

# **SUPREME COURT OF COLORADO**

## **OFFICE OF THE CHIEF JUSTICE**

### **APPOINTMENT OF STATE-FUNDED COUNSEL IN JUVENILE DELINQUENCY CASES**

This policy is adopted to assist the administration of justice with respect to the appointment of counsel in juvenile delinquency cases pursuant to Title 19. This policy does not cover appointments made pursuant to Titles 16 and 18, appointments of guardians ad litem for minors, or child's legal representatives (Office of the Child's Representative (OCR) appointments). For information concerning appointment of counsel in adult criminal cases, refer to Chief Justice Directive 04-04. For cases involving a state paid attorney appointed in the best interest of children and paid by the OCR, refer to Chief Justice Directive 04-06.

#### **I. STATUTORY AUTHORITY**

- A. The United States Supreme Court, in a case entitled *In re Gault*, 387 U.S. 1 (1967), determined that juveniles in delinquency proceedings have the same right to counsel as adults in criminal cases. The Colorado General Assembly codified this constitutional right in Article 2 of Title 19 of the Colorado Revised Statutes by stating that juveniles accused of delinquent acts have the right to the assistance of appointed counsel if the juvenile and the juvenile's parent, guardian, or legal custodian lack adequate resources to retain counsel. This right remains throughout the proceedings unless the juvenile makes a knowing, intelligent, and voluntary waiver of his or her right to counsel. The Colorado General Assembly, also in Article 2 of Title 19, statutorily expanded this constitutional right by providing that, irrespective of indigency, counsel for a juvenile should be appointed if the juvenile is detained and has not retained counsel; a juvenile requests counsel and the juvenile's parent, guardian, or legal custodian refuse to retain counsel for the juvenile; if the court determines that appointment of counsel is necessary to protect the interests of the juvenile or other parties; or if the juvenile is in the custody of the State Department of Human Services or a County Department of Social Services.
- B. State funds are appropriated to the Office of the Public Defender (PD) to provide for the representation of indigent persons in juvenile delinquency cases pursuant to §21-1-103, C.R.S. (2014). In addition, the Office of the Public Defender may be appointed in certain juvenile delinquency matters irrespective of indigency, pursuant to §19-2-508(2.5) and §19-2-706, C.R.S. (Effective November 1, 2014). State funds are appropriated to the Office of Alternate Defense Counsel (OADC) to provide for the representation of persons in juvenile delinquency cases in which the Public Defender declares a conflict of interest pursuant to §21-2-101, C.R.S., et seq (2014).

#### **II. INDIGENCY DETERMINATION**

- A. Any juvenile in a delinquency case, or the juvenile's parent, guardian, or legal custodian, requesting court-appointed representation on the basis of indigency must complete Form JDF219, Application for Public Defender, signed under oath and submit it to the Public Defender for review. Pursuant to §21-1-103(3), C.R.S., the Public Defender will make the

initial determination of eligibility for state-funded representation in accordance with the fiscal standards.

- B. An indigent juvenile is one whose financial circumstances or whose parent's, guardian's or legal custodian's financial circumstances prevent the juvenile from having equal access to the legal process (Attachments A, B, and C).
- C. In all cases, the court retains jurisdiction to determine whether the juvenile 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 juvenile's application for Public Defender. Based on a review of all information available, the court shall enter an order either granting or denying the juvenile'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. If the court determines the juvenile and juvenile's parent, guardian, or legal custodian are not indigent, the court may still appoint counsel for the juvenile if: a juvenile requests counsel and the juvenile's parent, guardian, or legal custodian refuse to retain counsel for the juvenile; if the court determines that appointment of counsel is necessary to protect the interests of the juvenile or other parties; or if the juvenile is in the custody of the State Department of Human Services or a County Department of Social Services.
- D. If the court finds the juvenile indigent and appoints the Public Defender, or in the case of a conflict, the Alternate Defense Counsel, the court may consider ordering the juvenile's or the juvenile's parent, guardian or legal custodian to make reimbursement in whole or in part to the State of Colorado pursuant to law using the process described in Section IV of this Chief Justice Directive.
- E. An attorney appointed by the court on the basis of indigency shall provide timely notice to the court in the event financial related information is discovered that would reasonably call into question the juvenile's or the juvenile's parent, guardian, or legal custodian'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 IV of this Chief Justice Directive shall apply. Based upon a reassessment of the juvenile'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: Except as described in paragraphs 2-4 below, to be eligible for representation by the Public Defender a juvenile and a juvenile's parent, legal guardian, or legal custodian in a delinquency case, must be indigent, as defined above and determined by the PD, subject to review by the court.
2. Juvenile in Custody/Detention Hearing: All juveniles in custody will be represented by counsel at his/her detention hearing. If the juvenile does not retain counsel, the PD, or in

the case of conflict, the OADC, will represent the juvenile at the detention hearing. No indigency application need be taken for detention hearing representation.

