

CHAPTER 160

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 94-1141

BY REPRESENTATIVES Tucker, Chlouber, Epps, Faatz, Greenwood, and Kaufman;
also SENATOR Schroeder.

AN ACT**CONCERNING REQUIREMENTS RELATED TO JUVENILE PROCEEDINGS.**

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

SECTION 1. 13-6-307, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-6-307. Process. (1) Each county court shall have the power to issue process necessary to acquire jurisdiction, to require attendance, and to enforce all orders, decrees, and judgments. Such process runs to any county within the state and, when authorized by the Colorado rules of civil procedure, may be served outside the state. Any sheriff to whom process is directed is authorized and required to execute the same, and he is entitled to the same fees as are allowed for serving like process from the district courts. Persons other than the sheriff or his deputies may also serve process from the county court when permitted by the Colorado rules of civil procedure or by law.

(2) UPON REQUEST OF THE COURT, THE PROSECUTING COUNTY, OR THE DEFENDANT, THE CLERK OF THE COUNTY COURT SHALL ISSUE A SUBPOENA FOR THE APPEARANCE, AT ANY AND ALL STAGES OF THE COURT'S PROCEEDINGS, OF THE PARENT, GUARDIAN, OR LAWFUL CUSTODIAN OF ANY CHILD UNDER EIGHTEEN YEARS OF AGE WHO IS CHARGED WITH THE VIOLATION OF A COUNTY ORDINANCE. WHENEVER A PERSON WHO IS ISSUED A SUBPOENA PURSUANT TO THIS SUBSECTION (2) FAILS, WITHOUT GOOD CAUSE, TO APPEAR, THE COURT MAY ISSUE AN ORDER FOR THE PERSON TO SHOW CAUSE TO THE COURT AS TO WHY THE PERSON SHOULD NOT BE HELD IN CONTEMPT. FOLLOWING A SHOW CAUSE HEARING, THE COURT MAY MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND MAY ENTER AN APPROPRIATE ORDER, WHICH MAY INCLUDE FINDING THE PERSON IN CONTEMPT.

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

SECTION 2. 13-10-103, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-10-103. Applicability. This article shall apply to and govern the operation of municipal courts in the cities and towns of this state. Except for the provisions relating to the method of salary payment for municipal judges, the incarceration of children provided for in sections 19-2-204 and 19-2-1115, C.R.S., THE APPEARANCE OF THE PARENT, GUARDIAN, OR LAWFUL CUSTODIAN OF ANY CHILD UNDER EIGHTEEN YEARS OF AGE WHO IS CHARGED WITH A MUNICIPAL OFFENSE AS REQUIRED BY SECTION 13-10-111, the right to a trial by jury for petty offenses provided for in section 16-10-109, C.R.S., rules of procedure promulgated by the supreme court, and appellate procedure, this article may be superseded by charter or ordinance enacted by a home rule city.

SECTION 3. 13-10-111 (5), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-10-111. Commencement of actions - process. (5) Upon the request of the municipal court, the prosecuting municipality, or the defendant, the clerk of the municipal court shall issue a subpoena for the appearance, at any and all stages of the court's proceedings, of the parent, guardian, or lawful custodian of any child under eighteen years of age who is charged with a municipal offense. WHENEVER A PERSON WHO IS ISSUED A SUBPOENA PURSUANT TO THIS SUBSECTION (5) FAILS, WITHOUT GOOD CAUSE, TO APPEAR, THE COURT MAY ISSUE AN ORDER FOR THE PERSON TO SHOW CAUSE TO THE COURT AS TO WHY THE PERSON SHOULD NOT BE HELD IN CONTEMPT. FOLLOWING A SHOW CAUSE HEARING, THE COURT MAY MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND MAY ENTER AN APPROPRIATE ORDER, WHICH MAY INCLUDE FINDING THE PERSON IN CONTEMPT.

SECTION 4. 16-11-311 (2) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-311. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections - repeal. (2) (a) (I) A juvenile may be sentenced to the youthful offender system created pursuant to this section under the circumstances set forth in section 19-2-805 (2) (a) (II), C.R.S. In order to sentence a person to the youthful offender system, the court shall first impose upon such person a sentence to the department of corrections in accordance with section 18-1-105, C.R.S. The court shall thereafter suspend such sentence conditioned on completion of a sentence to the youthful offender system, including a period of parole supervision. The court shall impose any such sentence to the youthful offender system for a determinate period of not less than one year nor more than five years and a mandatory period of parole supervision for a period of one year. Upon the successful completion of the programs in the youthful offender system, including the mandatory period of supervision, the sentence to the department of corrections shall have been completed. Whenever a person is returned to the district court for revocation pursuant to subsection (5) of this section, the court shall impose the original sentence following the revocation of the sentence to the youthful offender system. Such revocation shall be in accordance with section 16-11-206.

