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. 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.

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.” 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.

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. 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. The Commission also has the authority to discharge the State Public Defender for cause. 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. 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. The maximum total fee per appointment for juvenile cases is $2500 for a trial and $1750 without trial. 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. OADC has made an effort to designate specific attorneys to handle juvenile delinquency cases. OADC also provides juvenile-specific training for attorneys handling juvenile cases 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. 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. The Commission also has the authority to discharge the Director of the Alternate Defense Counsel. 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.”

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 Colo-
rado 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
delinquency petition. The number of delinquency cases filed statewide has decreased 34% between 2002 and 2010 ac-
cording 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 par-
ticular, 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 10.5% of children did not have health insurance. 83 The average high school graduation rate in 2011
was 73.9% , 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 annu-
ally. 85 The ratio of cost per prisoner to cost per student in Colorado is 2.6. 86
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

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

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

Member of Investigative Team
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 vocational 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. Probation is one of many sentencing options for juveniles that have been adjudicated delinquent. Some juveniles are supervised on probation by the Department of Human Services. In FY 2011, there were 843 revocations of regular juvenile probation—543, or 64%, for technical violations. There were 204 revocations of Juvenile Intensive Supervision Probation—123, or 60%, for technical violations. In FY 2011, there were 2940 (74%) successful regular juvenile probation terminations and 223 (50%) successful terminations of juvenile intensive supervision probation. 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. Of that total, 24% were female and 76% were male. The gender of 5% is unknown. By race, new juvenile probation cases broke down as 74% white, 1% black, 1% Asian, 20% Hispanic, 1% Native, and 2% other.

**Detention Centers and the Division of Youth Corrections**

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

The Division of Youth Corrections (DYC) is responsible for state-operated and privately-contracted detention facilities. 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. Due to declining commitment populations, DYC closed two commitment facilities in 2011. 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.
Juvenile Justice System Flowchart

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. 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 “to secure for each child care and guidance, preferably in his own home, as will best serve his welfare and the interests of society; to preserve and strengthen family ties whenever possible; to 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 “to 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.”

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.” In certain cases, the legislature intends the juvenile justice system to bring together “victims, the community, and juvenile offenders for restorative purposes.” 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.

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. 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. 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.

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. 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 court and (2) if the juvenile court waives its jurisdiction to the adult system following a transfer proceeding.

Filing Charges Against a Juvenile in Adult Criminal Court

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.

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. If a motion is filed, the judge will schedule a reverse-transfer hearing to be held with the preliminary hearing. 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.

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.

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. 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.
Any request for waiver of jurisdiction must be in writing and made within 28 days of the initial advisement. 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. 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. 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.

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.

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

1. The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;
2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
3. Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;
4. The maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;
5. The record and previous history of the juvenile;
6. The likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court;
7. The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;
8. The impact of the offense on the victim;
9. That the juvenile was twice previously adjudicated a delinquent juvenile for delinquent acts that constitute felonies;
10. 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.;
11. That the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony;
12. 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.;
13. 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
14. That the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of a delinquent act.

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.

Right to Counsel
Beyond the right to counsel afforded to juveniles by the Supreme Court of the United States in *In re Gault*, children in Colorado have a statutory right to counsel in juvenile court and the court must make certain the child understands
the right to counsel at the first appearance. 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 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." 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. 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.

If the child and/or parent request counsel and are found to be without sufficient financial means, counsel will be provided. 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. If the juvenile requests counsel and the juvenile’s parents are deemed financially capable, but refuse to retain counsel, the court shall appoint counsel. 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. 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.

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.

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. A probation officer may also take a child into custody if the child has violated conditions of probation. 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.

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. 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. 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.

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. 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. 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.

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. 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. Upon a showing of good cause, the court may extend the 48 hour limit.

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. 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. 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. 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.
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. Such a screening must not extend the time within which a detention hearing must be held.

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.

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 program established by the county, city, or judicial district. The pre-adjudication service programs vary from jurisdiction to jurisdiction but may include different levels of community-based supervision. 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.

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

**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.

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. The juvenile shall be held or shall participate in the program pending a hearing on the petition. 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.

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. 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. 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.

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.

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. 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.

