

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0592.01 Michael Dohr

HOUSE BILL 08-1208

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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.

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 (1) and (3), Colorado Revised Statutes,
3 are amended, and the said 19-2-517 is further amended BY THE
4 ADDITION OF A NEW SUBSECTION, to read:

5 **19-2-517. Direct filing.** (1) (a) A juvenile may be charged by the
6 direct filing of an information in the district court or by indictment only
7 when:

8 (I) The juvenile is ~~fourteen~~ SIXTEEN years of age or older at the
9 time of the commission of the alleged offense and is alleged to have
10 committed a class 1 or class 2 felony; or

11 (II) The juvenile is ~~fourteen~~ SIXTEEN years of age or older at the
12 time of the commission of the alleged offense and:

13 (A) Is alleged to have committed a felony enumerated as a crime
14 of violence pursuant to section 18-1.3-406, C.R.S.; or

15 (B) Is alleged to have committed a felony offense described in
16 part 1 of article 12 of title 18, C.R.S., except for the possession of a
17 handgun by a juvenile, as set forth in section 18-12-108.5, C.R.S.; or

18 (C) Is alleged to have used, or possessed and threatened the use
19 of, a deadly weapon during the commission of felony offenses against the

1 person, which are set forth in article 3 of title 18, C.R.S.; or

2 (D) ~~Is alleged to have committed vehicular homicide, as described~~
3 ~~in section 18-3-106, C.R.S., vehicular assault, as described in section~~
4 ~~18-3-205, C.R.S., or felonious arson, as described in part 1 of article 4 of~~
5 title 18, C.R.S.; or

6 (III) The juvenile has, within the two previous years, been
7 adjudicated a juvenile delinquent for a delinquent act that constitutes a
8 felony, is sixteen years of age or older at the time of the commission of
9 the alleged offense, and allegedly has committed a crime defined by
10 section 18-1.3-401, C.R.S., as a class 3 felony, except felonies defined by
11 section 18-3-402 (1) (d), C.R.S., or section 18-3-403 (1) (e), C.R.S., as it
12 existed prior to July 1, 2000; or

13 (IV) ~~The juvenile is fourteen years of age or older at the time of~~
14 ~~the commission of the alleged offense, has allegedly committed a~~
15 ~~delinquent act that constitutes a felony, and has previously been subject~~
16 ~~to proceedings in district court as a result of a direct filing pursuant to this~~
17 ~~section or a transfer pursuant to section 19-2-518; except that, if a~~
18 ~~juvenile is found not guilty in the district court of the prior felony or any~~
19 ~~lesser included offense, the subsequent charge shall be remanded back to~~
20 ~~the juvenile court; or~~

21 (V) The juvenile is ~~fourteen~~ SIXTEEN years of age or older at the
22 time of the commission of the alleged offense, has allegedly committed
23 a delinquent act that constitutes a felony, and is determined to be an
24 "habitual juvenile offender". For the purposes of this section, "habitual
25 juvenile offender" is defined in section 19-1-103 (61).

26 (b) The offenses described in subparagraphs (I) to (V) of
27 paragraph (a) of this subsection (1) shall include the attempt, conspiracy,

1 solicitation, or complicity to commit such offenses.

2 (3) (a) Whenever criminal charges are filed by information or
3 indictment in the district court pursuant to this section, the district judge
4 shall sentence the juvenile as follows:

5 (I) As an adult; or

6 (II) To the youthful offender system in the department of
7 corrections in accordance with section 18-1.3-407, C.R.S., if the juvenile
8 is convicted of an offense described in subparagraph (II) or (V) of
9 paragraph (a) of subsection (1) of this section; except that a juvenile shall
10 be ineligible for sentencing to the youthful offender system if the juvenile
11 is convicted of:

12 (A) A class 1 felony;

13 (B) A class 2 felony as a result of a plea agreement in cases where
14 the juvenile is charged with a class 1 felony EXCEPT WHEN THE DISTRICT
15 ATTORNEY STIPULATES OR THE COURT FINDS THAT THERE IS NO
16 REASONABLE LIKELIHOOD OF CONVICTION OF THE CLASS 1 FELONY;

