



OCR Youth Justice Case Law & Legislative Update

2023



1



Thank you!

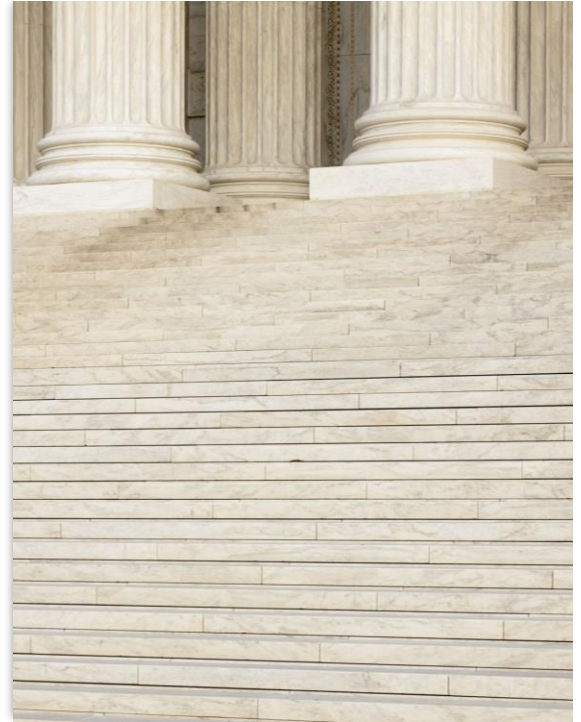
- Tiffany Pelham Webb
- Claire Morrow
- Kathy Dory
- Erin Rossiter
- Claudia Lair
- Rebekah Brown
- Josie Burt
- Julie Shultz
- Sylvia Geiger

The OCR logo is located in the bottom left corner of the slide. It is a smaller version of the logo seen on the first slide, featuring the same circular emblem and text.

2

THE BIG PICTURE

- Changes to substantive offenses
- New (& improved?) procedures and considerations for the court
- Services, supports, opportunities for young people
- Federal standards codified in state statute & miscellaneous



3

HB23-1292

CCJJ Enhanced Sentencing Recommendations

Effective July 1, 2023

C.R.S. 18-1.3-406

- Allows for modification of consecutive COV sentences at least 2 years but no more than 5 years after judgement of conviction enters
- Allows for concurrent sentencing on COV convictions arising from the same incident under certain circumstances.
 - Parties waive ineligibility, or
 - Certain factors are proven by preponderance of the evidence or stipulated to at sentencing

4

HB23-1293

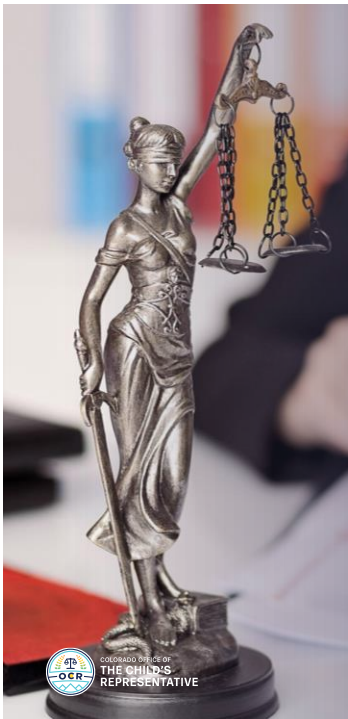
Felony Sentencing Commission Recommendations

