

**NORTHGLENN MUNICIPAL COURT
ADAMS COUNTY, STATE OF COLORADO**

ADMINISTRATIVE ORDER: 20-02

Subject: Appointment of City Funded Attorneys in Municipal Court Cases

This Administrative Order is a policy to assist with the administration of justice with respect to the appointment of counsel in municipal court cases pursuant to Colorado Revised Statutes Titles 13 and 16 and Colorado Municipal Court Rules of Procedure Rule 244(a) for out of custody defendants.

I. Legal Authority

The federal and state constitutions provide that an accused person has the right to be represented by counsel in criminal prosecutions. This constitutional right has been interpreted to mean that counsel will be provided at state expense for indigent persons in all cases in which actual incarceration is a likely penalty or there is a waiver of the right to counsel at the advisement. The Sixth Amendment of the US Constitution provides that “in all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense.” Article II, Section 16 of the Colorado Constitution guarantees a right to counsel similar to its federal counterpart: “In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel. The Sixth Amendment right to assistance of counsel in a criminal prosecution is a fundamental constitutional right. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

The Colorado Legislature has mandated that if “the defendant is released from custody, he or she may apply for court-appointed counsel, and the court shall appoint counsel if the court determines that the defendant is indigent and the charged offense includes a possible sentence of incarceration.” Colo. Rev. Stat. § 13-10-114.5(2).

A. Adult Defendants – Waiver of Jail by the Prosecution

The majority of municipal code violations in the City of Northglenn carry a possible penalty of up to 1 year in jail and a \$2,650 fine. *See*, Northglenn Municipal Code 1-1-10(a)(2). If the Prosecuting Attorney waives the jail component of a sentence a defendant may still be eligible for court appointed counsel in extenuating circumstances. For example, if there is a potential for negative collateral consequences, such as immigration consequences, or the Defendant seems to suffer from mental health issues that limits the Defendant’s ability to fully participate in and understand the proceedings.

The waiver of jail by the Prosecution does not preclude a Defendant from being entitled to court appointed counsel. In 2013 the Colorado legislature specifically repealed Colo. Rev. Stat. § 16-5-501 in House Bill 13-1210. Colo. Rev. Stat. § 16-5-50 stated that:

in any criminal prosecution for class 2 and class 3 misdemeanors, petty offenses, class 1 and class 2 traffic offense, or municipal or county ordinance violations, the prosecuting attorney may state in writing, at any time during the prosecution, whether he or she will seek incarceration as a part of the penalty upon conviction. If the prosecuting attorney does not seek incarceration, legal representation and supporting services need not thereafter be provided for the defendant at state expense, but no such defendant shall be incarcerated if found guilty of the charges.

This was part of Colorado Legislative changes that were made in response to the US Supreme Court's holding in *Rothgery v. Gillespie Cty., Tex.*, 554 U.S. 191, 213 (2008) (criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel). It is clear that the Colorado Legislative intent was to ensure an indigent defendant facing possible imprisonment his Constitutional Right to counsel.

The Colorado Municipal Court Rules of Procedure do not specify that a defendant be facing jail to be appointed counsel. C.M.R.C.R. Rule 244(a) simply states that "if, upon the defendant's affidavit or sworn testimony and other investigation, the court finds that the defendant is financially unable to obtain counsel, an attorney shall be assigned to represent the defendant at every stage of the trial court proceedings."

The waiver of jail by the Prosecution has the impact of a sentencing stipulation. The Court has the ability to reject sentencing stipulations or concessions. *Young v. People*, 30 P.3d 202, 209 (Colo. 2001) citing *People v. Wright*, 573 P.2d 551, 553 (1978). In certain cases jail may be appropriate. However, if the Defendant is not represented by an attorney the Court will not be able to impose the sentence the Court believes is appropriate. *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972)(no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel). Additionally, the Court may feel that a jail sentence is appropriate at a later date should the Defendant be unable to comply with Court orders if he or she is found guilty. If the Court were to not allow the Defendant to have counsel the Court would be precluded from ever imposing jail as a sanction.

B. Juvenile Defendants

Title 13 and C.M.C.R. Rule 244(a) do not specifically address Juvenile Defendants. Colo. Rev. Stat. Ann. § 13-10-114.5(2) states that "the court shall appoint counsel if the court determines that the defendant is indigent and the charged offense includes a possible sentence of incarceration." All juvenile cases carry the possibility of 2 days detention pursuant to Colo. Rev. Stat. Ann. § 13-10-113(4). Juveniles whose parents are indigent are entitled to court appointed counsel. The Court will make the determination of whether or not to appoint counsel on a case by case basis. The Court will appoint counsel when it is necessary to protect the interests of the juvenile.

