

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0312.01 Michael Dohr x4347

HOUSE BILL 12-1271

HOUSE SPONSORSHIP

Nikkel and McCann, Levy

SENATE SPONSORSHIP

Giron,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CHARGING OF JUVENILES BY DIRECT FILE OF**
102 **INFORMATION OR INDICTMENT IN DISTRICT COURT.**

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>.)

Under current law, a juvenile charged with a specific serious crime can be prosecuted in district court under the district attorney's authority to direct file certain juveniles. This bill amends the direct file statute to limit the offenses for which a juvenile may be subject to direct file to class 1 felonies, class 2 felonies, crime of violence felonies for prior

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.*

violent juvenile offenders, and violent sex offenses.

If, after a preliminary hearing, the district court does not find probable cause for a direct-file-eligible offense, the court shall remand the case to the juvenile court. The bill also provides for a reverse-transfer hearing for juveniles who fall within a specified class, which juveniles may petition the adult criminal court to transfer the case back to juvenile court after the preliminary hearing.

Under the bill, a juvenile's non-felony conviction must be remanded to juvenile court and, when a juvenile sentence is selected, the conviction converts to a juvenile adjudication.

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

SECTION 1. In Colorado Revised Statutes, **amend** 19-2-517 as follows:

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

(a) The juvenile is sixteen years of age or older at the time of the commission of the alleged offense and:

(I) Is alleged to have committed a class 1 or class 2 felony; or

(II) ~~Is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406, C.R.S.;~~ IS ALLEGED TO HAVE COMMITTED A SEXUAL ASSAULT THAT IS A CRIME OF VIOLENCE PURSUANT TO SECTION 18-1.3-406, C.R.S., OR A SEXUAL ASSAULT UNDER THE CIRCUMSTANCES DESCRIBED IN SECTION 18-3-402 (5) (a), C.R.S.; or

(III) ~~Is alleged to have committed a felony offense described in part 1 of article 12 of title 18, C.R.S., except for the possession of a handgun by a juvenile, as set forth in section 18-12-108.5, C.R.S.;~~ IS ALLEGED TO HAVE COMMITTED A FELONY ENUMERATED AS A CRIME OF VIOLENCE PURSUANT TO SECTION 18-1.3-406, C.R.S., OTHER THAN A SEXUAL ASSAULT AS DESCRIBED IN SUBPARAGRAPH (II) OF THIS

1 PARAGRAPH (a), AND IS FOUND TO HAVE A PRIOR ADJUDICATION AS A
2 VIOLENT JUVENILE OFFENDER; or

3 (IV) ~~Is alleged to have used, or possessed and threatened the use~~
4 ~~of, a deadly weapon during the commission of a felony offense against a~~
5 ~~person described in article 3 of title 18, C.R.S.; or HAS PREVIOUSLY BEEN~~
6 SUBJECT TO PROCEEDINGS IN DISTRICT COURT AS A RESULT OF A DIRECT
7 FILING PURSUANT TO THIS SECTION OR A TRANSFER PURSUANT TO SECTION
8 19-2-518; EXCEPT THAT:

9 (A) IF THE JUVENILE IS FOUND NOT GUILTY IN DISTRICT COURT OF
10 THE PRIOR FELONY OR ANY LESSER INCLUDED OFFENSE, THE SUBSEQUENT
11 CHARGE SHALL BE REMANDED TO THE JUVENILE COURT; AND

12 (B) IF THE JUVENILE IS CONVICTED IN DISTRICT COURT IN THE
13 PRIOR CASE OF A LESSER INCLUDED OR NONENUMERATED OFFENSE FOR
14 WHICH CRIMINAL CHARGES COULD NOT HAVE BEEN ORIGINALLY FILED BY
15 INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO THIS
16 SECTION, THE SUBSEQUENT CHARGE MAY BE REMANDED TO THE JUVENILE
17 COURT.

