the OSPD at least 5 days before the hearing.*

At a juvenile's first appearance before the court, after the detention hearing or at the first appearance if the juvenile appears on a summons, the court shall advise the juvenile of his or her constitutional and legal rights, including the right to counsel. ~~The court shall appoint the OSPD or, in the case of a conflict, the OADC for the juvenile unless the juvenile has retained his or her own counsel or the juvenile has made a knowing, intelligent, and voluntary waiver of his or her right to counsel.~~

If a juvenile respondent has made an early application for appointed counsel and the OSPD has made a preliminary determination that the juvenile is eligible for appointed counsel, or if the court has appointed counsel for the juvenile, an OSPD attorney or, in the case of a conflict, an OADC attorney, shall be available to represent the juvenile at the juvenile's first appearance. If a juvenile respondent has not made an early application for appointed counsel for the juvenile but the juvenile requests appointment of counsel at the first appearance, the court shall determine if the juvenile is eligible for counsel. "Early application" means that the respondent has contacted OSPD and applied for representation of the juvenile not less than 5 days before the juvenile's scheduled court date for the first appearance and has provided sufficient information to OSPD to allow OSPD to make a preliminary determination of eligibility for representation. Failure of a juvenile's parent, guardian, or legal custodian to apply for court-appointed counsel may not be construed as

a waiver of the right to counsel or any other rights held by the juvenile.

If the juvenile and his or her parents, guardian, or other legal custodian are found to be indigent, or the juvenile's parents, guardian, or other legal custodian refuses to retain counsel for the juvenile, or the court, on its own motion, determines that counsel is necessary to protect the interests of the juvenile or other parties, or the juvenile is in the custody of the state department of human services or a county department of social services, the court shall appoint OSPD or, in the case of a conflict, OADC for the juvenile; except that the court shall not appoint the OSPD or OADC if:

- ! The juvenile has retained his or her own counsel; or*
- ! The juvenile has made a knowing, intelligent, and voluntary waiver of his or her right to counsel.*

If the court appoints counsel for the juvenile because of the refusal of the parents, guardian, or other legal custodian to retain counsel for the juvenile, the parents, guardian, or legal custodian, other than a county department of social services or the department of human services, shall be advised by the court that if the juvenile's parent, guardian, or legal custodian is determined not to be indigent, then the court will order the juvenile's parent, guardian, or legal custodian to reimburse the court for the cost of the representation unless the court, for good cause, waives the reimbursement requirement.

~~Any decision to waive the right to counsel shall be made by the juvenile himself or herself after consulting with his or her defense counsel. The court may accept a waiver of counsel by a juvenile only after finding that:~~

- ~~! The juvenile is of a sufficient maturity level to make a voluntary, knowing, and intelligent waiver of the right to counsel;~~
- ~~! The juvenile has consulted with counsel and understands the sentencing options that will be are available to the court in the event of an adjudication or conviction;~~
- ~~! The juvenile has not been coerced into making the waiver;~~
- ~~! The juvenile understands that the court will provide counsel if the juvenile's parent, guardian, or legal custodian is unable or unwilling to obtain counsel for the juvenile; and~~
- ~~! The juvenile understands the possible consequences that may result from an adjudication or conviction of the offense with which the juvenile is charged.~~

~~The court shall not accept a juvenile's waiver of his or her right to counsel in any proceeding relating to a case in which the juvenile is charged with:~~

- ~~! A sexual offense;~~
- ~~! A crime of violence;~~
- ~~! An offense for which the juvenile will receive a mandatory sentence upon his or her conviction of the offense; or~~
- ~~! An offense for which the juvenile is being charged as a repeat juvenile offender, as an aggravated juvenile offender, or as a mandatory sentence offender.~~

~~The court shall not accept a juvenile's attempt to waive his or her right to counsel if~~

~~the prosecuting attorney is seeking direct file proceedings or a transfer proceeding or if the juvenile is in the custody of the state department of human services or a county department of social services:~~

~~For purposes of applying for court-appointed counsel, the indigence of a juvenile is determined only by considering the juvenile's assets and income.~~

The appointment of counsel for a juvenile offender shall continue until the court's jurisdiction is terminated; the juvenile or the juvenile's parent, guardian, or legal custodian retains counsel for the juvenile; *the court finds that the juvenile or his or her parents, guardians, or other legal custodian has sufficient financial means to retain counsel or no longer refuses to retain counsel for the juvenile;* or the juvenile makes a knowing, intelligent, and voluntary waiver of his or her right to counsel.

A court shall not deem a guardian ad litem who is appointed by the court for a child in a delinquency proceeding to be a substitute for defense counsel for the juvenile.

The OSPD, before determining indigency, may provide ~~limited~~ representation to juveniles in detention hearings. ~~or adult defendants in custody who cannot post or are not allowed bond.~~

The OSPD, the OADC, and the judicial branch shall annually report certain data concerning juvenile delinquency proceedings.