Effective October 1, 2023

- 18-3-203 – **Assault in the second degree** –
 - (1)(f.5) delete the words “harass annoy, threaten or annoy” in the “spitting” section of assault in a detention facility so the act must be to “infect, injure or harm.”
 - (2)(c) delete 18-3-203(1)(c) (i.e. prevent peace officer, firefighter, or EMT from performing lawful duty and causing BI) from crimes eligible to be sentenced pursuant to 18-1.3-406 as COV as referenced in 18-3-203(2)(c)(II); add 18-3-203(1)(c.5) (i.e. prevent peace officer, firefighter or EMT from performing lawful duty and causing SBI) as COV crime but no mandatory as provided in 18-3-203(2)(c)(II).
- 18-3-302 – **Second Degree Kidnapping** – adds the element of “and causes such movement which increases the risk of harm to the person” to the crime. This language was basically taken from old case law but was never incorporated/recognized as an element.
- 18-4-102 – **First Degree Arson** – occupied structure remains a class 3 felony but reduces a building from a F3 to an F4
- 18-4-104(2) – **Third Degree Arson** – F4 to F5
- 18-4-203 – **Second Degree Burglary** – burglary of a dwelling remains an F3; burglary of occupied structure remains a F4; burglary of building that is used for the operation of a commercial business is an F4; any other building e.g., a shed or storage unit is reduced from an F4 to an F5.
- 18-8-211(2)(b) – **Riots in Detention Facility** – unclassified with mandatory sentence of 2 to 10 years to F4



5



SB23-034

Definition of Serious Bodily Injury

Effective July 1, 2023

Definition of serious bodily injury now includes any penetrating knife or gunshot wounds (C.R.S. 18-1-901)

6

SB23-097

Changes to Motor Vehicle Theft

Effective July 1, 2023



C.R.S. 18-4-409

- Removes the term “aggravated”
- Changes definition of Motor Vehicle
- Value of car no longer determines level of offense



7

SB23-097

Changes to Motor Vehicle Theft, cont'd

- 1st degree MV theft (F3): taking a car when you have two prior mv theft or unauthorized use convictions
- 2nd degree MV theft (F4) taking the car plus
 - Alters, attempts to alter, or removes the VIN
 - Takes the MV out-of-state,
 - Uses the wrong license plates
 - Causes over \$1000 worth of damage,
 - Causes bodily injury to anyone except a participant
 - Use or attempts to use the car in a crime other than eluding or criminal trespass of a car; or
 - Takes a car with license plate or placard indicating that the mv belongs to someone with a disability.
- 3rd degree MV theft (F5)
 - Taking the a car that's not yours without permission
- Unauthorized use (M1) 18-4-409.5
 - Takes the car and
 - Does not commit any offense except eluding
 - The MV is returned or recovered within 24 hours with no damage



8

SB23-249

False Reporting of an Emergency

Effective June 7, 2023

C.R.S. 18-8-110

- Class 6 Felony to falsely report a mass shooting, specifically:
 - Any person **reports to any other person that there is a mass shooting or an active shooter** in a public or private place or vehicle designed for the transportation of person or property, **knowing that the report is false**, causing the occupants of a building, place of assembly, or facility of public transportation to be **evacuated or to be impacted or to be issued a shelter-in-place order**; causing any disruptions or impacts to regular activities; or resulting in the initiation of a standard response protocol in response to the false report.



HB23-1012

Juvenile Competency to Proceed

Effective August 6, 2023

C.R.S. 19-2.5-700 et seq

- Creates a right to second competency evaluation (previously denied by caselaw);
- Allows for information sharing between involved parties and entities – specifically: court, DA, PD, GAL, OCFMH (evaluators and educators);
- Creates a mechanism for a “restoration evaluation” (similar to “reassessment” contemplated in A.C.);
- Creates time limits for restoration process.



HB23-1012

Juvenile Competency to Proceed (cont'd)

Restoration evaluation

Defined in C.R.S. 19-2.5-701.5(6)

Process outlined in C.R.S. 19-2.5-704(2)(c)

- Need for evaluation can be raised by the court or *any party* at any time during restoration process
- In order for restoration evaluation to occur:
 - There must be credible evidence that the juvenile's circumstances have changed;
 - The court can't make the determination with existing information, and;
 - The cause for the restoration evaluation outweighs any delay caused by conducting the eval and any negative impact on the child.



11

HB23-1012

Juvenile Competency to Proceed (cont'd)

Timeframes for restoration

C.R.S. 19-2.5-704(2.5)

- 6 MONTHS: misdo, drug misdo, petty offense, traffic offense
- 1 YEAR: highest charge is F4, F5, F6, DF3, DF4
- 2 YEARS: highest charge is F3, DF1, DF2 (unless charged AJO)
- 5 YEARS: highest charge is F1, F2, AJO

NOTE: Time limits can be extended if child failed to attend or comply with restoration, there is a reasonable likelihood they could be restored in foreseeable future, and their lack of cooperation is not the result of ID/DD, MH/BH disorder, lack of mental capacity.



