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An Act

HOUSE BILL 08-1208

BY REPRESENTATIVE(S) Levy, Carroll T., Green, Kefalas, Labuda, Merrifield, Weissmann, Benefield, Butcher, Carroll M., Jahn, Judd, Kerr A., Madden, Marshall, Solano, Borodkin, McFadyen, McGihon, Stafford, and Todd;
also SENATOR(S) Shaffer, Bacon, Gordon, Hagedorn, Morse, Tapia, Boyd, Groff, Romer, and Tupa.

CONCERNING JUVENILES AGAINST WHOM CHARGES ARE DIRECTLY FILED IN
A DISTRICT COURT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 19-2-517 (3) (c), Colorado Revised Statutes, is amended to read:

19-2-517. Direct filing. (3) (c) The district court judge ~~may~~ **SHALL** sentence a juvenile pursuant to the provisions of this article if the juvenile is convicted of a ~~t lesser included~~ **AN** offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section. **WHEN A JUVENILE IS SENTENCED PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (c), THE JUVENILE'S CONVICTION BY VERDICT SHALL BE ADJUDICATED AS A JUVENILE DELINQUENCY.**

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 19-2-517, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-2-517. Direct filing. (6) (a) A JUVENILE MAY FILE A REVERSE-TRANSFER PETITION WITH THE DISTRICT COURT WITHIN THIRTY DAYS AFTER THE JUVENILE IS CHARGED BY THE DIRECT FILING OF AN INFORMATION IN DISTRICT COURT OR BY INDICTMENT PURSUANT TO THIS SECTION, REQUESTING THAT THE JUVENILE'S CASE BE REMANDED TO THE JUVENILE COURT FOR ADJUDICATION PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

(b) UPON RECEIPT OF THE PETITION, THE DISTRICT COURT SHALL SET A REVERSE-TRANSFER HEARING AS SOON AS PRACTICABLE AFTER A DETERMINATION OF PROBABLE CAUSE PURSUANT TO SECTION 18-4-404, C.R.S.

(c) AT THE HEARING, THE JUVENILE SHALL HAVE THE BURDEN OF SHOWING BY A PREPONDERANCE OF THE EVIDENCE THAT ADJUDICATIVE PROCEEDINGS PURSUANT TO THIS ARTICLE WOULD SERVE BOTH THE INTERESTS OF THE COMMUNITY AND INTERESTS OF THE JUVENILE BASED ON THE CONSIDERATION OF THE FOLLOWING FACTORS:

(I) THE SERIOUSNESS OF THE OFFENSE AND WHETHER THE PROTECTION OF THE COMMUNITY REQUIRES ISOLATION OF THE JUVENILE BEYOND THAT AFFORDED BY JUVENILE FACILITIES;

(II) WHETHER THE ALLEGED OFFENSE WAS COMMITTED IN AN AGGRESSIVE, VIOLENT, PREMEDITATED, OR WILLFUL MANNER;

(III) WHETHER THE ALLEGED OFFENSE WAS AGAINST PERSONS OR PROPERTY, GREATER WEIGHT BEING GIVEN TO OFFENSES AGAINST PERSONS;

(IV) THE MATURITY OF THE JUVENILE AS DETERMINED BY CONSIDERATIONS OF THE JUVENILE'S HOME, ENVIRONMENT, EMOTIONAL ATTITUDE, AND PATTERN OF LIVING;

(V) THE RECORD AND PREVIOUS HISTORY OF THE JUVENILE;

(VI) THE LIKELIHOOD OF REHABILITATION OF THE JUVENILE BY USE

OF FACILITIES AVAILABLE TO THE JUVENILE COURT;

(VII) THE INTEREST OF THE COMMUNITY IN THE IMPOSITION OF A PUNISHMENT COMMENSURATE WITH THE GRAVITY OF THE OFFENSE;

(VIII) THE IMPACT OF THE OFFENSE ON THE VICTIM;

(IX) THAT THE JUVENILE WAS TWICE PREVIOUSLY ADJUDICATED A DELINQUENT JUVENILE FOR DELINQUENT ACTS THAT CONSTITUTE FELONIES;

(X) THAT THE JUVENILE WAS PREVIOUSLY ADJUDICATED A JUVENILE DELINQUENT FOR A DELINQUENT ACT THAT CONSTITUTES A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406, C.R.S.;

(XI) THAT THE JUVENILE WAS PREVIOUSLY COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES FOLLOWING AN ADJUDICATION FOR A DELINQUENT ACT THAT CONSTITUTES A FELONY;