18 (V) ~~Is alleged to have committed vehicular homicide, as described~~
19 ~~in section 18-3-106, C.R.S., vehicular assault, as described in section~~
20 ~~18-3-205, C.R.S., or felonious arson, as described in part 1 of article 4 of~~
21 ~~title 18, C.R.S.; or~~

22 (VI) ~~Is alleged to have committed a class 3 felony, or sexual~~
23 ~~assault as described in section 18-3-402 (1) (d), C.R.S., or section~~
24 ~~18-3-403 (1) (e), C.R.S., as it existed prior to July 1, 2000, and the~~
25 ~~juvenile, within the two previous years, has been adjudicated a juvenile~~
26 ~~delinquent for an act that constitutes a felony; or~~

27 (VII) ~~Is alleged to have committed a felony, and is determined to~~

1 ~~be an habitual juvenile offender. For purposes of this section, "habitual~~
2 ~~juvenile offender" is defined in section 19-1-103 (61):~~

3 (b) ~~The juvenile is fourteen or fifteen years of age at the time of~~
4 ~~the commission of the alleged offense and:~~

5 (I) ~~Is alleged to have committed murder in the first degree, as~~
6 ~~described in section 18-3-102, C.R.S., or murder in the second degree, as~~
7 ~~described in section 18-3-103, C.R.S.; or~~

8 (II) ~~Is alleged to have committed sexual assault under the~~
9 ~~circumstances described in section 18-3-402 (5) (a), C.R.S.; or~~

10 (III) ~~Is alleged to have committed any sexual offense that is~~
11 ~~enumerated as a crime of violence pursuant to section 18-1.3-406, C.R.S.;~~
12 ~~or~~

13 (IV) ~~Is alleged to have committed any sexual offense classified as~~
14 ~~a class 3 felony, or sexual assault as described in section 18-3-402 (1) (d),~~
15 ~~C.R.S., or section 18-3-403 (1) (e), C.R.S., as it existed prior to July 1,~~
16 ~~2000, and the juvenile, within the two previous years, has been~~
17 ~~adjudicated a juvenile delinquent for an act that constitutes a felony; or~~

18 (V) ~~Is alleged to have committed any felony sexual offense and~~
19 ~~is determined to be an habitual juvenile offender; or~~

20 (c) ~~The juvenile is fourteen years of age or older at the time of the~~
21 ~~commission of the alleged offense, has allegedly committed a felony, and~~
22 ~~has previously been subject to proceedings in district court as a result of~~
23 ~~a direct filing pursuant to this section or a transfer pursuant to section~~
24 ~~19-2-518; except that:~~

25 (I) ~~If the juvenile is found not guilty in district court of the prior~~
26 ~~felony or any lesser included offense, the subsequent charge shall be~~
27 ~~remanded back to the juvenile court; and~~

1 ~~(H) If the juvenile is convicted in district court in the prior case of~~
2 ~~a lesser included or nonenumerated offense for which criminal charges~~
3 ~~could not have been originally filed by information or indictment in the~~
4 ~~district court pursuant to this section, the subsequent charge may be~~
5 ~~remanded back to the juvenile court.~~

6 (1.5) IF, AFTER A PRELIMINARY HEARING, THE DISTRICT COURT
7 DOES NOT FIND PROBABLE CAUSE FOR AN OFFENSE THAT MAY BE CHARGED
8 BY DIRECT FILING, OR IF THE DIRECT FILE ELIGIBLE OFFENSE IS DISMISSED
9 AT A LATER DATE, THE COURT SHALL REMAND THE CASE TO THE JUVENILE
10 COURT.

11 (2) Notwithstanding the provisions of section 19-2-518, after
12 filing charges in the juvenile court but ~~prior to the time that~~ BEFORE the
13 juvenile court conducts a transfer hearing, the district attorney may file
14 the same or different charges against the juvenile by direct filing of an
15 information in the district court or by indictment pursuant to this section.
16 Upon ~~said~~ THE filing or indictment in the district court, the juvenile court
17 shall no longer have jurisdiction over proceedings concerning ~~said~~ THE
18 charges.

