

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

INTRODUCED

LLS NO. 10-0973.04 Michael Dohr

HOUSE BILL 10-1413

HOUSE SPONSORSHIP

Levy and May, Carroll T.

SENATE SPONSORSHIP

Newell and Lundberg,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING JUVENILES WHO ARE TRIED AS ADULTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

For purposes of authorizing a district attorney to directly file charges in district court against a juvenile (direct file), the bill changes the minimum age of the defendant from 14 to 16 years, except in the case of first degree murder, second degree murder, or a sex offense. At least 14 days prior to filing the charges in district court, the district attorney must file the charges in juvenile court with a notice of decision on direct file. The bill lists the criteria that the district attorney must consider in

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.

determining whether to direct file charges against a juvenile. The district attorney must submit a written statement listing the criteria the district attorney relied upon in deciding to direct file.

The bill permits a juvenile convicted in district court of a class 2 felony nonsex offense to be sentenced to the youthful offender system.

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

2 **SECTION 1.** 19-2-517 (1), (3) (a), and (3) (a.5), Colorado
3 Revised Statutes, are amended, and the said 19-2-517 is further amended
4 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS,
5 to read:

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

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

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

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

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

19 (C) Is alleged to have used, or possessed and threatened the use
20 of, a deadly weapon during the commission of felony offenses against the
21 person, which are set forth in article 3 of title 18, C.R.S.; or

22 (D) Is alleged to have committed vehicular homicide, as described
23 in section 18-3-106, C.R.S., vehicular assault, as described in section

1 18-3-205, C.R.S., or felonious arson, as described in part 1 of article 4 of
2 title 18, C.R.S.; or

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

10 (IV) ~~The juvenile is fourteen years of age or older at the time of~~
11 ~~the commission of the alleged offense, has allegedly committed a~~
12 ~~delinquent act that constitutes a felony, and has previously been subject~~
13 ~~to proceedings in district court as a result of a direct filing pursuant to this~~
14 ~~section or a transfer pursuant to section 19-2-518; except that, if a~~
15 ~~juvenile is found not guilty in the district court of the prior felony or any~~
16 ~~lesser included offense, the subsequent charge shall be remanded back to~~
17 ~~the juvenile court; or~~ THE JUVENILE IS FOURTEEN YEARS OF AGE OR
18 OLDER AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE, AND
19 HAS ALLEGEDLY COMMITTED A DELINQUENT ACT THAT CONSTITUTES FIRST
20 DEGREE MURDER AS DESCRIBED IN SECTION 18-3-102, C.R.S., SECOND
21 DEGREE MURDER AS DESCRIBED IN SECTION 18-3-103, C.R.S., OR SEXUAL
22 ASSAULT UNDER THE CIRCUMSTANCES DESCRIBED IN SECTION 18-3-402 (5)
23 (a), C.R.S.; OR

24 (V) The juvenile is ~~fourteen~~ SIXTEEN years of age or older at the
25 time of the commission of the alleged offense, has allegedly committed
26 a delinquent act that constitutes a felony, and is determined to be an
27 "habitual juvenile offender". For the purposes of this section, "habitual

1 juvenile offender" is defined in section 19-1-103 (61); OR

2 (VI) THE JUVENILE IS FOURTEEN YEARS OF AGE OR OLDER AT THE
3 TIME OF THE COMMISSION OF THE ALLEGED OFFENSE, HAS ALLEGEDLY
4 COMMITTED A DELINQUENT ACT THAT CONSTITUTES A FELONY DESCRIBED
5 IN PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., AND:

6 (A) THE ALLEGED FELONY IS ENUMERATED AS A CRIME OF
7 VIOLENCE PURSUANT TO SECTION 18-1.3-406, C.R.S.;

8 (B) THE JUVENILE IS ALLEGED TO HAVE USED, OR POSSESSED AND
9 THREATENED THE USE OF, A DEADLY WEAPON DURING THE COMMISSION OF
10 THE ALLEGED FELONY OFFENSE AGAINST THE PERSON;

11 (C) THE JUVENILE HAS, WITHIN THE TWO PREVIOUS YEARS, BEEN
12 ADJUDICATED A JUVENILE DELINQUENT FOR A DELINQUENT ACT THAT
13 CONSTITUTES A FELONY, AND ALLEGEDLY HAS COMMITTED A CRIME
14 DEFINED BY SECTION 18-1.3-401, C.R.S., AS A CLASS 3 FELONY, EXCEPT
15 FELONIES DESCRIBED IN SECTION 18-3-402 (1) (d), C.R.S., OR SECTION
16 18-3-403 (1) (e), C.R.S., AS IT EXISTED PRIOR TO JULY 1, 2000;

17 (D) THE JUVENILE HAS PREVIOUSLY BEEN SUBJECT TO
18 PROCEEDINGS IN DISTRICT COURT AS A RESULT OF A DIRECT FILING
19 PURSUANT TO THIS SECTION OR A TRANSFER PURSUANT TO SECTION
20 19-2-518; EXCEPT THAT, IF A JUVENILE IS FOUND NOT GUILTY IN THE
21 DISTRICT COURT OF THE PRIOR FELONY OR ANY LESSER INCLUDED
22 OFFENSE, THE SUBSEQUENT CHARGE SHALL BE REMANDED BACK TO THE
23 JUVENILE COURT; OR

24 (E) THE JUVENILE IS DETERMINED TO BE AN "HABITUAL JUVENILE
25 OFFENDER". FOR THE PURPOSES OF THIS SECTION, "HABITUAL JUVENILE
26 OFFENDER" IS DEFINED IN SECTION 19-1-103 (61).