(II) FOR THE PURPOSES OF THIS SECTION, "JUVENILE" MEANS A PERSON WHO IS UNDER THE AGE OF EIGHTEEN YEARS AT THE TIME OF SENTENCING PURSUANT TO THIS SECTION.

SECTION 5. 19-1-103, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-1-103. Definitions. As used in this title, unless the context otherwise requires:

(12.3) "FIRE INVESTIGATOR" MEANS A PERSON WHO:

(a) IS AN OFFICER OR MEMBER OF A FIRE DEPARTMENT, FIRE PROTECTION DISTRICT, OR FIRE FIGHTING AGENCY OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS;

(b) IS ENGAGED IN CONDUCTING OR IS PRESENT FOR THE PURPOSE OF ENGAGING IN THE CONDUCT OF A FIRE INVESTIGATION; AND

(c) IS EITHER A VOLUNTEER OR IS COMPENSATED FOR SERVICES RENDERED BY THE PERSON.

SECTION 6. 19-1-119 (1) (b.5), the introductory portions to 19-1-119 (1) (c) (II) and (2) (a), and 19-1-119 (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 19-1-119 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

19-1-119. Confidentiality of juvenile records - delinquency. (1) (b.5) ~~Court records in juvenile delinquency proceedings concerning a juvenile who is adjudicated a juvenile delinquent for the commission of a delinquent act which would constitute a class 1, 2, 3, or 4 felony if such juvenile were an adult, or any juvenile who is charged with the commission of any such delinquent act, shall be open to the public. The information which shall be open to the public pursuant to this paragraph (b.5) regarding a juvenile who is charged with the commission of a delinquent act shall be the basic identification information concerning such juvenile, as defined in section 24-72-302 (2), C.R.S. However, any psychological profile of any such juvenile, any intelligence test results for any such juvenile, or any information regarding whether such juvenile has been sexually abused shall not be open to the public unless released by an order of the court~~ THE PUBLIC HAS ACCESS TO ARREST AND CRIMINAL RECORDS INFORMATION, AS DEFINED IN SECTION 24-72-302 (1), C.R.S., AND INCLUDING A PERSON'S PHYSICAL DESCRIPTION, THAT:

(I) IS IN THE CUSTODY OF THE INVESTIGATING LAW ENFORCEMENT AGENCY, THE AGENCY RESPONSIBLE FOR FILING A PETITION AGAINST THE JUVENILE, AND THE COURT; AND

(II) CONCERNS A JUVENILE WHO:

(A) IS ADJUDICATED A JUVENILE DELINQUENT OR IS SUBJECT TO A REVOCATION OF PROBATION FOR COMMITTING THE CRIME OF POSSESSION OF A HANDGUN BY A JUVENILE OR FOR COMMITTING AN ACT THAT WOULD CONSTITUTE A CLASS 1, 2, 3, OR 4 FELONY OR WOULD CONSTITUTE ANY CRIME THAT INVOLVES THE USE OR POSSESSION

OF A WEAPON IF SUCH ACT WERE COMMITTED BY AN ADULT; OR

(B) IS CHARGED WITH THE COMMISSION OF ANY ACT DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II).

(b.7) THE INFORMATION WHICH SHALL BE OPEN TO THE PUBLIC PURSUANT TO PARAGRAPH (b.5) REGARDING A JUVENILE WHO IS CHARGED WITH THE COMMISSION OF A DELINQUENT ACT SHALL NOT INCLUDE RECORDS OF INVESTIGATION AS SUCH RECORDS ARE DESCRIBED IN SECTION 24-72-305 (5), C.R.S. IN ADDITION, ANY PSYCHOLOGICAL PROFILE OF ANY SUCH JUVENILE, ANY INTELLIGENCE TEST RESULTS FOR ANY SUCH JUVENILE, OR ANY INFORMATION REGARDING WHETHER SUCH JUVENILE HAS BEEN SEXUALLY ABUSED SHALL NOT BE OPEN TO THE PUBLIC UNLESS RELEASED BY AN ORDER OF THE COURT.

(c) A juvenile probation officer's records, whether or not part of the court file, shall not be open to inspection except as provided in subparagraphs (I) to (IX) of this paragraph (c):

(II) To law enforcement officers, as defined in section 19-1-103 (17.5), AND TO FIRE INVESTIGATORS, AS DEFINED IN SECTION 19-1-103 (12.3), the inspection shall be limited to the following information:

(2) (a) EXCEPT AS OTHERWISE PROVIDED BY PARAGRAPH (b.5) OF SUBSECTION (1) OF THIS SECTION, the records of law enforcement officers concerning juveniles, including identifying information, shall be identified as juvenile records and shall not be inspected by or disclosed to the public, except:

