



Colorado Office of the
Child's Representative

HB22-1038: Client Directed Counsel in D&N Cases

HB22-1038 was signed into law by Governor Polis on April 12, 2022 and **will go into effect on January 9, 2023**. This bill gives youth 12 and older a more authentic voice in their dependency and neglect ("D&N") proceedings and provides procedural justice for those youth. Below is a summary of some of the new terms and changes encompassed in HB22-1038:

Every child and youth in a D&N proceeding is now a party to the case (C.R.S. 19-3-502).

- As such, the child(ren)/youth have the **right to attend and fully participate in all hearings** related to the child's case.
 - The GAL or CFY must provide developmentally appropriate notice to the child of all hearings related to their case.
- A GAL may still demand a jury trial for the adjudicatory hearing and now a youth aged 12 and older may as well (C.R.S. 19-3-202).

Counsel for Youth ("CFY") is the term for an attorney providing specialized client-directed legal representation for a child or youth and is defined in C.R.S. 19-1-103 (41.5). This attorney has a traditional attorney/client relationship with the youth and owes the same duties, including undivided loyalty, confidentiality and competent representation to the youth as is due an adult. CFY represent the youth's position rather than what the attorney determines is in a child's best interest. This is the same term used in the Foster Youth and Transition Program.

- CFY, like a GAL, has access to information about the youth, with some expanded language for both (C.R.S. 19-3-203 (4)).
- CFY, like a GAL, must ensure the child or youth has representation through pending appeals (C.R.S. 19-3-203(6)).
- After Termination, a CFY must file a position statement rather than a post-termination report (C.R.S. 19-3-606).
- CFY is added throughout Title 19 to ensure access similar to a GAL (e.g. in C.R.S. 13-1-119.5 to give access to Colorado State Court Data Access, C.R.S. 19-3-213 to ensure CFY is notified of a change of placement, or C.R.S. 42-2-108 to ensure they can sign the application for a driver's license.)

Mechanics (C.R.S. 19-1-111; C.R.S. 19-3-203)

- The Court will continue to appoint a GAL for every child under the age of 12 in D&N cases.
- The Court will appoint CFY for every youth aged 12 and older in D&N cases.
- When a youth turns 12 in a D&N case, the GAL will transition to CFY automatically upon the youth's 12th birthday (unless the youth has diminished capacity, in which case the GAL may remain in that role and new CFY must be appointed).
 - The attorney must notify the Court and parties of the change in appointment, and the Court shall issue a new order of appointment within 7 days (C.R.S. 19-3-203 (3))
- The court may also appoint a GAL for a youth 12 and older who has diminished capacity).

- An attorney may be appointed as CFY for a youth 12 or older and GAL for that youth's younger siblings so long as the attorney does not assert a conflict of interest.
- The youth's right to counsel cannot be waived (C.R.S. 19-3-203 (2))

Diminished Capacity is the standard to determine whether a youth needs a GAL in addition to Counsel. This term comes from the Rules of Professional Conduct and is now defined in C.R.S. 19-1-103 (55.5). The definition is consistent with R.P.C. 1.14, which also features additional commentary and guidance. The statute defines diminished capacity as a child or youth who lack sufficient capacity to communicate or make considered decisions adequately in connection with the child or youth's legal representation. Age or developmental maturity must not be the sole basis for a determination of diminished capacity.

Note: Diminished capacity is now also the standard when determining if a GAL appointment should continue past the age of 18 in Delinquency cases (see 19-1-111 (4)(b)(II)).

- CFY may also be appointed in PRNP cases (C.R.S. 19-1-115)

Next Steps

- Pursuant to its enabling legislation, the OCR will make recommendations to the Chief Justice regarding necessary changes and updates to the practice standards in Chief Justice Directive 04-06 to further clarify and help implement these changes.
- Stay tuned for training about this legislation in the next few months.

If you have any questions about this new legislation, please feel free to reach out to your [staff attorney liaison](#) or any of us at the OCR!