27 (b) The offenses described in subparagraphs (I) to ~~(V)~~ (VI) of

1 paragraph (a) of this subsection (1) shall include the attempt, conspiracy,
2 solicitation, or complicity to commit such offenses.

3 (1.5) (a) AT LEAST FOURTEEN DAYS PRIOR TO FILING CHARGES IN
4 THE DISTRICT COURT PURSUANT TO THIS SECTION, THE DISTRICT
5 ATTORNEY SHALL FILE CHARGES IN THE JUVENILE COURT WITH A
6 CONTEMPORANEOUS NOTICE OF DECISION ON DIRECT FILE. UPON THE
7 FILING OF CHARGES IN DISTRICT COURT PURSUANT TO THIS PARAGRAPH (a),
8 THE JUVENILE COURT SHALL NOT HAVE JURISDICTION OVER PROCEEDINGS
9 CONCERNING THE CHARGES.

10 (b) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (1.5)
11 SHALL NOT APPLY TO CHARGES FOR FIRST DEGREE MURDER AS DESCRIBED
12 IN SECTION 18-3-102, C.R.S., SECOND DEGREE MURDER AS DESCRIBED IN
13 SECTION 18-3-103, C.R.S., OR A SEXUAL OFFENSE AS DESCRIBED IN PART
14 4 OF ARTICLE 3 OF TITLE 18, C.R.S., OR SECTION 18-6-301 OR 18-6-302,
15 C.R.S.

16 (1.7) (a) PRIOR TO FILING CHARGES IN DISTRICT COURT PURSUANT
17 TO THIS SECTION, THE DISTRICT ATTORNEY SHALL CONSIDER THE
18 FOLLOWING CRITERIA IN DETERMINING WHETHER TO FILE CHARGES IN
19 DISTRICT COURT PURSUANT TO THIS SECTION:

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

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

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

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

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

5 (VI) THE LIKELIHOOD OF REHABILITATION OF THE JUVENILE BY USE
6 OF FACILITIES AVAILABLE TO THE JUVENILE COURT;

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

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

10 (IX) WHETHER THE JUVENILE HAS BEEN TWICE PREVIOUSLY
11 ADJUDICATED A JUVENILE DELINQUENT FOR DELINQUENT ACTS THAT
12 CONSTITUTE FELONIES;

13 (X) WHETHER THE JUVENILE HAS BEEN ADJUDICATED A JUVENILE
14 DELINQUENT FOR A DELINQUENT ACT THAT CONSTITUTES A CRIME OF
15 VIOLENCE, AS DEFINED IN SECTION 18-1.3-406, C.R.S.;

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

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

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

26 (XIV) WHETHER THE JUVENILE USED, OR POSSESSED AND
27 THREATENED THE USE OF, A DEADLY WEAPON IN THE COMMISSION OF A

1 DELINQUENT ACT.

2 (b) WHEN A DISTRICT ATTORNEY FILES CHARGES IN THE DISTRICT
3 COURT PURSUANT TO THIS SECTION, HE OR SHE SHALL FILE
4 CONTEMPORANEOUSLY A WRITTEN STATEMENT LISTING THE SPECIFIC
5 CRITERIA FROM PARAGRAPH (a) OF THIS SUBSECTION (1.7) UPON WHICH
6 THE DECISION WAS BASED.

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

10 (I) As an adult; or

11 (II) To the youthful offender system in the department of
12 corrections in accordance with section 18-1.3-407, C.R.S., if the juvenile
13 is convicted of an offense described in subparagraph (II), ~~or (V), OR (VI)~~
14 of paragraph (a) of subsection (1) of this section; except that a juvenile
15 shall be ineligible for sentencing to the youthful offender system if the
16 juvenile is convicted of:

17 (A) A class 1 felony;

18 ~~(B) A class 2 felony as a result of a plea agreement in cases where~~
19 ~~the juvenile is charged with a class 1 felony;~~

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

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

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

1 (F) A second or subsequent offense described in said
2 subparagraph (II), ~~or (V)~~, OR (VI), if such person received a sentence to
3 the department of corrections or to the youthful offender system for the
4 prior offense; or

5 (III) Pursuant to the provisions of this article, if the juvenile is ~~less~~
6 ~~than sixteen years of age at the time of commission of the crime and is~~
7 convicted of an offense other than a class 1 or class 2 felony, a crime of
8 violence as defined under section 18-1.3-406, C.R.S., or an offense
9 described in subparagraph (V) OR (VI) of paragraph (a) of subsection (1)
10 of this section and the judge makes a finding of special circumstances.