17 (C) A class 2 felony and the juvenile has one or more prior
18 convictions for a crime of violence, as defined in section 18-1.3-406,
19 C.R.S., or prior adjudications for an offense that would constitute a crime
20 of violence if committed by an adult;

21 ~~(D) A class 2 felony and the juvenile is sixteen years of age or~~
22 ~~older;~~

23 (E) Any sexual offense described in section 18-6-301 or 18-6-302,
24 C.R.S., or part 4 of article 3 of title 18, C.R.S.; or

25 (F) A second or subsequent offense described in said
26 subparagraph (II) or (V), if such person received a sentence to the
27 department of corrections or to the youthful offender system for the prior

1 offense; or

2 (III) Pursuant to the provisions of this article, if the ~~juvenile is less~~
3 ~~than sixteen years of age at the time of commission of the crime and is~~
4 ~~convicted of an offense other than a class 1 or class 2 felony, a crime of~~
5 ~~violence as defined under section 18-1.3-406, C.R.S., or an offense~~
6 ~~described in subparagraph (V) of paragraph (a) of subsection (1) of this~~
7 ~~section and the judge makes a finding of special circumstances~~ JUDGE
8 FINDS THE INTERESTS OF THE JUVENILE AND OF THE COMMUNITY WOULD
9 BE BETTER SERVED BY A JUVENILE DISPOSITION AFTER CONSIDERATION OF
10 THE FACTORS OUTLINED IN SECTION 19-2-518 (4) (b).

11 (b) Repealed.

12 (c) The district court judge ~~may~~ SHALL sentence a juvenile
13 pursuant to the provisions of this article if the juvenile is convicted of a
14 ~~lesser included~~ AN offense for which criminal charges could not have
15 been originally filed by information or indictment in the district court
16 pursuant to this section.

17 (d) WHEN A JUVENILE IS SENTENCED PURSUANT TO THE
18 PROVISIONS OF THIS ARTICLE, THE JUVENILE'S CONVICTION BY VERDICT
19 SHALL BE ADJUDICATED AS A JUVENILE DELINQUENCY.

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

26 (b) UPON RECEIPT OF THE PETITION, THE DISTRICT COURT SHALL
27 SET A REVERSE-TRANSFER HEARING AS SOON AS PRACTICABLE.

1 (c) AT THE HEARING, THE JUVENILE SHALL HAVE THE BURDEN OF
2 SHOWING BY A PREPONDERANCE OF THE EVIDENCE THAT ADJUDICATIVE
3 PROCEEDINGS PURSUANT TO THIS ARTICLE WOULD SERVE THE BEST
4 INTERESTS OF THE JUVENILE AND THE COMMUNITY.

5 (d) IF THE COURT FINDS THAT THE JUVENILE HAS SATISFIED THE
6 BURDEN DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (6), THE
7 COURT SHALL CONSIDER THE FOLLOWING IN DETERMINING WHETHER TO
8 GRANT THE JUVENILE'S PETITION:

9 (I) WHETHER THERE IS PROBABLE CAUSE FOR THE CHARGED
10 OFFENSES;

11 (II) WHETHER THE INTERESTS OF THE JUVENILE OR THE
12 COMMUNITY WOULD BE BETTER SERVED BY ADJUDICATIVE PROCEEDINGS
13 PURSUANT TO THIS ARTICLE; AND

14 (III) THE FACTORS SPECIFIED IN SECTION 19-2-518 (4) (b).

15 **SECTION 2. Repeal.** 19-2-518 (5), Colorado Revised Statutes,
16 is repealed as follows:

17 **19-2-518. Transfers.** (5) ~~When an action has been remanded to~~
18 ~~the juvenile court pursuant to section 19-2-517 (1) (a) (IV) and the~~
19 ~~prosecution seeks waiver of jurisdiction pursuant to this section, the~~
20 ~~court's findings from the prior transfer hearing regarding the factor listed~~
21 ~~in paragraph (c) of subsection (4) of this section shall establish prima~~
22 ~~facie evidence that to retain jurisdiction in juvenile court would be~~
23 ~~contrary to the best interests of the juvenile or of the community.~~

24 **SECTION 3. Effective date - applicability.** This act shall take
25 effect July 1, 2008, and shall apply to offenses committed on or after said
26 date.

27 **SECTION 4. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.