12

HB23-1187

Criminal Justice Alternatives for Pregnant Persons

Effective August 6, 2023

C.R.S. 19-2.5-1118.5

Creates a rebuttable presumption against detention or commitment for a pregnant or postpartum young person when issuing bond, accepting entry into diversion, accepting or continuing deferred judgements, sentencing, imposing an alternative sentence, or granting a stay of execution.

Youth are entitled to a pregnancy test in a juvenile facility within 24 hours of requesting it; if the youth signs a release, the detention center shall notify the child's attorney within 48 hours of their request for the test.

Young person can seek reconsideration of a sentence if they find out they are pregnant after they become committed.

13

HB23-1168

Legal Representation and Students with Disabilities

Effective May 25, 2023

C.R.S. 22-1-141

- A nonprofit organization selected by the Department of Ed will create and maintain a list of attorneys qualified to represent a parent in a due process complaint filed by a school district concerning issues disputed in a state complaint in which the parent prevailed.
- The bill is repealed in 5 years with some reporting requirements.



14

HB23-1291 Procedures for Expulsion Hearing Officers

Effective April 25, 2023

C.R.S. 22-33-105

- Clarifies that the school district has the burden of proving by a preponderance of the evidence that the student violated 22-33-106 and the school districts policy.
- Requires the school district seeking to expel or deny admission to a student to provide all records the district intends to use as supporting evidence at least 2 business days prior to the hearing.
- The hearing officer must create a report with findings of fact and recommendations.
- A student who is denied admission or expelled as a result of the hearing has 10 business days to appeal the decision to the Board of Education. The Board shall issue a written order providing notice of the decision.
- Clarifies that the hearing officer must not have a conflict of interest with regard to the student under consideration and must receive training on how to serve impartially. An executive officer involved in investigating or reporting an incident that leads to a hearing shall not act as the hearing officer and must delegate such powers to a designee who is not involved in investigating or reporting the incident.

15



HB23-1042

Admissibility Standards for Juvenile Statements

Effective August 6, 2023

C.R.S. 19-2.5-203(8)(a)

- Statements made by a juvenile to law enforcement official or agent during custodial interrogation are *presumptively inadmissible* if the law enforcement official or agent lies to the young person.
 - BUT: prosecution can establish, by preponderance, that the statement was made voluntarily despite the lies.
 - Court must consider evidence concerning the child's vulnerability to the lies.
- Law enforcement and agents now required to electronically record all custodial interrogations
- Requires training for officers in interrogation of juveniles, including building rapport, avoiding coerced confessions, conducting questioning in an age-appropriate way

16

SB23-075

Deletion of Child's Name from CJ Records

Effective August 6, 2023

C.R.S. 24-72-304

- Name of child witnesses and victims of *any offense* (except solely traffic) must be deleted from criminal justice records released to the public.
- Creates a good cause exception – person seeking disclosure must petition the court, and the court must find there the person seeking disclosure has established that the public interest in accessing the child victim or child witness's name and identifying information substantially outweighs the harm to the privacy interest of the child victim, child witness, or their legal guardian



17

HB23-1307

Enhanced Supports for Youth in Detention

Effective June 7, 2023

C.R.S. 19-2.5-1407.3

- Creates 22 emergency detention beds
 - Beds do not count toward statewide 215 detention bed cap
 - Beds to be allocated to catchment areas by CYDC
 - DA or DHS has to petition the court for use of an emergency bed under certain circumstances – *see 19-2.5-1407.3(4)(c)(I)*
 - Lays out the circumstances under which the court can authorize the use of an emergency detention bed (*see 19-2.5-11407(c)(II)*), and court is required to continue entering orders every 5 days.