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. 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.
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.\textsuperscript{182} A violation of a mandatory protection order is punishable as contempt of court,\textsuperscript{183} but has also been prosecuted as a restraining order violation when a minor is accused of alcohol possession.\textsuperscript{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.\textsuperscript{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.\textsuperscript{186}

If the case is the first for the juvenile in any jurisdiction, the district attorney has the discretion to use restorative justice practices.\textsuperscript{187} Restorative justice practices emphasize repairing the harm to the victim and the community, and consequences can include apologies and community service.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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. 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.\textsuperscript{194} At the advisement hearing, after the filing of the petition, the district attorney must provide discovery material to the defense.\textsuperscript{195} Any juvenile requesting a preliminary hearing must file that request within ten days of the advisement hearing.\textsuperscript{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.\textsuperscript{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.\textsuperscript{198} The juvenile may file a request for a review of a magistrate’s preliminary hearing finding.\textsuperscript{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.\textsuperscript{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.\textsuperscript{201} Pre-trial motions must be in writing, except those made orally by leave of court.\textsuperscript{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.\textsuperscript{203}

Discovery in juvenile cases is governed by the criminal discovery rule.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{227} Sentencing hearings for juveniles in custody take priority on the court’s calendar.\textsuperscript{228} The juvenile has a right to file a motion for a new trial pursuant to the rules of criminal procedure.\textsuperscript{229} If a juvenile is in custody, the youth may apply for post-trial bail.\textsuperscript{230}

A youth who is found to be incompetent—\textit{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.\textsuperscript{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 \textit{ad litem} to assure the best interests of the juvenile are addressed in accordance with existing law.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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:\textsuperscript{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.\textsuperscript{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.\textsuperscript{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;\textsuperscript{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;\textsuperscript{241}
- A period of detention or placement in an alternative services program;\textsuperscript{242}
- Placement with and transfer of legal custody to a relative or other suitable person;\textsuperscript{243}
- Probation with conditions, or placement in an intensive supervision program or supervised work program.\textsuperscript{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;\textsuperscript{245}
- Grant legal custody and placement of the juvenile to county department of social services or a child placement agency;\textsuperscript{246} or
- Placement of the juvenile in a hospital, mental health facility, or similar suitable placement where appropriate.\textsuperscript{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.\textsuperscript{248}

The sentence imposed may include the juvenile’s parent or guardian.\textsuperscript{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.\textsuperscript{250}

If a child is adjudicated as a “mandatory sentence offender”\textsuperscript{251} or a “repeat juvenile offender”\textsuperscript{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.\textsuperscript{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.\textsuperscript{254}

If a child is adjudicated as a “violent juvenile offender”\textsuperscript{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.\textsuperscript{256} If the violent juvenile offender is between the ages of 10 and 12, the court may impose an alternative sentence if appropriate.\textsuperscript{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.\textsuperscript{258}

If a child is adjudicated as an “aggravated juvenile offender”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{266} Juveniles may affirmatively petition the court for a discharge from this obligation after statutorily prescribed periods.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{271} Juveniles who are alleged to have violated their terms of probation have a statutory right to counsel at hearings on the alleged violation.\textsuperscript{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.\textsuperscript{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.\textsuperscript{274} The hearing panel may require the juvenile to attend school or work to attain a high school diploma or GED.\textsuperscript{275} If the two individuals disagree, at least a quorum of the entire Board must decide upon the appropriate action.\textsuperscript{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.\textsuperscript{277} A juvenile parole board administrator ensures that all Board members are trained as to the various aspects of the juvenile justice system.\textsuperscript{278} Where the Board determines parole is appropriate, the statutorily-established length of supervision is six months.\textsuperscript{279} For certain juveniles adjudicated of more serious offenses, the time may be extended for an additional 15 months.\textsuperscript{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.\textsuperscript{281}

**Appeals**

The Colorado Appellate Rules govern appellate procedure of juvenile cases.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{284} Originally, interlocutory appeals were not available to any party in juvenile court.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{292}

Status offenders—\textit{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.\textsuperscript{293} Status offenders cannot be held in a secure area of a jail or lockup facility.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”

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.

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. The probation department and the court will also have access to expungement information should the youth ever be convicted and sentenced on another matter.

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, encompassing essentially all crimes that are sexual in nature.

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. 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.

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. 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.

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.” 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.

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 adjudication or 63 days prior to the completion of their sentence. 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.

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. The court’s order regarding registration shall be incorporated into the parole plan.

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.

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.