

CLIENT DIRECTED COUNSEL

HB22-1038

Nuts and Bolts of HB22-1038

**Goes into Effect
January 9th,
2023**

Providing client directed counsel for youth 12 and older in D&N cases.

COUNSEL FOR YOUTH "CFY"

This is the term for an attorney providing specialized client-directed legal representation for a child or youth and is defined in 19-1-103 (41.5)

CHILD/YOUTH PARTY TO THE CASE

- 19-3-502
- Children and Youth have the right to attend and fully participate in all hearings related to the child/youth's case.
- The GAL or CFY must provide developmentally appropriate notice to the child/youth of all hearings related to the case.

DIMINISHED CAPACITY

This is the standard to determine whether a GAL may be allowed to be appointed, in addition to Counsel. The term comes from the Rules of Professional Conduct and is defined in 19-1-103 (55.5) and Rule 1.14 guides this analysis.

MECHANICS

- GAL appointed for every child under the age of 12 in D&N cases.
- CFY appointed for every youth aged 12 and older in D&N cases.
- When a youth turns 12 in an open D&N case, the GAL will transition to CFY automatically (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 of appointment.
- The Court shall issue a new order of appointment within 7 days (19-3-203(3)).

(55.5) "Diminished Capacity" means a child or youth who lacks sufficient capacity to communicate or make considered decisions adequately in connection with the child's or youth's legal representation. Age or developmental maturity must not be the sole basis for a determination of diminished capacity.

Why Age 12?

Consistent with other Colorado Statutes, see for example: 19-5-203 (2); 15-14-203 (2); 19-7-101(z); 12-43-202.5 (2)

Recognized by the Rules of Professional Conduct 1.14

"... children as young as 5 or 6 of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."

Developmentally appropriate as youth of this age are becoming more independent, have more ability for complex thought, are better able to express feelings thought talking and are developing a stronger sense of right and wrong. It is important at this time of a youth's life to encourage them to make their own decisions, to respect their opinions and take into account their thoughts and feelings. It is important for youth of this age to know they are being listened to. Research shows that when youth are provided the guidance of a supportive adult who can help the youth deliberate, youth are able to make reasoned and rational decisions.

CFY

Have a confidential relationship with the youth

Have access to info about the youth
19-3-203

Can represent youth in D&N or FYTP cases

"It is hard to take responsibility for your own life when you don't have a say with what happens in it. Everyone else made decisions about my life."
- Comment of former foster youth when talking about HB22-1038

Additional Provisions found in HB22-1038

- 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.
- Establishes that a youth's right to counsel cannot be waived (19-3-203).
- Makes Diminished capacity the standard when determining if a GAL appointment should continue past 18 in JD cases.