

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0956.01 Michael Dohr

HOUSE BILL 09-1321

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A BILL FOR AN ACT

101 **CONCERNING THE PLACEMENT OF A JUVENILE WHO IS AWAITING TRIAL**
102 **IN 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.)

Precludes a juvenile from being held in a jail or adult lockup unless the juvenile is charged as an adult, either after a transfer hearing (transfer) or by the direct filing of charges in district court (direct file), and the district court determines after a hearing that such a placement is appropriate. Outlines the factors that the court shall consider when determining whether to hold a juvenile in a jail or adult lockup. Directs the court to hold the hearing within 30 days after transfer or direct file,

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.

and provides that the juvenile shall be held in a juvenile facility until the hearing is held. If the juvenile is ordered held in a jail or adult lockup, permits the juvenile to petition the court for placement in a juvenile facility based on a change in circumstances.

Makes conforming amendments.

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

SECTION 1. 19-2-508 (4), Colorado Revised Statutes, is amended to read:

19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions - repeal. (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. A JAIL OR OTHER FACILITY FOR PRETRIAL DETENTION OF ADULT OFFENDERS SHALL NOT RECEIVE A JUVENILE FOR DETENTION FOLLOWING A DETENTION HEARING UNLESS THE JUVENILE HAS BEEN ORDERED BY THE COURT TO BE HELD FOR CRIMINAL PROCEEDINGS AS AN ADULT PURSUANT TO A TRANSFER PETITION UNDER SECTION 19-2-518 OR PURSUANT TO THE DIRECT FILING OF AN INFORMATION IN THE DISTRICT COURT OR BY INDICTMENT PURSUANT TO SECTION 19-2- 517 AND THE DISTRICT COURT FINDS, AFTER A HEARING, THAT IT IS IN THE INTERESTS OF JUSTICE TO~~

1 DETAIN THE JUVENILE IN AN ADULT FACILITY.

2 (b) IN DETERMINING WHETHER IT IS IN THE INTERESTS OF JUSTICE
3 TO PERMIT A JUVENILE TO BE HELD IN A JAIL OR FACILITY FOR PRETRIAL
4 DETENTION OF ADULT OFFENDERS, THE DISTRICT COURT SHALL CONSIDER
5 THE FOLLOWING FACTORS:

6 (I) THE AGE OF THE JUVENILE;

7 (II) THE PHYSICAL AND MENTAL MATURITY OF THE JUVENILE;

8 (III) THE NATURE, SERIOUSNESS, AND CIRCUMSTANCES OF THE
9 ALLEGED OFFENSE;

10 (IV) THE JUVENILE'S HISTORY OF PRIOR DELINQUENT ACTS;

11 (V) THE PRESENT MENTAL STATE OF THE JUVENILE, INCLUDING
12 WHETHER THE JUVENILE PRESENTS AN IMMINENT RISK OF HARM TO
13 HIMSELF OR HERSELF OR WHETHER THE JUVENILE PRESENTS AN IMMINENT
14 RISK OF HARM TO OTHERS WITHIN A JUVENILE FACILITY;

15 (VI) WHETHER DETENTION IN A JUVENILE FACILITY WILL
16 ADEQUATELY SERVE THE NEED FOR COMMUNITY PROTECTION PENDING
17 THE OUTCOME OF THE CRIMINAL PROCEEDINGS;

18 (VII) WHETHER DETENTION IN A JUVENILE FACILITY WILL BETTER
19 SERVE THE LONG-TERM INTERESTS OF THE JUVENILE AND BE MORE LIKELY
20 TO PREVENT THE JUVENILE FROM REOFFENDING IN THE FUTURE;

21 (VIII) THE RELATIVE ABILITY OF THE AVAILABLE ADULT AND
22 JUVENILE DETENTION FACILITIES TO MEET THE NEEDS OF THE JUVENILE
23 AND PROTECT THE PUBLIC; AND

24 (IX) ANY OTHER RELEVANT FACTORS.