(XII) THAT THE JUVENILE IS SIXTEEN YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE PRESENT ACT CONSTITUTES A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406, C.R.S.;

(XIII) THAT THE JUVENILE IS SIXTEEN YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND HAS BEEN TWICE PREVIOUSLY ADJUDICATED A JUVENILE DELINQUENT FOR DELINQUENT ACTS AGAINST PROPERTY THAT CONSTITUTE FELONIES; AND

(XIV) THAT THE JUVENILE USED, OR POSSESSED AND THREATENED THE USE OF, A DEADLY WEAPON IN THE COMMISSION OF A DELINQUENT ACT.

(d) THE AMOUNT OF WEIGHT TO BE GIVEN TO EACH OF THE FACTORS LISTED IN PARAGRAPH (c) OF THIS SUBSECTION (6) IS DISCRETIONARY WITH THE COURT; EXCEPT THAT A RECORD OF TWO OR MORE PREVIOUSLY SUSTAINED PETITIONS FOR DELINQUENT ACTS THAT CONSTITUTE FELONIES OR A RECORD OF TWO OR MORE JUVENILE PROBATION REVOCATIONS BASED ON ACTS THAT CONSTITUTE FELONIES SHALL ESTABLISH PRIMA FACIE EVIDENCE THAT TO TRANSFER JURISDICTION TO JUVENILE COURT WOULD BE CONTRARY TO THE BEST INTERESTS OF THE JUVENILE OR OF THE COMMUNITY.

SECTION 3. 19-2-508 (3) (c) (II), (4) (a), and (4) (b), Colorado Revised Statutes, are amended, and the said 19-2-508 (3) (c) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions - repeal.

(3) (c) (II) Following a detention hearing held in accordance with subparagraph (I) of this paragraph (c), ~~no juvenile who is to be tried as an adult for criminal proceedings pursuant to a direct filing or transfer shall be held at any facility intended to be utilized by juvenile offenders, unless the district attorney and the defense counsel agree otherwise. If there is no agreement, detention of the juvenile shall be subject to the provisions of subsection (4) of this section.~~ ANY JUVENILE WHO IS TO BE TRIED FOR CRIMINAL PROCEEDINGS PURSUANT TO A DIRECT FILING OR TRANSFER OR HAS BEEN ORDERED BY THE COURT TO BE HELD FOR CRIMINAL PROCEEDINGS AS AN ADULT PURSUANT TO A TRANSFER OR DIRECT FILING SHALL BE HELD AT A FACILITY INTENDED TO BE UTILIZED BY JUVENILE OFFENDERS UNLESS THE COURT FINDS THAT:

(A) THE JUVENILE'S RELEASE FROM CUSTODY IS NOT APPROPRIATE DUE TO THE JUVENILE BEING A DANGER TO HIMSELF OR HERSELF OR THE COMMUNITY OR THAT JUVENILE IS LIKELY TO FAIL TO APPEAR FOR A PENDING COURT HEARING; AND

(B) THERE IS A SUBSTANTIAL PROBABILITY THAT HIS OR HER RETENTION IN A JUVENILE FACILITY WILL SERIOUSLY ENDANGER OTHER RESIDENTS OF THE FACILITY.

(III) IN THE EVENT THAT THE COURT MAKES THE FINDINGS IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) AND ORDERS THE JUVENILE HELD IN A JAIL, THE JUVENILE SHALL BE PHYSICALLY SEGREGATED FROM THE ADULT OFFENDERS AND THERE SHALL BE BOTH SIGHT AND SOUND SEPARATION FROM ADULT OFFENDERS.

(4) (a) ~~No jail shall receive a juvenile for detention following a detention hearing pursuant to this section unless the juvenile has been ordered by the court to be held for criminal proceedings as an adult pursuant to a transfer or unless the juvenile is to be held for criminal proceedings as an adult pursuant to a direct filing. No juvenile under the age of fourteen and, except upon order of the court, no juvenile fourteen years of age or~~

~~older shall be detained in a jail, lockup, or other place used for the confinement of adult offenders. The exception for detention in a jail shall be used only if the juvenile is being held for criminal proceedings as an adult pursuant to a direct filing or transfer.~~

~~(b) Whenever a juvenile is held pursuant to a direct filing or transfer in a facility where adults are held, the juvenile shall be physically segregated from the adult offenders.~~

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to offenses committed on or after the applicable effective date of this act.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO