

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 08-0592.01 Michael Dohr

HOUSE BILL 08-1208

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Levy, Carroll T., Green, Kefalas, Labuda, Merrifield, Weissmann, Benefield, Butcher, Carroll M., Jahn, Judd, Kerr A., Madden, Marshall, and Solano

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House Committees
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A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

For purposes of authorizing a district attorney to directly file charges in district court against a juvenile ("direct file"), changes the minimum age of the defendant from 14 to 16 years. Removes vehicular homicide and vehicular assault from the crimes eligible for direct file. Permits a district court to sentence a juvenile to the youthful offender system as a result of a plea to a class 2 felony if the juvenile was originally charged with a class 1 felony and the district attorney stipulates

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
3rd Reading Unamended
March 11, 2008

HOUSE
Amended 2nd Reading
March 7, 2008

or the court finds there is no reasonable likelihood of conviction on the class 1 felony. Permits the district court to sentence a juvenile who is convicted as an adult to a juvenile disposition if the court finds the interests of the juvenile and the community are better served by a juvenile disposition. Requires the district court to sentence a juvenile who is convicted as an adult to a juvenile disposition for conviction of an offense for which criminal charges could not have been originally filed by information or indictment. States that, if a juvenile is convicted as an adult and receives a juvenile disposition, the juvenile's conviction shall be adjudicated as a juvenile delinquency. Creates a reverse-transfer process.

Makes conforming amendments.

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

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

4 **19-2-517. Direct filing.** (3) (c) The district court judge ~~may~~
5 SHALL sentence a juvenile pursuant to the provisions of this article if the
6 juvenile is convicted of a lesser included AN offense for which criminal
7 charges could not have been originally filed by information or indictment
8 in the district court pursuant to this section. WHEN A JUVENILE IS
9 SENTENCED PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (C), THE
10 JUVENILE'S CONVICTION BY VERDICT SHALL BE ADJUDICATED AS A
11 JUVENILE DELINQUENCY. _____

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

14 **19-2-517. Direct filing.** (6) (a) A JUVENILE MAY FILE A
15 REVERSE-TRANSFER PETITION WITH THE DISTRICT COURT WITHIN THIRTY
16 DAYS AFTER THE JUVENILE IS CHARGED BY THE DIRECT FILING OF AN
17 INFORMATION IN DISTRICT COURT OR BY INDICTMENT PURSUANT TO THIS
18 SECTION, REQUESTING THAT THE JUVENILE'S CASE BE REMANDED TO THE
19 JUVENILE COURT FOR ADJUDICATION PURSUANT TO THE PROVISIONS OF

1 THIS ARTICLE.

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

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

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

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

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

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

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

23 (VI) THE LIKELIHOOD OF REHABILITATION OF THE JUVENILE BY USE
24 OF FACILITIES AVAILABLE TO THE JUVENILE COURT;

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

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

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

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

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

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

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

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

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

1 INTERESTS OF THE JUVENILE OR OF THE COMMUNITY. _____

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

5 19-2-508. Detention and shelter - hearing - time limits -
6 findings - review - confinement with adult offenders - restrictions -
7 repeal. (3) (c) (II) Following a detention hearing held in accordance
8 with subparagraph (I) of this paragraph (c), no juvenile who is to be tried
9 as an adult for criminal proceedings pursuant to a direct filing or transfer
10 shall be held at any facility intended to be utilized by juvenile offenders,
11 unless the district attorney and the defense counsel agree otherwise. If
12 there is no agreement, detention of the juvenile shall be subject to the
13 provisions of subsection (4) of this section. ANY JUVENILE WHO IS TO BE
14 TRIED FOR CRIMINAL PROCEEDINGS PURSUANT TO A DIRECT FILING OR
15 TRANSFER OR HAS BEEN ORDERED BY THE COURT TO BE HELD FOR
16 CRIMINAL PROCEEDINGS AS AN ADULT PURSUANT TO A TRANSFER OR
17 DIRECT FILING SHALL BE HELD AT A FACILITY INTENDED TO BE UTILIZED BY
18 JUVENILE OFFENDERS UNLESS THE COURT FINDS THAT:

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


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

26 (III) IN THE EVENT THAT THE COURT MAKES THE FINDINGS IN
27 SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) AND ORDERS THE JUVENILE

1 HELD IN A JAIL, THE JUVENILE SHALL BE PHYSICALLY SEGREGATED FROM
2 THE ADULT OFFENDERS AND THERE SHALL BE BOTH SIGHT AND SOUND
3 SEPARATION FROM ADULT OFFENDERS.

4 (4) (a) No jail shall receive a juvenile for detention following a
5 detention hearing pursuant to this section unless the juvenile has been
6 ordered by the court to be held for criminal proceedings as an adult
7 pursuant to a transfer or unless the juvenile is to be held for criminal
8 proceedings as an adult pursuant to a direct filing. No juvenile under the
9 age of fourteen and, except upon order of the court, no juvenile fourteen
10 years of age or older shall be detained in a jail, lockup, or other place
11 used for the confinement of adult offenders. The exception for detention
12 in a jail shall be used only if the juvenile is being held for criminal
13 proceedings as an adult pursuant to a direct filing or transfer.

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

17 

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

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