

## **CHAPTER 40**

### **CHILDREN’S CODE — JUVENILE DELINQUENCY**

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### **Introductory Note**

Pursuant to the provisions of sections 19-1-105(1) and 19-2-107(1), C.R.S., a juvenile is entitled to a jury trial only in limited circumstances. As a result, very few juvenile delinquency jury trials are held in Colorado's courts. When the right to a jury trial exists, the provisions of section 19-2-805, C.R.S., and the Colorado Rules of Juvenile Procedure provide that proceedings in delinquency be conducted in accordance with the Colorado Rules of Criminal Procedure except as they relate to the examination and selection of jurors. As a result, only instructions relating to the examination of the jury panel and the selection of the jury have been provided in this chapter. The user is directed to consult the Colorado Model Criminal Jury Instructions for all jury instructions that are not provided in this chapter.

#### **40:1 INTRODUCTORY REMARKS TO JURY PANEL**

*(The remarks of the Court to the members of the jury panel at the commencement of the trial should be substantially as follows:)*

**Members of the jury, this is** *(insert appropriate description, e.g., “Courtroom A,” “Division II,” etc.)* **of the (Juvenile) (District) Court. My name is** *(insert name)*. **I am the judge assigned to preside in this case.**

**First, I want to tell you about the rules that will govern your conduct during your jury duty, beginning right now, even if you are not finally selected as jurors. If you are chosen as jurors, your job will be to decide this case based solely on the evidence presented during the trial and the instructions that I will give you. You will not be investigators or researchers, so do not attempt to gather any information about this case on your own. Do not read or do research about this case or the issues in the case from any other source, including the internet. You may not use Google, Bing, Yahoo, or any other type of internet search engine to learn about any person, place, or thing that is involved in this case. Do not read about this case in newspapers, magazines, or any other publications. Do not listen to any podcasts or television or radio broadcasts about the trial. Do not consult dictionaries; medical, scientific, or technical publications; religious books or materials; or law books. I want to emphasize that you must not seek or receive any information about this case from the internet, which includes all social media, Google, Wikipedia, blogs, and other websites.**

**If you were to violate this rule by receiving outside information about the case, it could force me to declare a mistrial, meaning that the trial would have to start over, and all of the parties’ work, my work, and your work on this case would be wasted.**

**Therefore, it is very important that you not receive outside information about this case, whether it comes from other people, from the media, from books or publications, or from the internet. You are free to use the internet, but only for purposes unrelated to this case. Do not search for or receive any information about the parties, the lawyers, the witnesses, the judge, the evidence, or any place or location mentioned. Do not research the law. Do not look up the meaning of any words or scientific or technical terms used. If necessary, I will give you definitions of words or terms.**

**Also, you are not allowed to visit any place(s) involved in this case. If you normally travel through such a place, you should try to take a different route until I tell you that your jury service is completed. If you cannot take a different route, you must not stop or attempt to gather any information from that location.**

**Until I tell you that your jury service is complete, do not communicate about the case with anyone, including family and friends, whether in person, or by telephone, cell phone, smart phone, computer, internet, or any internet service. This means you must not email, text, instant message, tweet, blog, or post information about this case, or about your experience as a juror on this case, on any social media, website, listserv, chat room, or blog.**

**When court is not in session, you may communicate about anything other than this case. You may tell others that you are on jury duty and that you cannot talk about this duty until your service is completed, and you may tell them the estimated schedule of your jury duty, but do not tell them anything else about the case. If anyone tries to communicate with you about anything concerning the case, you must stop the communication immediately and report it to the Bailiff, who will notify me.**

**(The Court) (I) will now introduce you to this case.**

**The case we are about to try is not a criminal or civil case, but a juvenile delinquency case under the Colorado Children’s Code. The parties to this case are: (1) the People of the State of Colorado, who will be referred to during the trial as “the People” or “the Prosecution;” (2) *(insert juvenile’s name)*, who may be referred by name or as “the Juvenile;” and *(name of respondent[s])*, who (are) (is) the (parent[s]) (guardian[s]) (custodian[s]) of the Juvenile and (is) (are) referred to as “Respondent(s).”**

**The case is based upon a petition that claims: *(here read a short statement of the case)*. You should understand that this petition is only a charge and it is not in any sense evidence of the statements it contains.**

**The Juvenile has pleaded not guilty to the charge(s) made in the petition. The People, therefore, have the burden of proving the charge(s) (or count[s]) beyond a reasonable doubt. The purpose of this trial is to determine whether the charges in the petition have been proved beyond a reasonable doubt. The jury will make this determination. The jury will consider all the evidence received during the trial and will make its determination with the help of instructions from the Court as to the law applicable to the case.**