In 2014 the Colorado Legislature amended Title 19 of the Colorado Revised Statute removing the requirement that a juvenile's parents be indigent in order for the Court to appoint

counsel. Colo. Rev. Stat. Ann. § 19-2-706(2)(a) states that if “the court, on its own motion, determines that counsel is necessary to protect the interests of the juvenile or other parties, or the juvenile is in the custody of the state department of human services or a county department of human or social services, the court shall appoint the office of state public defender or, in the case of a conflict, the office of alternate defense counsel for the juvenile....”

In 2019 the Colorado Court of Appeals found that “a juvenile enjoys the right to counsel because “[t]he juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.” *People In Interest of J.V.D.*, 2019 COA 70, ¶ 13, 442 P.3d 1030, 1033 *citing In re Gault*, 387 U.S. 1, 36 (1967); *see also L.O.W. v. Dist. Court*, 623 P.2d 1253, 1256 (Colo. 1981) (“Rights provided to adult defendants [are not] uniformly available to juveniles because the protective purposes of juvenile proceedings preponderate over their punitive function.”). The Court went on to explain that:

Because juveniles “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,” *J.D.B. v. North Carolina*, 564 U.S. 261, 272, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011) (quoting *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979)), a court has an expanded duty of careful inquiry into a juvenile's understanding of his or her right to counsel before the court can find that a waiver is voluntary, knowing, and intelligent. A juvenile must benefit not only from the constitutional standards that apply to adults—

- (1) presumptions against a waiver;
- (2) advisement regarding the many risks of self-representation; and
- (3) inquiry into his or her understanding of those risks and the reasons for the requested waiver—but also from the statutory requirements of section 19-2-706(2)(c)—
- (4) an inquiry into the juvenile's maturity;
- (5) an inquiry into the juvenile's understanding that counsel will be provided regardless of a parent's or guardian's ability or willingness to do so; and
- (6) findings on the record.

Id. at 1035–36.

II. Guidelines for Indigency

Adult parties requesting court-appointed counsel must be indigent to be represented at City expense. Adults requesting court-appointed representation on the basis of indigency must complete a NORTHGLENN MUNICIPAL COURT APPLICATION FOR COURT-APPOINTED COUNSEL, signed under oath. Juvenile defendants requesting court-appointed representation must have their parents or guardians complete a NORTHGLENN MUNICIPAL COURT JUVENILE DELINQUENCY APPLICATION FOR COURT APPOINTED COUNSEL, signed under oath.

An indigent person is one whose financial circumstances prevent the person from having equal access to the legal process (Colorado Supreme Court Chief Justice Directive 04-04 Attachments A and B). The court retains jurisdiction to determine whether the person is indigent

based on all the information available. Based on a review of all information available, the court shall enter an order either granting or denying the person's request for court appointed counsel.

The court shall have the discretion to reassess indigence. Based upon a reassessment of a party's financial circumstances, the court may terminate a City paid appointment

So ordered this 31st day of January 2020.

/s/ Amanda Bailhache

Amanda Bailhache

Northglenn Municipal Court Judge

INCOME ELIGIBILITY GUIDELINES (Amended January 2019)								
Family Size	Yearly Poverty Guideline	Monthly Poverty Guideline	Monthly Income*	Monthly Income plus 10%	Monthly Income plus 75%	Yearly Income*	Yearly Income plus 10%	Yearly Income plus 75%
1	\$12,490	\$1,041	\$1,301	\$1,431	\$2,277	\$15,613	\$17,174	\$27,322
2	\$16,910	\$1,409	\$1,761	\$1,938	\$3,083	\$21,138	\$23,251	\$36,991
3	\$21,330	\$1,778	\$2,222	\$2,444	\$3,888	\$26,663	\$29,329	\$46,659
4	\$25,750	\$2,146	\$2,682	\$2,951	\$4,694	\$32,188	\$35,406	\$56,328
5	\$30,170	\$2,514	\$3,143	\$3,457	\$5,500	\$37,713	\$41,484	\$65,997
6	\$34,590	\$2,883	\$3,603	\$3,963	\$6,305	\$43,238	\$47,561	\$75,666
7	\$39,010	\$3,251	\$4,064	\$4,470	\$7,111	\$48,763	\$53,639	\$85,334
8	\$43,430	\$3,619	\$4,524	\$4,976	\$7,917	\$54,288	\$59,716	\$95,003
* 125% of poverty level as determined by the Department of Health and Human Services.								
*For family units with more than eight members, add \$460 per month to "monthly income" or \$5,525 per year to "yearly income" for each additional family member.								
Source: FEDERAL REGISTER (84 FR 1167, 01/11/2019)								