

CHAPTER 128

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 12-1271

BY REPRESENTATIVE(S) Nikkel and McCann, Levy, Kagan, Labuda, Lee, Tyler, Vigil, Williams A., Wilson, Young;
also SENATOR(S) Giron and Neville, Aguilar, Bacon, Boyd, Carroll, Foster, Guzman, Heath, Hudak, Jahn, Newell, Nicholson,
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AN ACT

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

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) (A) ~~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 PARAGRAPH (a), OR IS ALLEGED TO HAVE COMMITTED SEXUAL ASSAULT PURSUANT TO SECTION 18-3-402, C.R.S., SEXUAL ASSAULT ON A CHILD PURSUANT TO SECTION 18-3-405, C.R.S., OR SEXUAL ASSAULT ON A CHILD BY ONE IN A

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

POSITION OF TRUST PURSUANT TO SECTION 18-3-405.3, C.R.S.; AND

(B) IS FOUND TO HAVE A PRIOR ADJUDICATED FELONY OFFENSE; or

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

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

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

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

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

~~(VII) Is alleged to have committed a felony, and is determined to be an habitual juvenile offender. For purposes of this section, "habitual juvenile offender" is defined in section 19-1-103 (61).~~

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

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

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

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

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

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

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

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

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

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

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

(3) (a) ~~In determining whether to file charges in district court pursuant to this section, the district attorney shall first consider the following criteria:~~ AFTER A JUVENILE CASE HAS BEEN CHARGED BY DIRECT FILING OF INFORMATION OR BY AN INDICTMENT IN DISTRICT COURT, THE JUVENILE MAY FILE IN DISTRICT COURT A MOTION TO TRANSFER THE CASE TO JUVENILE COURT. THE JUVENILE MUST FILE THE MOTION NO LATER THAN THE TIME TO REQUEST A PRELIMINARY HEARING. UPON RECEIPT OF THE MOTION, THE COURT SHALL SET THE REVERSE-TRANSFER HEARING WITH THE PRELIMINARY HEARING. THE COURT SHALL PERMIT THE DISTRICT ATTORNEY TO FILE A RESPONSE TO THE JUVENILE'S MOTION TO TRANSFER THE CASE TO JUVENILE COURT. THE DISTRICT ATTORNEY SHALL FILE THE RESPONSE NO LATER THAN FOURTEEN DAYS BEFORE THE REVERSE-TRANSFER HEARING.

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

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

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

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

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

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

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

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

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

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

(b) The amount of weight given to each of the factors listed in paragraph (a) of this subsection (3) is discretionary with the district attorney. The insufficiency of any factor or set of factors shall not preclude the district attorney from charging by direct filing, so long as the district attorney is satisfied that the information available supports the decision. IN DETERMINING WHETHER THE JUVENILE AND THE COMMUNITY WOULD BE BETTER SERVED BY ADJUDICATIVE PROCEEDINGS PURSUANT TO THIS ARTICLE OR BY PROCEEDINGS UNDER TITLE 16, C.R.S., THE COURT SHALL CONSIDER THE FOLLOWING FACTORS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(d) The district attorney is encouraged to provide the juvenile's counsel of record an opportunity to meet to discuss any and all information relevant to the factors set forth in subsection (3) of this section before a decision to direct file occurs.~~

~~However, the lack of any such meeting shall not require an extension of the period for consideration:~~

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

~~(5) Upon the direct filing of charges in the district court pursuant to this section, the district attorney shall file a written statement listing the specific factors set forth in subsection (3) of this section upon which the decision to direct file was based:~~

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

~~(I) As an adult; EXCEPT THAT A JUVENILE IS EXCLUDED FROM THE MANDATORY MINIMUM SENTENCING PROVISIONS IN SECTION 18-1.3-406, C.R.S., UNLESS THE JUVENILE IS CONVICTED OF A CLASS 1 FELONY OR A SEX OFFENSE THAT IS SUBJECT TO PART 9 OF ARTICLE 1.3 OF TITLE 18, C.R.S.; or~~

~~(II) To the youthful offender system in the department of corrections in accordance with section 18-1.3-407, C.R.S.; except that a juvenile shall be ineligible for sentencing to the youthful offender system if the juvenile is convicted of:~~

~~(A) A class 1 felony;~~

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

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

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

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

~~(c) IF A JUVENILE IS CONVICTED OF AN OFFENSE THAT IS NOT ELIGIBLE FOR~~

DISTRICT COURT JURISDICTION UNDER EITHER THIS SECTION OR SECTION 19-2-518, THE JUVENILE SHALL BE REMANDED TO JUVENILE COURT.

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

- (a) Section 19-2-908 (1) (a), regarding mandatory sentence offenders;
- (b) Section 19-2-908 (1) (b), regarding repeat juvenile offenders;
- (c) Section 19-2-908 (1) (c), regarding violent juvenile offenders; and
- (d) Section 19-2-601, regarding aggravated juvenile offenders.

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

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

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

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

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

Approved: April 20, 2012