3. Appointments Irrespective of Indigency: Irrespective of indigency, the PD shall be appointed in all juvenile delinquency matters if the juvenile requested counsel and the juvenile's parent(s), guardian, or legal custodian has refused to retain private counsel; if the court finds such representation is necessary to protect the interest of the juvenile or other parties involved in the case; or, if the juvenile is in the custody of the State Department of Human Services or a County Department of Social Services. In the event the PD has a conflict, Alternate Defense Counsel shall be appointed as provided in in this directive.
4. Appointments To Assist in Motions Under Rule 35(c) of the Colorado Rules of Criminal Procedure: A juvenile may be represented by the PD to assist in motions under Rule 35(c) 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 there is no conflict with such representation.
5. Appointments for Appeals:
  - a. The court may appoint counsel for a juvenile for appeal for any of the reasons listed in this directive.
  - b. When a juvenile has an Alternate Defense Counsel attorney for the trial in a delinquency case, the PD shall be appointed to represent the juvenile on appeal unless the court determines that the PD has a conflict of interest.

**B. Appointment of Alternate Defense Counsel**

The 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 a juvenile receiving OADC representation, except in specific exceptional circumstances. Accordingly, upon specific written request by counsel for appointment of an additional attorney to assist in the defense of a juvenile, 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 of its intent to withdraw in all cases in which a conflict of interest exists. The court shall appoint an Alternate Defense Counsel attorney to represent juveniles 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(c) of the Colorado Rules of Criminal Procedure: A juvenile may be represented by 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 Section 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 juvenile.

#### **IV. REIMBURSEMENT TO THE STATE**

- A. For all new appointments made on or after November 1, 2014 in which the court appoints counsel for a juvenile in a delinquency case because of the refusal of a non-indigent parent, guardian, or 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 for good cause, waives the reimbursement requirement pursuant to §19-2-706(2)(b)(I), C.R.S. However, in accordance with §19-2-706(2)(b)(II), C.R.S., if the court finds that there exists a conflict of interest between the juvenile and the juvenile's parent, guardian or legal custodian such that the income and assets of the parent, guardian, or legal custodian are unavailable to the juvenile, then the court shall consider only the juvenile's own income and assets for purposes of determining whether to order reimbursement pursuant to this paragraph.
- B. For appointments made prior to November 1, 2014, in which the court had appointed counsel for a juvenile in a delinquency case because of the refusal of a non-indigent parent, guardian, or legal custodian to retain counsel for the juvenile, the appointment shall continue to be funded by the Judicial Department until the matter requiring representation is concluded. The Judicial Department shall continue to pursue reimbursement of all attorney fees and costs associated with these appointments. All monies collected by the Judicial Department shall be applied as a cost recovery to the Court Costs, Jury Costs, and Court Appointed Counsel budget line.
- C. Costs for representation provided by the PD or OADC may be assessed against the responsible party(ies) based upon the fixed rate of \$400 per case. However, for pre-November 1, 2014 appointments of state-funded counsel (non-PD/OADC), reimbursement shall be based upon the amounts expended by the Judicial Department for representation.
- D. When an appointment is made based on refusal of a non-indigent parent, guardian, or legal custodian to retain counsel for the juvenile, the PD or OADC shall notify the court upon making an appearance on the case. The State Court Administrator's Office will bill the parent \$400 for each case. The rate listed above shall apply on a per case basis; the court may waive the reimbursement requirement, for good cause, pursuant to §19-2-706(2)(b)(I), C.R.S.

**V. 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.
- 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.

This directive is effective November 1, 2014.

Done at Denver, Colorado this 31<sup>st</sup> day of October, 2014.

/s/

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Nancy E. Rice, Chief Justice

Applicant Name \_\_\_\_\_ Court \_\_\_\_\_

Case Number \_\_\_\_\_ Case Name \_\_\_\_\_

**FISCAL STANDARDS - ELIGIBILITY SCORING INSTRUMENT**

Use information from Form JDF219 and information provided by applicant during screening interview. Circle the points in the category that applies and transfer to the "Points" column. Total at end.