**(The Court) (I) will now read you some of the instructions that may apply in this case. These are preliminary instructions about the law and may not be exactly the same as the final instructions about the law you will be given at the end of the case to use in your deliberations. If there is any difference between the preliminary and final instructions, you must follow and be governed by the final instructions in deciding the case. You should not be concerned about any difference between the preliminary instructions and the final instructions. *(Insert applicable jury instructions, such as the definition of the burden of proof and any applicable evidentiary standards.)***

**It will be the sole responsibility of the jurors chosen to try the case to determine the facts from all the evidence received during the trial.**

**To meet this responsibility you, as jurors, have a duty to determine the facts and apply the law impartially.**

**In this case, the parties are entitled to a jury trial. Trial by jury is a traditional way for people to render justice among themselves. Each juror plays an equal and important part in this American plan for justice. This requires your close attention, absolute honesty and impartiality, and sound judgment.**

**It has been estimated that this trial will last** *(insert number)* **days.** *(The Court may either at this time or later inquire whether there are any members of the jury panel who would be unable to serve during the trial if selected as jurors.)*

**In this case, it will not be necessary to keep the jurors together at noon or at night until the case is finally given to you for your decision.**

### **Notes on Use**

1. This instruction should be used rather than Instruction 1:1. *See* Notes on Use to Instruction 1:1.

2. Use whichever parenthesized words are appropriate.

3. This instruction should be modified to reflect current communication methods and information-gathering technology.

### **Related Instructions**

4. Although this instruction replaces Instruction 1:1 and Instruction 2:1, other instructions in Chapter 1 must be included when applicable, including 1:2 through 1:23. The Comment to C.R.C.P. 47 explains as follows:

As part of the case-specific orientation, certain preliminary instructions should be used to help prospective jurors to understand the claims and defenses of the parties in the civil case. At a minimum, these instructions should address burden of proof, credibility, objections by counsel, bench conferences and whether jurors will be permitted to take notes and ask questions. In complex or technical cases, definitions of terms and other information that would help orient the jury to the case should be given. The trial judge, rather than counsel, should give these instructions as part of the before-examination orientation.

### **Source and Authority**

1. This instruction is supported by C.R.J.P. 1, C.R.C.P. 47, and Crim. P. 24.

2. C.R.J.P. 1 provides in part: “Proceedings in delinquency shall be conducted in accordance with the Colorado Rules of Criminal Procedure, except as otherwise provided by statute or by these rules.” C.R.J.P. 3.5(b) and section 19-2-805, C.R.S., provide that the examination and selection of jurors in delinquency proceedings shall be as provided by C.R.C.P. 47, except that the grounds for challenge for cause are governed by Crim. P. 24. C.R.C.P. 47(a)(1), in turn provides, “An orientation and examination shall be conducted to inform prospective jurors about their duties and service.” C.R.C.P. 47(a)(2)(IV) requires that the judge explain the “nature of the case” in “plain and clear language.”

3. In most cases, no jury trial is permitted in a delinquency case. §§ 19-1-105 & 19-2-107(2), C.R.S.; *see also* **People in Interest of A.B.-B.**, 215 P.3d 1205 (Colo. App. 2009). In cases where a jury trial is authorized, under section 19-2-107(1), the “juvenile or the district

attorney may demand a trial by a jury of not more than six persons . . . or the court, on its own motion, may order” one. *See also* § 19-2-601(3)(a), C.R.S. (providing that when the child is alleged to be an “aggravated juvenile offender,” the child may request a jury of twelve).

4. As to the constitutionality of section 19-2-107(2) (formerly section 19-1-106(4)(a)(I), C.R.S.), excluding the right to jury trial in less serious delinquency adjudications, see **People in Interest of T.M.**, 742 P.2d 905 (Colo. 1987). *See also* **A.C. v. People**, 16 P.3d 240 (Colo. 2001) (upholding constitutionality of section 19-2-107, and construing statute to mandate jury trial only when juvenile is charged as an aggravated juvenile offender or with a crime of violence). The child does not have a “fundamental right” to elect to be tried by the court if the state demands a jury trial. **S.A.S. v. Dist. Court**, 623 P.2d 58 (Colo. 1981) (construing what was formerly section 19-1-106(4), C.R.S.).

5. Concerning the form and content of delinquency petitions, see section 19-2-513, C.R.S., and C.R.J.P. 3.1(a). Although the parents of the juvenile must be named in the petition and may attend delinquency hearings, they have no due process right to participate as actual parties in interest in the adjudicative phase of the proceedings. **People in Interest of J.P.L.**, 214 P.3d 1072 (Colo. App. 2009).

6. The burden of proof in juvenile delinquency cases is beyond a reasonable doubt. § 19-1-103(2), C.R.S.; **S.A.S.**, 623 P.2d at 61.