11 (a.5) ~~Notwithstanding the provisions of subparagraph (H) of~~
12 ~~paragraph (a) of this subsection (3), a juvenile who is charged with first~~
13 ~~degree murder as described in section 18-3-102(1)(b), C.R.S., and pleads~~
14 ~~guilty to a class 2 felony as a result of a plea agreement is eligible for~~
15 ~~sentencing to the youthful offender system if the juvenile would be~~
16 ~~eligible for sentencing to the youthful offender system for a conviction of~~
17 ~~the felony underlying the charge of first degree murder as described in~~
18 ~~section 18-3-102(1)(b), C.R.S.~~

19 **SECTION 2.** 19-2-518 (1) (d) (II) (B), (1) (d) (II) (C), (1) (d) (II)
20 (D), and (5), Colorado Revised Statutes, are amended to read:

21 **19-2-518. Transfers.** (1) (d) (II) In cases in which criminal
22 charges are transferred to the district court pursuant to the provisions of
23 this section, the judge of the district court may sentence to the youthful
24 offender system created in section 18-1.3-407, C.R.S., any juvenile who
25 would otherwise be sentenced pursuant to the provisions of subparagraph
26 (I) of this paragraph (d); except that a juvenile shall be ineligible for
27 sentencing to the youthful offender system if the juvenile is convicted of:

1 (B) ~~A class 2 felony as a result of a plea agreement in cases where~~
2 ~~the juvenile is charged with a class 1 felony;~~

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

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

9 (5) When an action has been remanded to the juvenile court
10 pursuant to section 19-2-517 (1) (a) ~~(IV)~~ (VI) (D) and the prosecution
11 seeks waiver of jurisdiction pursuant to this section, the court's findings
12 from the prior transfer hearing regarding the factor listed in paragraph (c)
13 of subsection (4) of this section shall establish prima facie evidence that
14 to retain jurisdiction in juvenile court would be contrary to the best
15 interests of the juvenile or of the community.

16 **SECTION 3.** 18-1.3-407 (2) (a) (I), Colorado Revised Statutes,
17 is amended to read:

18 **18-1.3-407. Sentences - youthful offenders - legislative**
19 **declaration - powers and duties of district court - authorization for**
20 **youthful offender system - powers and duties of department of**
21 **corrections - definitions.** (2) (a) (I) A juvenile may be sentenced to the
22 youthful offender system created pursuant to this section under the
23 circumstances set forth in section 19-2-517 (3) (a) (II) ~~or (3) (a.5)~~ or
24 19-2-518 (1) (d) (II) or (1) (d.5), C.R.S. A young adult offender may be
25 sentenced to the youthful offender system created pursuant to this section
26 under the circumstances set forth in section 18-1.3-407.5. In order to
27 sentence a juvenile or young adult offender to the youthful offender

1 system, the court shall first impose upon such person a sentence to the
2 department of corrections in accordance with section 18-1.3-401. The
3 court shall thereafter suspend such sentence conditioned on completion
4 of a sentence to the youthful offender system, including a period of
5 community supervision. The court shall impose any such sentence to the
6 youthful offender system for a determinate period of not fewer than two
7 years nor more than six years; except that a juvenile or young adult
8 offender convicted of a class 2 felony may be sentenced for a determinate
9 period of up to seven years. In imposing such sentence, the court shall
10 grant authority to the department of corrections to place the offender
11 under a period of community supervision for a period of not fewer than
12 six months and up to twelve months any time after the date on which the
13 offender has twelve months remaining to complete the determinate
14 sentence. The court may award an offender sentenced to the youthful
15 offender system credit for presentence confinement; except that such
16 credit shall not reduce the offender's actual time served in the youthful
17 offender system to fewer than two years. The court shall have a
18 presentence investigation conducted before sentencing a juvenile or
19 young adult offender pursuant to this section. Upon the request of either
20 the prosecution or the defense, the presentence report shall include a
21 determination by the warden of the youthful offender system whether the
22 offender is acceptable for sentencing to the youthful offender system.
23 When making a determination, the warden shall consider the nature and
24 circumstances of the crime; the age, circumstances, and criminal history
25 of the offender; the available bed space in the youthful offender system;
26 and any other appropriate considerations.

27 **SECTION 4. Act subject to petition - effective date.** This act

1 shall take effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly (August
3 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
4 referendum petition is filed pursuant to section 1 (3) of article V of the
5 state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part shall not take effect
7 unless approved by the people at the general election to be held in
8 November 2010 and shall take effect on the date of the official
9 declaration of the vote thereon by the governor.