25 (c) THE DISTRICT COURT SHALL HOLD A HEARING ON THE PLACE OF
26 PRETRIAL DETENTION FOR THE JUVENILE AS SOON AS PRACTICABLE BUT NO
27 LATER THAN THIRTY DAYS AFTER THE DATE OF THE ORDER THAT THE

1 JUVENILE BE HELD FOR CRIMINAL PROCEEDINGS AS AN ADULT PURSUANT
2 TO SECTION 19-2-518 OR 19-2-517. THE JUVENILE SHALL REMAIN IN A
3 JUVENILE FACILITY PENDING THE COURT HEARING; HOWEVER, A JUVENILE
4 MAY WAIVE HIS OR HER RIGHT TO A HEARING PURSUANT TO THIS
5 SUBSECTION (4) AND CONSENT TO DETENTION IN A JAIL OR OTHER ADULT
6 FACILITY PENDING THE OUTCOME OF THE CRIMINAL PROCEEDINGS.

7 (d) THE DIVISION OF YOUTH CORRECTIONS IN THE DEPARTMENT OF
8 HUMAN SERVICES SHALL HAVE THE AUTHORITY TO DETAIN THE JUVENILE
9 AT ANY SECURE FACILITY OPERATED BY THE DIVISION FOR THE CARE OF
10 JUVENILES ORDERED DETAINED OR COMMITTED TO THE DIVISION OF YOUTH
11 CORRECTIONS CONSISTENT WITH ANY AND ALL POLICIES AND PROCEDURES
12 ESTABLISHED BY THE DIVISION FOR THE SAFE AND EFFECTIVE PLACEMENT
13 AND TREATMENT OF JUVENILES.

14 (e) THE DISTRICT ATTORNEY OR THE DIVISION OF YOUTH
15 CORRECTIONS IN THE DEPARTMENT OF HUMAN SERVICES MAY PETITION
16 THE COURT AT ANY TIME DURING THE JUVENILE'S PLACEMENT IN A
17 JUVENILE FACILITY FOR A FORTHWITH HEARING TO CONSIDER THE
18 TERMINATION OF THE JUVENILE'S PLACEMENT IN A JUVENILE FACILITY IF
19 THE JUVENILE PRESENTS AN IMMINENT DANGER TO THE OTHER JUVENILES
20 OR STAFF AT THE DETENTION FACILITY. AT THE HEARING, THE COURT
21 SHALL CONSIDER THE EVIDENCE OF IMMINENT DANGER AS WELL AS THE
22 FACTORS OUTLINED IN PARAGRAPH (b) OF THIS SUBSECTION (4).

23 (f) IF THE DISTRICT COURT DETERMINES THAT IT IS IN THE
24 INTERESTS OF JUSTICE TO PERMIT A JUVENILE CHARGED AS AN ADULT TO
25 BE HELD IN A JAIL OR OTHER FACILITY FOR THE DETENTION OF ADULT
26 OFFENDERS, THE JUVENILE MAY PETITION THE COURT FOR REVIEW OF THAT
27 DECISION IF THERE IS A SUBSTANTIAL CHANGE OF CIRCUMSTANCES THAT

1 WOULD AFFECT THE COURT'S DETERMINATION REGARDING THE FACTORS
2 OUTLINED IN PARAGRAPH (b) OF THIS SUBSECTION (4).

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

6 ~~(e)~~ (h) The official in charge of a jail or other facility for the
7 detention of adult offenders shall immediately inform the court that has
8 jurisdiction of the juvenile's alleged offense when a juvenile who is or
9 appears to be under eighteen years of age is received at the facility, except
10 for a juvenile ordered by the court to be held for criminal proceedings as
11 an adult.