## **40:2 GENERAL OUTLINE OF TRIAL PROCEDURES TO JURY**

**I will now explain the procedure that is usually followed during a trial. Before the trial begins, I will orally give you some preliminary instructions to provide you with a framework for the evidence that will be presented. (You will also receive copies of these preliminary instructions.)**

**The attorneys will then have the opportunity to present opening statements. The purpose of opening statements is to give you an outline of each party's claims and defenses. You must remember, however, that what is said in opening statements and all other statements made by the attorneys are not evidence. Your verdict must be based upon the evidence in this case and the instructions regarding the law that governs this case. The evidence usually consists of the sworn testimony of witnesses, the exhibits which are received and any facts which are admitted or agreed to or are judicially noticed.**

**(Also, during the course of this trial, [the court] [the attorneys] will [make] [read] brief statements summarizing the evidence already presented [and outlining how this evidence relates to evidence that will be presented later in the trial]. These statements are not evidence and are only made for the purpose of assisting you in understanding this case.)**

**Once the trial begins, the People will present evidence. The Juvenile's attorney is permitted to cross-examine all witnesses presented by the People. Upon the conclusion of the People's case, the Juvenile's attorney may offer evidence on behalf of the Juvenile, but is not required to do so. The burden is always on the People, represented by the district attorney, to prove beyond a reasonable doubt every element of the delinquent act(s) that (is) (are) charged. The law never imposes on the Juvenile the burden of calling any witnesses or presenting any evidence. If the Juvenile presents witnesses (in response to the People's evidence or to establish any defense), the People may cross-examine them. The Prosecution may choose to present further evidence in response to any evidence presented by the Juvenile.**

**After all the evidence has been received, (I) (the Court) will give you final instructions on the law applicable to this particular case. These final instructions will replace the preliminary instructions that you will be given before the trial begins. Based upon the evidence presented, the final instructions may differ from the preliminary instructions. If there is any difference between the preliminary and final instructions, you must follow and be governed by the final instructions in deciding the case.**

**After you have received all the instructions on the law governing this case, each attorney may present a final argument to you. The People will first present a closing argument. Thereafter, the Juvenile's attorney will make a closing argument. The People may respond to any statements made by the Juvenile's attorney. After arguments are concluded, the case is given to you for decision.**

**It is the right of an attorney to object when testimony or other evidence is offered that the attorney believes is not admissible.**

**When (I) (the Court) sustain(s) an objection to a question, the jurors must disregard the question and must draw no conclusion from the question nor guess what the witness would have said. If any answer has been given, the jurors must disregard it.**

**When (I) (the Court) sustain(s) an objection to any evidence or strikes any evidence, the jurors must disregard that evidence.**

**When (I) (the Court) overrule(s) an objection to any evidence, the jurors must not give that evidence any more weight than if the objection had not been made. You should not be prejudiced against any party because that party's attorney makes an objection.**

**Legal arguments are occasionally required to be considered outside the presence of the jury. This may cause delay. All rulings (I) (the Court) (am) (is) required to make will be based solely on the law. You must not infer from any ruling or from anything (I) (the Court) say(s) during trial that (I) (the Court) hold(s) any views either for or against any party to this case.**

**During recesses and adjournments of court, you will be free to separate, to eat lunch, and to go home at the end of the day. During these times, you are not to discuss this case with one another or anyone else. Furthermore, you must not talk with any of the parties to this case, their attorneys, witnesses, or representatives of the media until after you have reached your verdict and have been discharged by the Court as jurors in this case.**

**We have a Bailiff, *(name)*, and *(insert applicable pronoun)* is here to take care of your needs during the course of this trial. Do not discuss this case with the Bailiff. If you have any personal problems or needs, take it up with *(name of Bailiff)* and *(insert applicable pronoun)* will notify me.**

### **Notes on Use**

1. This instruction should be used rather than Instruction 1:7. *See* Notes on Use to Instruction 1:7.

2. Use whichever parenthesized words are appropriate.

### **Source and Authority**

This instruction is supported by the authorities cited in paragraphs 1 and 2 of the Source and Authority to Instruction 40:1, and the Source and Authority to Instruction 1:7.



#### **40:3 SUMMARY CLOSING INSTRUCTION**

**These instructions contain the law that will govern you in this case.**

**No one of these instructions states all of the law applicable, but all of them must be taken, read and considered together because they are connected with and related to each other as a whole.**

**You must not be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law should be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.**

**Neither sympathy nor prejudice should influence you. You must not consider for any purpose what action the Court may take with respect to the juvenile as a result of your verdict. Such action is solely the responsibility of the Court.**

**The Court did not in any way and does not by these instructions express any opinions as to what has or has not been proved in the case, or as to what are or are not the facts of the case.**

#### **Notes on Use**

This instruction should be used rather than Instruction 4:1, although the instructions are similar except for the additional fourth paragraph of this instruction. *See* Notes on Use to Instruction 4:1.

#### **Source and Authority**

This instruction is supported by the authorities cited in the Source and Authority to Instruction 4:1.