19 (3) (a) ~~In determining whether to file charges in district court~~
20 ~~pursuant to this section, the district attorney shall first consider the~~
21 ~~following criteria:~~ ■ AFTER A JUVENILE CASE HAS BEEN CHARGED BY
22 DIRECT FILING OF INFORMATION OR BY AN INDICTMENT IN DISTRICT COURT,
23 THE JUVENILE MAY FILE IN DISTRICT COURT A MOTION TO TRANSFER THE
24 CASE TO JUVENILE COURT. THE JUVENILE MUST FILE THE MOTION NO
25 LATER THAN THE TIME TO REQUEST A PRELIMINARY HEARING. UPON
26 RECEIPT OF THE MOTION, THE COURT SHALL SET THE REVERSE-TRANSFER
27 HEARING WITH THE PRELIMINARY HEARING. ■ THE COURT SHALL PERMIT

1 THE DISTRICT ATTORNEY TO FILE A RESPONSE TO THE JUVENILE'S MOTION
2 TO TRANSFER THE CASE TO JUVENILE COURT. THE DISTRICT ATTORNEY
3 SHALL FILE THE RESPONSE NO LATER THAN FOURTEEN DAYS BEFORE THE
4 REVERSE-TRANSFER HEARING.

5 ~~(I) The seriousness of the offense and whether the protection of~~
6 ~~the community requires response or consequence beyond that afforded by~~
7 ~~this article;~~

8 ~~(II) Whether the alleged offense was committed in an aggressive,~~
9 ~~violent, premeditated, or willful manner;~~

10 ~~(III) Whether the alleged offense was against persons or property,~~
11 ~~greater weight being given to offenses against persons;~~

12 ~~(IV) The age of the juvenile and the maturity of the juvenile as~~
13 ~~determined by considerations of the juvenile's home, environment,~~
14 ~~emotional attitude, and pattern of living;~~

15 ~~(V) The record and previous history of the juvenile;~~

16 ~~(VI) The likelihood of rehabilitation of the juvenile by use of the~~
17 ~~sentencing options available in the juvenile and district courts;~~

18 ~~(VII) The interest of the community in the imposition of a~~
19 ~~punishment commensurate with the gravity of the offense;~~

20 ~~(VIII) The impact of the offense on the victim;~~

21 ~~(IX) Whether the juvenile was previously committed to the~~
22 ~~department of human services following an adjudication for a delinquent~~
23 ~~act that constitutes a felony; and~~

24 ~~(X) Whether the juvenile used, or possessed and threatened the~~
25 ~~use of, a deadly weapon in the commission of a delinquent act.~~

26 (b) ~~The amount of weight given to each of the factors listed in~~
27 ~~paragraph (a) of this subsection (3) is discretionary with the district~~

1 ~~attorney. The insufficiency of any factor or set of factors shall not~~
2 ~~preclude the district attorney from charging by direct filing, so long as the~~
3 ~~district attorney is satisfied that the information available supports the~~
4 ~~decision~~ IN DETERMINING WHETHER THE JUVENILE AND THE COMMUNITY
5 WOULD BE BETTER SERVED BY ADJUDICATIVE PROCEEDINGS PURSUANT TO
6 THIS ARTICLE OR BY PROCEEDINGS UNDER TITLE 16, C.R.S., THE COURT
7 SHALL CONSIDER THE FOLLOWING FACTORS:

8 (I) THE SERIOUSNESS OF THE ALLEGED OFFENSE AND WHETHER THE
9 PROTECTION OF THE COMMUNITY REQUIRES RESPONSE OR CONSEQUENCE
10 BEYOND THAT AFFORDED BY THIS ARTICLE;

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

13 (III) WHETHER THE ALLEGED OFFENSE WAS AGAINST PERSONS OR
14 PROPERTY, GREATER WEIGHT BEING GIVEN TO OFFENSES AGAINST
15 PERSONS;

16 (IV) THE AGE OF THE JUVENILE AND THE MATURITY OF THE
17 JUVENILE AS DETERMINED BY CONSIDERATIONS OF THE JUVENILE'S HOME,
18 ENVIRONMENT, EMOTIONAL ATTITUDE, AND PATTERN OF LIVING;

19 (V) THE RECORD AND PREVIOUS HISTORY OF THE JUVENILE IN
20 PRIOR COURT-RELATED MATTERS;