18

HB23-1307 Enhanced Supports for Youth in Detention (cont'd)

Effective June 7, 2023

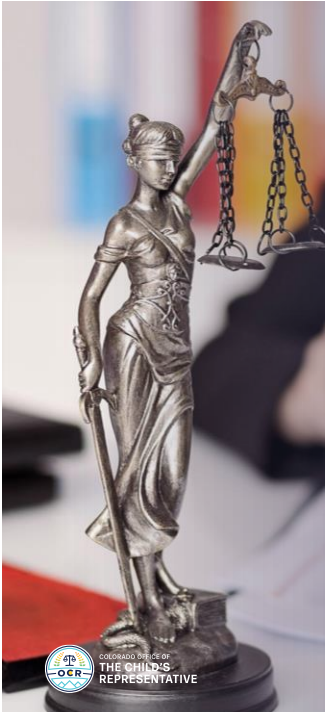
C.R.S. 19-2.5-305(2.5)

- Creates mandatory GAL appointment for youth in detention

“THE COURT SHALL, AT THE JUVENILE’S DETENTION HEARING, APPOINT A GUARDIAN AD LITEM FOR A JUVENILE DETAINED PURSUANT TO THIS ARTICLE 2.5. AN APPOINTMENT MADE PURSUANT TO THIS SUBSECTION (2.5) TERMINATES UPON THE RELEASE OF THE JUVENILE FROM DETENTION UNLESS THE COURT ALSO FINDS A BASIS FOR THE APPOINTMENT PURSUANT TO SECTION 19-1-111(2)(a)”



19



HB23-1307 Enhanced Supports for Youth in Detention (cont'd)

- Appropriates approximately 2 million to DHS (including CYDC) for kids who are detained or could be placed in lieu of detention. Funds to go to:
 - Outpatient therapeutic services
 - Mentorship
 - Assistance to quickly place kids in OHP, including:
 - Kin
 - Recruiting and support of foster parents
 - Respite care
 - Removing barriers for providers to serve youth in residential or family-like settings
 - More data collection! This time, regarding kids who are held in detention, utilization of emergency releases and emergency beds.

20

HB23-1133

Cost of Phone Calls for Persons in Custody

Effective August 6, 2023

- Phases in free phone calls for persons in DOC (17-42-103);
- immediately requires free phone calls for youth in DYS facilities (19-2.5-1511.5)
- DOC and DYS are not to receive any revenue from the administration of communication services



21

HB23-164

SOMB Standards

Effective August 6, 2023

- Makes explicit that juvenile SOMB standards apply to direct file/transfer youth so long as their sentence was imposed prior to their 21st birthday
 - No denial rule
 - Presumption against polygraph
 - No treatment mandates
 - No limits on contact with minors
 - Treatment is to be developmentally appropriate

C.R.S. 16-11.7-102(1.5)



22

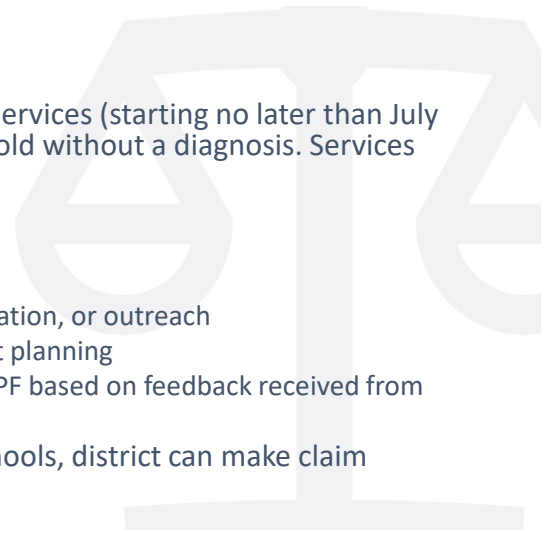
SB23-174

Access to BH Services for Under-21 Medicaid Recipients

Effective August 6, 2023

C.R.S. 25.5-1-133

- Requires coverage of certain behavioral health services (starting no later than July 1, 2024) for Medicaid members under 21 years old without a diagnosis. Services include:
 - Family Therapy
 - Group Therapy
 - Individual Therapy
 - Services related to prevention, promotion, education, or outreach
 - Evaluation, intake, case management, treatment planning
 - Any other services determined necessary by HCPF based on feedback received from stakeholders.
- If Medicaid-covered services are provided in schools, district can make claim