Factor				Points
<b>1. Income Guidelines</b> Gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workman's Compensation Benefits, Unemployment Benefits, and alimony.  Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, veteran's benefits earned from a disability, child support payments or other public assistance programs.  NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the Applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income.)	At or below guidelines	Up to 10% above guidelines	11% to 75% above guidelines (Not eligible if income is more than 75% above guidelines.)	
	<b>150</b>	<b>100</b>	<b>0</b>	
<b>2. Expenses vs. Income</b> (Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included.)	Monthly expenses exceed income by over \$100	Monthly expenses are within \$100 of income	Monthly income exceeds expenses by over \$100	
	<b>50</b>	<b>25</b>	<b>0</b>	
<b>3. Charge (most severe) vs. Assets which could be used to pay defense costs</b> (Assets to include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.)	Class 1 – Class 3 Felony or Habitual Offender related	Class 4 - Class 6 Felony	Class 1 - Class 3 Misdemeanor or Jailable Traffic	
	Assets \$0 - \$750	<b>150</b>	<b>125</b>	<b>50</b>
	Assets \$751 - \$1,500	<b>125</b>	<b>100</b>	<b>25</b>
	Assets \$1,501 - \$2,500	<b>100</b>	<b>75</b>	<b>0</b>
	Assets \$2,501 - \$5,000	<b>75</b>	<b>50</b>	<b>0</b>
	Assets \$5,001 - \$7,500	<b>50</b>	<b>25</b>	<b>0</b>
	Assets \$7,501 - \$10,000	<b>25</b>	<b>0</b>	<b>0</b>
	Assets over \$10,000	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL POINTS</b>				
<b>150 or greater</b>		<b>Less than 150</b>		
<input type="checkbox"/> Indigent - Eligible for Public Defender (Note: Reimbursement of costs of representation may be ordered by the court pursuant to Section 21-1-106, C.R.S.)		<input type="checkbox"/> Not Eligible for State-Funded Counsel		

EXCEPTION REQUESTED TO [ ALLOW / DISALLOW ] APPOINTMENT OF [PUBLIC DEFENDER / ALTERNATE DEFENSE COUNSEL (if PD conflict)] NOTWITHSTANDING THE ABOVE SCORE. (Documentation justifying request is attached.)

Evaluated by \_\_\_\_\_  
Print/Type Name
Evaluator Signature
Date

<b>INCOME ELIGIBILITY GUIDELINES</b>						
<b>Family Size</b>	<b>Monthly Income*</b>	<b>Monthly Income plus 10%</b>	<b>Monthly Income plus 75%</b>	<b>Yearly Income*</b>	<b>Yearly Income plus 10%</b>	<b>Yearly Income plus 75%</b>
1	\$1,256	\$1,382	\$2,198	\$15,075	\$16,583	\$26,381
2	\$1,692	\$1,861	\$2,960	\$20,300	\$22,330	\$35,525
3	\$2,127	\$2,340	\$3,722	\$25,525	\$28,078	\$44,669
4	\$2,563	\$2,819	\$4,484	\$30,750	\$33,825	\$53,813
5	\$2,998	\$3,298	\$5,246	\$35,975	\$39,573	\$62,956
6	\$3,433	\$3,777	\$6,008	\$41,200	\$45,320	\$72,100
7	\$3,869	\$4,256	\$6,770	\$46,425	\$51,068	\$81,244
8	\$4,304	\$4,735	\$7,532	\$51,650	\$56,815	\$90,388
<p>* 125% of poverty level as determined by the Department of Health and Human Services. For family units with more than eight members, add \$435 per month to "Monthly Income*" or \$5,225 per year to "Yearly Income*" for each additional family member.</p>						
<p>Source: Federal Register 82 FR 8831 (01/31/2017)</p>						

**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 14-01. Any juvenile, 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 juvenile or the juvenile's parent, guardian, or legal custodian shall apply for the Public Defender by completing the Application for Public Defender, form JDF219.
- If the juvenile is in custody and has not retained his or her own counsel, the court shall appoint the Office of the Public Defender, or in the case of a conflict, the Office of the Alternate Defense Counsel to represent the juvenile at the detention hearing. See §19-2-508, C.R.S. (Effective November 1, 2014).
- If the income of a juvenile defendant's parents, guardian, or legal custodian is at or below the income eligibility guidelines and he or she has no assets, as determined on form JDF219, the Public Defender may automatically elect to represent the defendant, and will submit the form JDF219 to the court to demonstrate eligibility.
- If the income of a juvenile defendant's parents, guardian, or legal custodian 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 JDF219 to the court to demonstrate ineligibility. If the Public Defender is appointed based on the parents, guardian, or legal custodian's refusal to retain private counsel, the judicial officer shall order reimbursement to the State, pursuant to Section IV of this Directive.
- If eligibility or ineligibility cannot be determined as described above, the eligibility-scoring instrument (Attachment A, Chief Justice Directive 14-01) will be completed, using information obtained on form JDF219. 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 juvenile. 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 juvenile will be represented by the Public Defender (or the Alternate Defense Counsel in case of Public Defender conflict) on the basis of indigency or due to the parents, guardian, or legal custodian refusing to retain private counsel. The Public Defender or juvenile 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.