

# **The basics of truancy law in Colorado:**

## **School Attendance Law of 1963 C.R.S. Section 22-33-104**

All children who are age six on or before August 1 of each year and under the age of seventeen are required to attend school, with some exceptions listed under C.R.S. 22-33-104 (2).

## **Definition of Habitually Truant C.R.S. Section 22-33-107**

C.R.S. 22-33-107 (3)(I) A child is “habitually truant” if s/he is six years old on or before August 1 of the school year and under seventeen and has four (4) unexcused absences from public school during any one month or ten (10) unexcused absences from public school during any school year. Absences due to suspension or expulsion of a child are considered excused absences.

## **Judicial Proceedings (School of Attendance Law 1963) C.R.S. 22-33-108**

### **Venue/Jurisdiction:**

Truancy actions are initiated in the judicial district where the child lives or is present. C.R.S. 22-33-108 (1.5) The Juvenile court has original jurisdiction over cases arising under the School Attendance Law. C.R.S. 22-33-108 (1)

**Filing of a Petition for Truancy under the School Attendance Law:** The school district initiates the filing of a petition for truancy C.R.S. 22-33-108. The school district shall initiate court proceedings only as a last resort and only if the child continues to be habitually truant after the school has created and implemented a plan to improve the child’s attendance. C.R.S. 22-33-108 (4)(b). If the school initiates court proceedings there are notice requirements and a minimum of evidence which must be submitted to the court. See C.R.S. Section 22-33-108 (5)(d).

### **Jurisdiction to enter orders to the parent(s) and child:**

C.R.S. 22-33-108(6) The court may 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.

### **Order for investigation for neglect:**

C.R.S. 22-33-108 (7) (a) 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 that an assessment for neglect as described in section 19-3-102 (1) be conducted as provided in section 19-3-501, C.R.S.** In addition, the court may order the child to show cause why he or she should not be held in contempt of court.” (Emphasis added).

**Contempt:**

**As to the child-** C.R.S. 22-33-108 (7) (b) The court may impose sanctions after finding of contempt. Sanctions may include, but are not limited to community service, supervised activities, participation in services for at risk students and other activities. If the court finds that the child has refused to comply with the plan created for the child pursuant to section 22-33-107 (7)(c), the **court may impose no more than forty-eight hours in a juvenile detention facility...<sup>1</sup>**

**As to the parent-** C.R.S. 22-33-108 (8) If the parent refuses or neglects to obey the order issued against the parent or both the parent and the child, the court may order the parent to show cause why he or she should not be held in contempt of court, and, if the parent fails to show cause, the court may impose a fine of up to but not more than twenty-five dollars per day or confine the parent in the county jail until the order is complied with.

**GAL appointments in Truancy cases:****C.R.S. Section 19-1-111:**

C.R.S. 19-1-111(2)(b) The court may appoint a guardian ad litem for a child in proceedings under the "School Attendance Law of 1963", article 33 of title 22 C.R.S., when the court finds that the appointment is necessary due to exceptional and extraordinary circumstances:

C.R.S. 19-1-111 (3) The guardian ad litem for the child shall have the right to participate in all proceedings as a party, except in delinquency cases.

**Which provisions of the Chief Justice Directive 04-06 Apply to GAL's in Truancy?**

Paragraph V. F. An attorney appointed as GAL, Child's Legal representative or counsel for child in all other proceedings governed by this Directive shall perform all duties as directed by the court, as set forth by statute and as required by the Rules of Professional conduct as described in Section V.B. These duties may include all or some of the duties described below:

1. Attend all court hearings relevant to the child and advocate for the child's best interests and legal rights as applicable. Present information relevant to the child's interest through oral or written recommendations, motions or other acceptable means consistent with the court's appointment orders and the attorney's statutory authority and ethical obligations.
2. Conduct an independent investigation in a timely manner that includes:
  - a. Personally meeting with the child;

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<sup>1</sup> Truancy Detention Reduction Policy – Legislative Declaration C.R.S. 13-5-145: Imposing detention in truancy cases does not improve school attendance and does not address the underlying causes of the juvenile's truancy. The chief judge in each judicial district was directed to convene a meeting with community stakeholders to create policy for addressing truancy cases that seeks alternatives to the use of detention as a sanction for truancy.

- b. Meeting with current and proposed placements, guardians or custodians when appropriate;
- c. Reviewing court files and relevant records, reports and documents. Chief Justice Directive 04-06 (Revised January 1, 2016).

## **Appointment of a Court Appointed Special Advocate (CASA) C.R.S. Section 19-1-206(1)(b).**

A judge or magistrate may appoint a CASA in any actions brought under the School Attendance Law provided that at least one parent or legal guardian of the child is provided with notice of the CASA appointment.

## **Truancy Actions: Arguments for filing of a D&N**

- No ability to remove child and/or enter protective orders regarding custody/placement out of the home
- Greater access for parents and children to mental health and treatment services outside of school
- Regular monitoring for substance/alcohol abuse and treatment for parents
- Detention should not be used for status offenders when what is needed is a D&N to address treatment needs of the family and safety of the child
- Contempt is slow and as a sanction is not designed to meet the needs of the child

## **Oral or Written Motion for preliminary investigation C.R.S. Section 19-3-501**

(1) Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the court's jurisdiction, as provided in this article, the law enforcement officer or other person may refer the matter to the court, which shall have a preliminary investigation made to determine whether the interests of the child or of the community require that further action be taken, which investigation shall be made by the probation department, county department of social services or any other agency designated by the court. On the basis of the preliminary investigation, the court may...

(a) Authorize a petition to be filed:...

(2)(a) Upon receipt of a report filed by law enforcement agency or any other person required to report pursuant to section 19-3-304(2) indicating a child has suffered abuse as defined in section 19-1-103(1) and that the best interests of the child require that he be protected from risk of further such abuse, the court shall then authorize and may order the filing of a petition.

(b) Upon receipt of a report, as described in paragraph (a) of this subsection (2), from any person other than those specified in said paragraph (a), the court, after such investigation as may be reasonable under the circumstances, may authorize and may order the filing of a petition.

**Encourage teachers and school administration as mandatory reporters to call the hotline whenever abuse and neglect is suspected C.R.S. 19-3-304(2)**

**Keep reminding the judge s/he has authority to order an investigation and the filing of a petition in dependency and neglect C.R.S. 19-3-501(2)(b)**

### **Discussion:**

- Scope of GAL appointment—low cap (\$750).
- Attend school staffings? Appointment of a CASA
- Is a D&N in the child's best interests? Will a D&N change the child's situation?
- If removed, where will the child go? Permanency?
- Are there other avenues to obtain services and/or interventions?
- Rocky Mountain Children's Law Center  
<https://childlawcenter.org/need-help/>
- Consult OCR educational experts