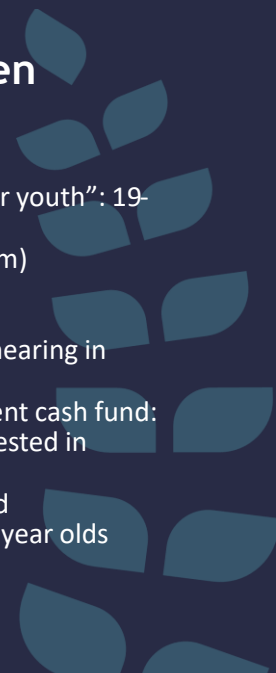
23

HB23-1249

Reduce Justice Involvement for Young Children

Effective August 6, 2023

- Data collection re: several different possible definitions of “crossover youth”: 19-2.5-1404(3)(b)(X) and (XI)
- Requires CMPS to have ISST (Individualized Service and Support Team)
- Provides examples of who can refer to CMP
- Clarifies who can access ISST records (includes GAL/CFY)
 - ISST records are not admissible “in any adjudicatory or criminal hearing in which the child is accused”, not subject to subpoena.
- General assembly to appropriate money to collaborative management cash fund: 24-1.9-104(1.5), and an additional \$2 million to assist counties interested in starting a CMP: 24-1.9-105
- Changes funding formula for DHS to allocate funds to CMP cash fund
- Data collection from diversion programs regarding number of 10-12 year olds served: 20-1-115



24



SB23-205

Universal High School Scholarship Program

effective August 7th, 2023

C.R.S 24-48.5-502

- Provides scholarships up to \$1500/student to offset the costs associated with postsecondary education, a registered apprenticeship, or training or education related to an in-demand or high-priority postsecondary pathway.
- Eligibility requirements:
 - Graduated from a Colorado high school or was awarded a GED by the Colorado Dept. of Ed.
 - Completes the FASFA or Colorado Application for Financial Aid.
 - Did not receive a grant or scholarship from the Colorado Opportunity Scholarship Initiative.
 - Submits an application for the program.
- Can be a full time or part time student and financial needs does not need to be demonstrated.
- Money can be used for tuition, fees, books, and equipment at a service provider.
- Includes a career advising component.

25

HB23-1145

Timelines for Juveniles in Adult Facilities

Effective March 23, 2023

C.R.S. 19-2.5-305(3)(c)(VI)-(VIII)

- Brings timelines in line with federal JJDPa
- Juvenile can petition the court for a hearing on appropriateness of adult jail within 30 days of initial determination, and within 30 days of any subsequent determination.
- Court shall continue to review determination every 30 days (45 in "rural" jurisdictions)
- Maximum amount of time a child can serve in adult jail pretrial is 180 days.



26

HB23-1155 Advisement During Custodial Interrogation

Effective July 1, 2023

C.R.S. 16-3-406

- Codifies *Miranda* in Colorado law
- Really, that's it....



27

SB23-158 CCJJ Reauthorization - **FAILED**

- Purpose was to reauthorize the Colorado Commission on Criminal and Juvenile Justice
- Bill failed, so this very long-standing commission will sunset on September 1, 2023



28

DELINQUENCY CASELAW

- *People v. Dannel*, 523 P.3d 471 (Colo. App. 2022):
 - 19-2.5-802(1)(a)(I)-(III) does not require prior adjudication for 14-year-old to be transferred to adult court.
- *People in the Interest of A.S.M.*, 517 P.3d 675 (Colo. 2022)
 - Magistrate’s preliminary hearing findings are subject to review by Juvenile Court.
- *People in the Interest of A.T.C.*, 528 P.3d 168 (Colo. 2023)
 - Magistrate’s competency findings are subject to review by Juvenile Court
- *People in the Interest of A.C.*, 517 P.3d 1228 (Colo. 2022)
 - Competency statute permits a “reassessment evaluation”.

