

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

ENGROSSED

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

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.*

HOUSE
Amended 2nd Reading
April 28, 2009

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~~ A jail shall NOT 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~~ A juvenile under the age of fourteen and, except upon order of the court, ~~no~~ A juvenile fourteen years of age or older shall NOT 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 AND THE DISTRICT ATTORNEY HAS DETERMINED THAT JAIL IS THE APPROPRIATE PLACE OF CONFINEMENT PURSUANT TO THE FACTORS SET FORTH IN THIS PARAGRAPH (a). IN DETERMINING WHETHER JAIL IS THE APPROPRIATE PLACE OF CONFINEMENT, THE DISTRICT ATTORNEY SHALL CONSIDER THE FOLLOWING FACTORS:

(I) THE AGE OF THE JUVENILE;

(II) THE NATURE, SERIOUSNESS, AND CIRCUMSTANCES OF THE ALLEGED OFFENSE;

1 (III) THE JUVENILE'S HISTORY OF PRIOR DELINQUENT OR CRIMINAL
2 ACTS;

3 (IV) WHETHER DETENTION IN A JUVENILE FACILITY WILL
4 ADEQUATELY SERVE THE NEED FOR COMMUNITY PROTECTION PENDING
5 THE OUTCOME OF THE CRIMINAL PROCEEDINGS;

6 (V) WHETHER DETENTION IN A JUVENILE FACILITY WILL
7 NEGATIVELY IMPACT THE FUNCTIONING OF THE JUVENILE FACILITY BY
8 COMPROMISING THE GOALS OF DETENTION TO MAINTAIN A SAFE, POSITIVE,
9 AND SECURE ENVIRONMENT FOR ALL JUVENILES WITHIN THE FACILITY;

10 (VI) THE RELATIVE ABILITY OF THE AVAILABLE ADULT AND
11 JUVENILE DETENTION FACILITIES TO MEET THE NEEDS OF THE JUVENILE
12 AND PROTECT THE PUBLIC;

13 (VII) WHETHER THE JUVENILE PRESENTS AN IMMINENT RISK OF
14 HARM TO HIMSELF OR HERSELF OR OTHERS WITHIN A JUVENILE FACILITY;

15 (VIII) THE PHYSICAL MATURITY OF THE JUVENILE;

16 (IX) THE CURRENT MENTAL STATE OR MATURITY OF THE JUVENILE
17 AS EVIDENCED BY RELEVANT MENTAL HEALTH OR PSYCHOLOGICAL
18 ASSESSMENTS OR SCREENINGS THAT ARE MADE AVAILABLE TO BOTH THE
19 DISTRICT ATTORNEY AND DEFENSE COUNSEL; AND

20 (X) ANY OTHER RELEVANT FACTORS.

21 (b) AT ANY STAGE OF THE PROCEEDINGS, THE DISTRICT ATTORNEY
22 MAY, AFTER FURTHER CONSIDERATION OF THE FACTORS SET FORTH IN
23 PARAGRAPH (a) OF THIS SUBSECTION (4), AGREE TO CHANGE THE PLACE OF
24 CONFINEMENT FROM JAIL TO A JUVENILE FACILITY.

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

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

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

22 (II) A sheriff or police chief who violates the provisions of
23 subparagraph (I) of this ~~paragraph (d)~~ PARAGRAPH (e) may be subject to
24 a civil fine of no more than one thousand dollars. The decision to fine
25 shall be based on prior violations of the provisions of subparagraph (I) of
26 this ~~paragraph (d)~~ PARAGRAPH (e) by the sheriff or police chief and the
27 willingness of the sheriff or police chief to address the violations in order

1 to comply with subparagraph (I) of this ~~paragraph (d)~~ PARAGRAPH (e).

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

12 (f) (g) Any person who is eighteen years of age or older who is
13 being detained for a delinquent act or criminal charge over which the
14 juvenile court has jurisdiction shall be detained in the county jail in the
15 same manner as if such person is charged as an adult.

16 (g) (h) A juvenile court shall not order a juvenile offender who is
17 under eighteen years of age at the time of sentencing to enter a secure
18 setting or secure section of an adult jail or lockup as a disposition for an
19 offense or as a means of modifying the juvenile offender's behavior.

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

22 **19-2-503. Issuance of a lawful warrant taking a juvenile into**
23 **custody.** (1) A lawful warrant taking a juvenile into custody may be
24 issued pursuant to this section by any judge of a court of record or by a
25 juvenile magistrate upon receipt of an affidavit relating facts sufficient to
26 establish probable cause to believe that a delinquent act has been
27 committed and probable cause to believe that a particular juvenile

1 committed that act. Upon receipt of such affidavit, the judge or
2 magistrate shall issue a lawful warrant commanding any peace officer to
3 take the juvenile named in the affidavit into custody and to take him or
4 her without unnecessary delay before the nearest judge of the juvenile
5 court or magistrate as provided in ~~section 19-2-508 (4) (d)~~ SECTION
6 19-2-508 (4) (e).

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

9 **42-4-1706. Juveniles - convicted - arrested and incarcerated**
10 **- provisions for confinement.** (2) (a) Notwithstanding any other
11 provision of law, a child, as defined in section 19-1-103 (18), C.R.S.,
12 arrested and incarcerated for an alleged misdemeanor traffic offense
13 under this article, and not released on bond, shall be taken before a county
14 judge who has jurisdiction of such offense within forty-eight hours for
15 fixing of bail and conditions of bond pursuant to ~~section 19-2-508 (4) (d)~~
16 SECTION 19-2-508 (4) (e), C.R.S. Such child shall not be confined in a
17 jail, lockup, or other place used for the confinement of adult offenders for
18 longer than seventy-two hours, after which the child may be further
19 detained only in a juvenile detention facility operated by or under contract
20 with the department of human services. In calculating time under this
21 subsection (2), Saturdays, Sundays, and court holidays shall be included.

22 **SECTION 4. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.