(5) Whenever a petition filed in juvenile court alleges that a child between the ages of fourteen to eighteen YEARS has committed an offense that would constitute a crime of violence, as defined in section 16-11-309, C.R.S., if committed by an adult or whenever charges filed in district court allege that a child has committed such an offense, ~~basic identification information~~ THEN THE ARREST AND CRIMINAL RECORDS INFORMATION, AS DEFINED IN SECTION 24-72-302 (1), C.R.S., AND INCLUDING A PERSON'S PHYSICAL DESCRIPTION, concerning such child shall be made available to the public. THE INFORMATION IS AVAILABLE ONLY FROM THE INVESTIGATIVE LAW ENFORCEMENT AGENCY, THE AGENCY RESPONSIBLE FOR FILING A PETITION, AND THE COURT, AND SHALL NOT INCLUDE RECORDS OF INVESTIGATION AS SUCH RECORDS ARE DESCRIBED IN SECTION 24-72-305 (5), C.R.S. ~~Such~~ Basic identification information, AS DEFINED IN SECTION 24-72-302 (2), C.R.S., along with the details of the alleged delinquent act or offense, shall be provided immediately to the school district in which the child is enrolled. Such information shall be used by the board of education for purposes of section 22-33-105 (5), C.R.S., but information made available to the school district and not otherwise available to the public shall remain confidential.

SECTION 7. 19-2-204 (3) (c) and (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

19-2-204. Detention and shelter - hearing - time limits - confinement with adult offenders - restrictions. (3) (c) (I) No juvenile taken to a detention or shelter facility or a temporary holding facility pursuant to section 19-2-201 as the result of an allegedly delinquent act which constitutes any of the offenses described in

sub-subparagraph (A), (B), or (C) of subparagraph (III) of paragraph (a) of this subsection (3) shall 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. No such juvenile shall 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), no juvenile ~~being held when the juvenile~~ WHO is to be tried as an adult for criminal proceedings pursuant to a direct filing or transfer shall be held at any facility intended to be utilized by juvenile offenders, unless the district attorney and the defense counsel agree otherwise. ~~Said juvenile shall be segregated from the adult offenders of the facility in which such juvenile is held.~~ IF THERE IS NO AGREEMENT, DETENTION OF THE JUVENILE SHALL BE SUBJECT TO THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION.

(4) (a) No jail shall 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 juvenile under the age of fourteen and, except upon order of the court, no juvenile fourteen years of age or older shall 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 ~~by the court~~ only if the juvenile is being held for criminal proceedings as an adult PURSUANT TO A DIRECT FILING OR TRANSFER or if the court determines that the juvenile is an escape risk or is a threat to the safety of detention center personnel or other detainees. Any determination that the juvenile is an escape risk shall be set forth by the court in written findings.

(b) ~~Except as provided in paragraph (c) of subsection (3) of this section, a juvenile fourteen years of age or older~~ WHENEVER A JUVENILE IS HELD PURSUANT TO A DIRECT FILING OR TRANSFER IN A FACILITY WHERE ADULTS ARE HELD, THE JUVENILE SHALL BE PHYSICALLY SEGREGATED FROM THE ADULT OFFENDERS. A JUVENILE DETERMINED BY THE COURT TO BE AN ESCAPE RISK OR A THREAT TO THE SAFETY OF DETENTION CENTER PERSONNEL OR OTHER DETAINEES WHO IS HELD IN AN ADULT FACILITY shall be detained in an area that is reasonably separated by sight and sound from, and is without haphazard or accidental contact with, adult offenders or persons charged with a crime.

SECTION 8. 19-2-205 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-205. Bail. (2) Any application for the revocation or modification of the amount, type, or conditions of bail shall be made in accordance with section 16-4-107, C.R.S.; EXCEPT THAT THE PRESUMPTION DESCRIBED IN SECTION 19-2-204 (3) (a) (III) (A) TO (3) (a) (III) (C) SHALL CONTINUE TO APPLY FOR THE PURPOSES OF THIS SECTION.

SECTION 9. 19-2-303 (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

19-2-303. Juvenile diversion program - authorization. (4) ~~Juveniles eligible for services under this section are those who have been taken into temporary custody more than once for crimes which constitute a misdemeanor or once for a crime which constitutes a felony.~~

SECTION 10. 19-2-806 (3) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-2-806. Transfer proceedings. (3) (c) The amount of weight to be given to each of the factors listed in paragraph (b) of this subsection (3) is discretionary with the court; except that a record of two or more previously sustained petitions for delinquent acts which constitute felonies OR A RECORD OF TWO OR MORE JUVENILE PROBATION REVOCATIONS BASED ON ACTS WHICH CONSTITUTE FELONIES shall establish prima facie evidence that to retain jurisdiction in juvenile court would be contrary to the best interests of the juvenile or of the community.

SECTION 11. Effective date - applicability. This act shall take effect upon passage and shall apply to acts committed on or after said date.

SECTION 12. 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 28, 1994