12 ~~(d)~~ (i) (I) Any juvenile arrested and detained for an alleged
13 violation of any article of title 42, C.R.S., or for any alleged violation of
14 a municipal or county ordinance, and not released on bond, shall be taken
15 before a judge with jurisdiction of such violation within forty-eight hours
16 for the fixing of bail and conditions of bond pursuant to subparagraph
17 (IV) of paragraph (a) of subsection (3) of this section. A juvenile may be
18 detained in a jail, lockup, or other place used for the confinement of adult
19 offenders only for processing for no longer than six hours and during
20 such time shall be placed in a setting that is physically segregated by sight
21 and sound from the adult offenders, and in no case may the juvenile be
22 detained in such place overnight. After six hours, the juvenile may be
23 further detained only in a juvenile detention facility operated by or under
24 contract with the department of human services. In calculating time
25 under this subsection (4), Saturdays, Sundays, and legal holidays shall be
26 included.

27 (II) A sheriff or police chief who violates the provisions of

1 subparagraph (I) of this paragraph ~~(d)~~ (i) may be subject to a civil fine of
2 no more than one thousand dollars. The decision to fine shall be based
3 on prior violations of the provisions of subparagraph (I) of this paragraph
4 ~~(d)~~ (i) by the sheriff or police chief and the willingness of the sheriff or
5 police chief to address the violations in order to comply with
6 subparagraph (I) of this paragraph ~~(d)~~ (i).

7 ~~(e)~~ (j) The official in charge of a jail, lockup, or other facility for
8 the confinement of adult offenders that receives a juvenile for detention
9 should, wherever possible, take such measures as are reasonably
10 necessary to restrict the confinement of any such juvenile with known
11 past or current affiliations or associations with any gang so as to prevent
12 contact with other inmates at such jail, lockup, or other facility. The
13 official should, wherever possible, also take such measures as are
14 reasonably necessary to prevent recruitment of new gang members from
15 among the general inmate population. For purposes of this paragraph ~~(e)~~
16 (j), "gang" is defined in section 19-1-103 (52).

17 ~~(f)~~ (k) Any person who is eighteen years of age or older who is
18 being detained for a delinquent act or criminal charge over which the
19 juvenile court has jurisdiction shall be detained in the county jail in the
20 same manner as if such person is charged as an adult.

21 ~~(g)~~ (l) A juvenile court shall not order a juvenile offender who is
22 under eighteen years of age at the time of sentencing to enter a secure
23 setting or secure section of an adult jail or lockup as a disposition for an
24 offense or as a means of modifying the juvenile offender's behavior.

25 **SECTION 2.** 19-2-503 (1), Colorado Revised Statutes, is
26 amended to read:

27 **19-2-503. Issuance of a lawful warrant taking a juvenile into**

1 **custody.** (1) A lawful warrant taking a juvenile into custody may be
2 issued pursuant to this section by any judge of a court of record or by a
3 juvenile magistrate upon receipt of an affidavit relating facts sufficient to
4 establish probable cause to believe that a delinquent act has been
5 committed and probable cause to believe that a particular juvenile
6 committed that act. Upon receipt of such affidavit, the judge or
7 magistrate shall issue a lawful warrant commanding any peace officer to
8 take the juvenile named in the affidavit into custody and to take him or
9 her without unnecessary delay before the nearest judge of the juvenile
10 court or magistrate as provided in section ~~19-2-508 (4) (d)~~ 19-2-508 (4)
11 (i).

12 **SECTION 3.** 42-4-1706 (2) (a), Colorado Revised Statutes, is
13 amended to read:

14 **42-4-1706. Juveniles - convicted - arrested and incarcerated**
15 **- provisions for confinement.** (2) (a) Notwithstanding any other
16 provision of law, a child, as defined in section 19-1-103 (18), C.R.S.,
17 arrested and incarcerated for an alleged misdemeanor traffic offense
18 under this article, and not released on bond, shall be taken before a county
19 judge who has jurisdiction of such offense within forty-eight hours for
20 fixing of bail and conditions of bond pursuant to section ~~19-2-508 (4) (d)~~
21 19-2-508 (4) (i), C.R.S. Such child shall not be confined in a jail, lockup,
22 or other place used for the confinement of adult offenders for longer than
23 seventy-two hours, after which the child may be further detained only in
24 a juvenile detention facility operated by or under contract with the
25 department of human services. In calculating time under this subsection
26 (2), Saturdays, Sundays, and court holidays shall be included.

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.