

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0435.01 Michael Dohr x4347

HOUSE BILL 12-1139

HOUSE SPONSORSHIP

Levy, Fields, Barker, Court, Kagan, Massey, McCann, McKinley, Nikkel, Solano, Young

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A BILL FOR AN ACT

101 CONCERNING PRETRIAL DETENTION OF CHILDREN PROSECUTED AS
102 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>.)

The bill prohibits a juvenile who is to be tried as an adult from being held in an adult jail or pretrial facility unless the district court, after a hearing, finds that an adult jail or pretrial facility is the appropriate place of confinement for the juvenile. The bill sets forth a list of factors the district court must consider in making its decision.

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.

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

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

4 **19-2-508. Detention and shelter - hearing - time limits -**
5 **findings - review - confinement with adult offenders - restrictions.**

6 (3) (c) (I) A juvenile taken to a detention or shelter facility or a
7 temporary holding facility pursuant to section 19-2-502 as the result of an
8 allegedly delinquent act that constitutes any of the offenses described in
9 subparagraph (III) of paragraph (a) of this subsection (3) shall not be
10 released from such facility if a law enforcement agency has requested that
11 a detention hearing be held to determine whether the juvenile's immediate
12 welfare or the protection of the community requires that the juvenile be
13 detained. A juvenile shall not thereafter be released from detention except
14 after a hearing, reasonable advance notice of which has been given to the
15 district attorney, alleging new circumstances concerning the further
16 detention of the juvenile.

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

- 1 ~~(A) The age of the juvenile;~~
- 2 ~~(B) The nature, seriousness, and circumstances of the alleged~~
3 ~~offense;~~
- 4 ~~(C) The juvenile's history of prior delinquent or criminal acts;~~
- 5 ~~(D) Whether detention in a juvenile facility will adequately serve~~
6 ~~the need for community protection pending the outcome of the criminal~~
7 ~~proceedings;~~
- 8 ~~(E) Whether detention in a juvenile facility will negatively impact~~
9 ~~the functioning of the juvenile facility by compromising the goals of~~
10 ~~detention to maintain a safe, positive, and secure environment for all~~
11 ~~juveniles within the facility;~~
- 12 ~~(F) The relative ability of the available adult and juvenile~~
13 ~~detention facilities to meet the needs of the juvenile, including the~~
14 ~~juvenile's need for educational services, and protect the public;~~
- 15 ~~(G) Whether the juvenile presents an imminent risk of harm to~~
16 ~~himself or herself or others within a juvenile facility;~~
- 17 ~~(H) The physical maturity of the juvenile;~~
- 18 ~~(I) The current mental state or maturity of the juvenile as~~
19 ~~evidenced by relevant mental health or psychological assessments or~~
20 ~~screenings that are made available to both the district attorney and~~
21 ~~defense counsel; and~~
- 22 ~~(J) Any other relevant factors.~~
- 23 ~~(III) At any stage of the proceedings, the district attorney may,~~
24 ~~after further consideration of the factors set forth in subparagraph (H) of~~
25 ~~this paragraph (c), agree to change the place of confinement from jail to~~
26 ~~a juvenile facility~~ IN DETERMINING WHETHER AN ADULT JAIL IS THE
27 APPROPRIATE PLACE OF CONFINEMENT FOR THE JUVENILE, THE DISTRICT

1 COURT SHALL CONSIDER THE FOLLOWING FACTORS:

2 (A) THE AGE OF THE JUVENILE;

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

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

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

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

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

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

27 (H) THE PHYSICAL MATURITY OF THE JUVENILE; AND

1 (I) ANY OTHER RELEVANT FACTORS.

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

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

24 (VI) IF THE DISTRICT COURT DETERMINES THAT AN ADULT JAIL IS
25 THE APPROPRIATE PLACE OF CONFINEMENT FOR THE JUVENILE, THE
26 JUVENILE MAY PETITION THE COURT FOR A REVIEW HEARING. THE
27 JUVENILE MAY NOT PETITION FOR A REVIEW HEARING WITHIN THIRTY DAYS

1 AFTER THE INITIAL CONFINEMENT DECISION OR WITHIN THIRTY DAYS
2 AFTER ANY SUBSEQUENT REVIEW HEARING. UPON RECEIPT OF THE
3 PETITION, THE COURT MAY SET THE MATTER FOR A HEARING IF THE
4 JUVENILE HAS ALLEGED FACTS OR CIRCUMSTANCES THAT, IF TRUE, WOULD
5 WARRANT RECONSIDERATION OF THE JUVENILE'S PLACEMENT IN AN ADULT
6 JAIL BASED UPON THE FACTORS SET FORTH IN SUBPARAGRAPH (III) OF THIS
7 PARAGRAPH (c) AND THE FACTORS PREVIOUSLY RELIED UPON BY THE
8 COURT.

9 **SECTION 2. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.