

CHAPTER 18

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 12-1139

BY REPRESENTATIVE(S) Levy, Fields, Barker, Court, Kagan, Massey, McCann, McKinley, Nikkel, Solano, Young, Duran, Fischer, Hullinghorst, Kefalas, Kerr A., Kerr J., Labuda, Lee, Pabon, Pace, Schafer S., Singer, Todd, Vigil, Williams A., Wilson; also SENATOR(S) Guzman, Aguilar, Bacon, Boyd, Carroll, Foster, Giron, Heath, Hodge, Hudak, Jahn, King S., Lundberg, Newell, Nicholson, Schwartz, Spence, Steadman, Tochtrop, White, Williams S., Shaffer B.

AN ACT**CONCERNING PRETRIAL DETENTION OF CHILDREN PROSECUTED AS ADULTS.**

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

SECTION 1. In Colorado Revised Statutes, 19-2-508, **amend** (3) (c) as follows:

19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions. (3) (c) (I) A juvenile taken to a detention or shelter facility or a temporary holding facility pursuant to section 19-2-502 as the result of an allegedly delinquent act that constitutes any of the offenses described in subparagraph (III) of paragraph (a) of this subsection (3) shall not be released from such facility if a law enforcement agency has requested that a detention hearing be held to determine whether the juvenile's immediate welfare or the protection of the community requires that the juvenile be detained. A juvenile shall not thereafter be released from detention except after a hearing, reasonable advance notice of which has been given to the district attorney, alleging new circumstances concerning the further detention of the juvenile.

(II) Following a detention hearing held in accordance with subparagraph (I) of this paragraph (c), a juvenile who is to be tried as an adult for criminal proceedings pursuant to a direct filing or transfer shall not be held at any ADULT JAIL OR PRETRIAL facility ~~intended to be utilized by juvenile offenders~~, unless the ~~district attorney and the defense counsel agree otherwise. In determining whether~~ DISTRICT COURT FINDS, AFTER A HEARING HELD PURSUANT TO SUBPARAGRAPH (IV), (V), OR (VI) OF THIS PARAGRAPH (c), THAT AN ADULT jail is the appropriate place of confinement ~~the district attorney and defense counsel shall consider the following factors:~~ FOR THE JUVENILE.

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

~~(A) The age of the juvenile;~~

~~(B) The nature, seriousness, and circumstances of the alleged offense;~~

~~(C) The juvenile's history of prior delinquent or criminal acts;~~

~~(D) Whether detention in a juvenile facility will adequately serve the need for community protection pending the outcome of the criminal proceedings;~~

~~(E) Whether detention in a juvenile facility will negatively impact the functioning of the juvenile facility by compromising the goals of detention to maintain a safe, positive, and secure environment for all juveniles within the facility;~~

~~(F) The relative ability of the available adult and juvenile detention facilities to meet the needs of the juvenile, including the juvenile's need for educational services, and protect the public;~~

~~(G) Whether the juvenile presents an imminent risk of harm to himself or herself or others within a juvenile facility;~~

~~(H) The physical maturity of the juvenile;~~

~~(I) The current mental state or maturity 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; and~~

~~(J) Any other relevant factors.~~

~~(III) At any stage of the proceedings, the district attorney may, after further consideration of the factors set forth in subparagraph (H) of this paragraph (c), agree to change the place of confinement from jail to a juvenile facility~~ IN DETERMINING WHETHER AN ADULT JAIL IS THE APPROPRIATE PLACE OF CONFINEMENT FOR THE JUVENILE, THE DISTRICT COURT SHALL CONSIDER THE FOLLOWING FACTORS:

(A) THE AGE OF THE JUVENILE;

(B) WHETHER, IN ORDER TO PROVIDE PHYSICAL SEPARATION FROM ADULTS, THE JUVENILE WOULD BE DEPRIVED OF CONTACT WITH OTHER PEOPLE FOR A SIGNIFICANT PORTION OF THE DAY OR WOULD NOT HAVE ACCESS TO RECREATIONAL FACILITIES OR AGE-APPROPRIATE EDUCATIONAL OPPORTUNITIES;