21 (VI) THE CURRENT AND PAST MENTAL HEALTH STATUS OF THE
22 JUVENILE AS EVIDENCED BY RELEVANT MENTAL HEALTH OR
23 PSYCHOLOGICAL ASSESSMENTS OR SCREENINGS THAT ARE MADE
24 AVAILABLE TO BOTH THE DISTRICT ATTORNEY AND DEFENSE COUNSEL;

25 (VII) THE LIKELIHOOD OF THE JUVENILE'S REHABILITATION BY USE
26 OF THE SENTENCING OPTIONS AVAILABLE IN THE JUVENILE COURTS AND
27 DISTRICT COURTS;

1 (VIII) THE INTEREST OF THE COMMUNITY IN THE IMPOSITION OF A
2 PUNISHMENT COMMENSURATE WITH THE GRAVITY OF THE OFFENSE;

3 (IX) THE IMPACT OF THE OFFENSE ON THE VICTIM;

4 (X) WHETHER THE JUVENILE WAS PREVIOUSLY COMMITTED TO THE
5 DEPARTMENT OF HUMAN SERVICES FOLLOWING AN ADJUDICATION FOR A
6 DELINQUENT ACT THAT CONSTITUTES A FELONY; AND

7 (XI) WHETHER THE JUVENILE USED, OR POSSESSED AND
8 THREATENED THE USE OF, A DEADLY WEAPON IN THE COMMISSION OF THE
9 DELINQUENT ACT.

10 (c) IF THE DISTRICT COURT DETERMINES PURSUANT TO PARAGRAPH
11 (b) OF THIS SUBSECTION (3) THAT THE JUVENILE AND THE COMMUNITY
12 WOULD BE BETTER SERVED BY ADJUDICATIVE PROCEEDINGS PURSUANT TO
13 THIS ARTICLE, THE COURT SHALL ENTER AN ORDER DIRECTING THAT THE
14 OFFENSES AGAINST THE JUVENILE BE ADJUDICATED IN JUVENILE COURT
15 PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

16 (4) ~~(a) If, after or contemporaneously with the filing of a~~
17 ~~delinquency petition and after initial consideration of the factors set forth~~
18 ~~in subsection (3) of this section, the district attorney believes the case may~~
19 ~~be appropriate for charging by direct filing, the district attorney shall file~~
20 ~~with the juvenile court, with a copy to the juvenile's counsel of record, or~~
21 ~~to the juvenile if the juvenile has waived counsel or if there is no counsel~~
22 ~~of record, a notice of consideration of direct file. No later than forty-eight~~
23 ~~hours after the filing of the notice of consideration, the juvenile court~~
24 ~~shall advise the juvenile of his or her right to counsel. If the juvenile has~~
25 ~~previously waived his or her right to counsel, the juvenile shall have an~~
26 ~~opportunity to withdraw such waiver.~~

27 (b) ~~After the filing of the notice of consideration of direct file, the~~

1 juvenile shall have fourteen days to provide to the district attorney any
2 and all information the juvenile requests the district attorney to consider
3 relating to the factors set forth in subsection (3) of this section in making
4 the decision whether to direct file charges. The district attorney shall not
5 direct file charges until the fourteen-day period for consideration has
6 passed. Nothing in this section shall require the district attorney to extend
7 the period for consideration; nor shall anything in this section prohibit the
8 district attorney from agreeing with the juvenile's counsel of record to
9 extend the period for consideration. Further, nothing in this section shall
10 preclude the district attorney from direct filing the charges after the
11 expiration of the period for consideration.

12 (c) The juvenile court shall not accept a plea of guilty during the
13 period for consideration of direct file unless the plea is entered with the
14 agreement of the district attorney.

15 (d) The district attorney is encouraged to provide the juvenile's
16 counsel of record an opportunity to meet to discuss any and all
17 information relevant to the factors set forth in subsection (3) of this
18 section before a decision to direct file occurs. However, the lack of any
19 such meeting shall not require an extension of the period for
20 consideration.

21 (e) At the discretion of the district attorney, the provisions of this
22 subsection (4) shall not apply to charges for first degree murder as
23 described in section 18-3-102, C.R.S., second degree murder, as
24 described in section 18-3-103, C.R.S., or any sexual offense that is
25 eligible for direct file pursuant to subsection (1) of this section.

