



OFFICE OF THE STATE PUBLIC DEFENDER  
Office of the State Court Administrator

---

July 1, 2008

Mr. John W. Suthers  
Attorney General  
1525 Sherman St.  
7th floor  
Denver, CO 80203

Re: Request For Attorney General Opinion as to the Continued Constitutionality and Viability of CRS 16-7-301(4)(a) and 207(1)(c) in Light of the United States Supreme Court's Decision in *Rothgery v. Gillespie County*, 554 U.S. \_\_\_\_ (6/23/08).

Dear Mr. Suthers,

On June 23, 2008, the United States Supreme Court issued an opinion in *Rothgery v. Gillespie County*, 554 U.S. \_\_\_\_ (6/23/08). The *Rothgery* Court held that the Sixth Amendment's right to counsel attaches at the time a criminal defendant first appears before a judicial officer where he is informed of the criminal charges and restrictions are imposed upon his freedom. CRS 16-7-301(4)(a) requires an indigent defendant in misdemeanors, petty offenses and traffic offenses to pre-try his case with the prosecutor before he is entitled to apply for a public defender. CRS 16-7-207(1)(c) references the same procedure, but goes further by denying counsel to indigent defendants if the prosecution stipulates that they will not seek jail.

As the State Court Administrator and the State Public Defender, we are concerned about the continued constitutionality of these two statutes in light of *Rothgery*. The Court clearly indicates Colorado is in the minority in the current practice of the appointment of counsel along with Texas and Oklahoma. (*Rothgery* at pages 10-13).

Therefore, we are requesting that you give an opinion concerning the continued constitutionality and viability of the above statutes in light of the *Rothgery* decision. Please let us know if you will undertake the requested opinion. If you have any other questions, please contact either one of us.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Marroney".

Gerald A. Marroney  
State Court Administrator  
1301 Pennsylvania, Suite 300  
Denver CO 80203  
(303)861-1111

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas K. Wilson".

Douglas K. Wilson  
Colorado State Public Defender  
1290 Broadway, Suite 900  
Denver CO 80203  
(303)764-1400



JOHN W. SUTHERS  
Attorney General

CYNTHIA H. COFFMAN  
Chief Deputy Attorney General

DANIEL D. DOMENICO  
Solicitor General

STATE OF COLORADO  
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING  
1525 Sherman Street - 7th Floor  
Denver, Colorado 80203  
Phone (303) 866-4500

July 2, 2008

Gerald A. Marroney  
State Court Administrator  
1301 Pennsylvania #300  
Denver CO 80203

Douglas K. Wilson ✓  
Colorado State Public Defender  
1290 Broadway #900  
Denver CO 80203

RE: Request for Attorney General Opinion as to the Continued Constitutionality and Viability of C.R.S. 16-7-301(4)(a) and 207(1)(c) in light of the United States Supreme Court's Decision in Rothgery v. Gillespie County, 554 U.S. \_\_\_\_ (6/23/08)

Gentlemen:

I am in receipt of your letter dated July 1, 2008, requesting a formal opinion of the Attorney General.

After carefully considering the matter, I have determined not to issue a formal opinion. We have reviewed the Rothgery opinion and have determined that the Colorado statutes you have referenced are constitutionally defensible, should they be challenged. Because it will be the Attorney General's obligation to defend the statutes, we do not believe it would serve the interests of the state to issue a formal opinion at this time.

If you have further questions, please don't hesitate to contact me.

Sincerely,

JOHN W. SUTHERS  
Attorney General  
(303) 866-5785  
(303) 866-3955 (FAX)