(C) THE JUVENILE'S CURRENT EMOTIONAL STATE, INTELLIGENCE, AND DEVELOPMENTAL MATURITY, INCLUDING ANY EMOTIONAL AND PSYCHOLOGICAL TRAUMA, AND THE RISK TO THE JUVENILE CAUSED BY HIS OR HER PLACEMENT IN AN ADULT JAIL, WHICH RISK MAY BE EVIDENCED BY MENTAL HEALTH OR PSYCHOLOGICAL ASSESSMENTS OR SCREENINGS MADE AVAILABLE TO THE DISTRICT ATTORNEY AND TO DEFENSE COUNSEL;

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

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

(F) THE RELATIVE ABILITY OF THE AVAILABLE ADULT AND JUVENILE DETENTION FACILITIES TO MEET THE NEEDS OF THE JUVENILE, INCLUDING THE JUVENILE'S NEED FOR MENTAL HEALTH AND EDUCATIONAL SERVICES;

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

(H) THE PHYSICAL MATURITY OF THE JUVENILE; AND

(I) ANY OTHER RELEVANT FACTORS.

(IV) ~~If there is no agreement, detention of the juvenile shall be subject to the provisions of subsection (4) of this section~~ AFTER CHARGES ARE FILED DIRECTLY IN DISTRICT COURT AGAINST A JUVENILE PURSUANT TO SECTION 19-2-517 OR A JUVENILE IS TRANSFERRED TO DISTRICT COURT PURSUANT TO SECTION 19-2-518, THE DIVISION OF YOUTH CORRECTIONS MAY PETITION THE DISTRICT COURT TO TRANSPORT THE JUVENILE TO AN ADULT JAIL. THE DISTRICT COURT SHALL HOLD A HEARING ON THE PLACE OF PRETRIAL DETENTION FOR THE JUVENILE AS SOON AS PRACTICABLE, BUT NO LATER THAN TWENTY DAYS AFTER THE RECEIPT OF THE DIVISION'S PETITION TO TRANSPORT. THE DISTRICT ATTORNEY, SHERIFF, OR JUVENILE MAY FILE A RESPONSE TO THE PETITION AND PARTICIPATE IN THE HEARING. THE JUVENILE SHALL REMAIN IN A JUVENILE DETENTION FACILITY PENDING HEARING AND DECISION BY THE DISTRICT COURT.

(V) IF A JUVENILE IS PLACED IN THE DIVISION OF YOUTH CORRECTIONS AND IS BEING TRIED IN DISTRICT COURT, THE DIVISION OF YOUTH CORRECTIONS MAY PETITION THE COURT FOR A FORTHWITH HEARING TO TERMINATE JUVENILE DETENTION PLACEMENT IF THE JUVENILE'S PLACEMENT IN A JUVENILE DETENTION FACILITY PRESENTS AN IMMINENT DANGER TO THE OTHER JUVENILES OR TO STAFF AT THE DETENTION FACILITY. IN MAKING ITS DETERMINATION, THE COURT SHALL REVIEW THE FACTORS SET FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (c).

(VI) IF THE DISTRICT COURT DETERMINES THAT AN ADULT JAIL IS THE APPROPRIATE PLACE OF CONFINEMENT FOR THE JUVENILE, THE JUVENILE MAY PETITION THE COURT FOR A REVIEW HEARING. THE JUVENILE MAY NOT PETITION FOR A REVIEW HEARING WITHIN THIRTY DAYS AFTER THE INITIAL CONFINEMENT DECISION OR WITHIN THIRTY DAYS AFTER ANY SUBSEQUENT REVIEW HEARING. UPON RECEIPT OF THE PETITION, THE COURT MAY SET THE MATTER FOR A HEARING IF THE JUVENILE HAS ALLEGED FACTS OR CIRCUMSTANCES THAT, IF TRUE, WOULD WARRANT RECONSIDERATION OF THE JUVENILE'S PLACEMENT IN AN ADULT JAIL BASED UPON THE FACTORS SET FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) AND THE FACTORS PREVIOUSLY RELIED UPON BY THE COURT.

SECTION 2. 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: March 15, 2012