26 (5) Upon the direct filing of charges in the district court pursuant
27 to this section, the district attorney shall file a written statement listing the

1 specific factors set forth in subsection (3) of this section upon which the
2 decision to direct file was based.

3 (6) (a) If a juvenile is convicted following the filing of criminal
4 charges by information or indictment in the district court pursuant to this
5 section, the district judge shall sentence the juvenile as follows EITHER:

6 (I) As an adult; EXCEPT THAT A JUVENILE IS EXCLUDED FROM THE
7 MANDATORY MINIMUM SENTENCING PROVISIONS IN SECTION 18-1.3-406,
8 C.R.S., UNLESS THE JUVENILE IS CONVICTED OF A CLASS 1 FELONY OR A
9 SEX OFFENSE THAT IS SUBJECT TO PART 9 OF ARTICLE 1.3 OF TITLE 18,
10 C.R.S.; 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.; except that a
13 juvenile shall be ineligible for sentencing to the youthful offender system
14 if the juvenile is convicted of:

15 (A) A class 1 felony;

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

18 (C) A second or subsequent offense, if the juvenile received a
19 sentence to the department of corrections or to the youthful offender
20 system for the prior offense. or

21 (III) Pursuant to the provisions of this article, if the juvenile is less
22 than sixteen years of age at the time of commission of the crime and is
23 convicted of an offense other than a class 1 or class 2 felony, a crime of
24 violence as defined under section 18-1.3-406, C.R.S., or an offense
25 described in subparagraph (V) of paragraph (b) of subsection (1) of this
26 section and the judge makes a finding of special circumstances.

27 (b) The district court judge may sentence a juvenile pursuant to

1 the provisions of this article if the juvenile is convicted of a lesser
2 included or nonenumerated ~~FELONY~~ offense for which criminal charges
3 could not have been originally filed by information or indictment in the
4 district court pursuant to this section. ~~IF THE JUVENILE IS CONVICTED OF~~
5 ~~ONLY A MISDEMEANOR OFFENSE OR MISDEMEANOR OFFENSES, THE COURT~~
6 ~~SHALL ADJUDICATE THE JUVENILE A DELINQUENT AND SENTENCE THE~~
7 ~~JUVENILE PURSUANT TO ARTICLE 2 OF THIS TITLE.~~

8 (c) IF A JUVENILE IS CONVICTED OF AN OFFENSE THAT IS NOT
9 ELIGIBLE FOR DISTRICT COURT JURISDICTION UNDER EITHER THIS SECTION
10 OR SECTION 19-2-518, THE JUVENILE SHALL BE REMANDED TO JUVENILE
11 COURT.

12 (7) In the case of a person who is sentenced as a juvenile pursuant
13 to subsection (6) of this section, the following provisions shall apply:

14 (a) Section 19-2-908 (1) (a), regarding mandatory sentence
15 offenders;

16 (b) Section 19-2-908 (1) (b), regarding repeat juvenile offenders;

17 (c) Section 19-2-908 (1) (c), regarding violent juvenile offenders;

18 and

19 (d) Section 19-2-601, regarding aggravated juvenile offenders.

20 (8) The court in its discretion may appoint a guardian ad litem for
21 a juvenile charged by the direct filing of an information in the district
22 court or by indictment pursuant to this section.

23 ~~(9) The offenses described in this section shall include attempt,~~
24 ~~conspiracy, or solicitation to commit such offenses~~ WHEN A JUVENILE IS
25 SENTENCED PURSUANT TO THE PROVISIONS OF THIS ARTICLE, THE
26 JUVENILE'S CONVICTION SHALL BE ADJUDICATED AS A JUVENILE
27 DELINQUENCY ADJUDICATION.

1 (10) FOR PURPOSES OF THIS SECTION, "VIOLENT JUVENILE
2 OFFENDER" HAS THE SAME MEANING AS DEFINED IN SECTION 19-2-516(3).

3 **SECTION 2.** In Colorado Revised Statutes, **repeal** 19-2-518 (5).

4 **SECTION 3. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.