

WHEN A CHILD CAN BE TRIED AS AN ADULT

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A person who is less than 18 years of age is considered a juvenile under Colorado law. If charged with a crime, he or she is treated differently than an adult. According to section 19-2-104, C.R.S., the Colorado juvenile justice system and the juvenile court have exclusive original jurisdiction concerning a juvenile 10 years of age or older who violates:

- Any federal or state law (except non-felony state traffic, game and fish, and parks and recreation laws or regulations);
- Certain laws concerning furnishing tobacco products to minors;
- Certain laws concerning ethyl alcohol and marijuana; and
- County or municipal ordinances, the penalty of which may be a jail sentence of more than ten days (except traffic ordinances).

There are, however, certain acts that may warrant the removal of the juvenile's case to district court via either *direct file* or a *transfer*. In district court, the juvenile is tried as an adult and, if convicted, may be sentenced as an adult.

Four factors that affect the ability to try a juvenile as an adult include:

- The age of the juvenile;
- The type of offense charged;
- The extent of the juvenile's past history of delinquency; and
- Whether the district attorney invokes the district court's original jurisdiction or seeks to transfer a pending juvenile court proceeding to the district court.

As a general rule, the likelihood that a district attorney will be able to file criminal charges against a juvenile as an adult increases with the age of the juvenile, the severity of the charged offense, and the juvenile's past history of delinquency.

Under Colorado law, **the youngest ages at which a child may be tried as an adult are 12**

¹This summary contains information commonly requested from the Office of Legislative Legal Services (OLLS). It does not represent an official legal position of the General Assembly or the State of Colorado and does not bind the members of the General Assembly. It is intended to provide a general overview of Colorado law as of the date of its preparation. Any person needing legal advice should consult his or her own lawyer and should not rely on the information in this memorandum.

and 13, if the child is alleged to have committed a class 1 or 2 felony or a crime of violence and the juvenile court transfers the case to the district court. This is discussed in greater detail below.

Direct File

Under section 19-2-517, C.R.S., the district attorney may file charges against a juvenile directly in the district court only if the juvenile is 14 years of age or older and:

- Is alleged to have committed a class 1 or 2 felony or a crime of violence, as defined in section 18-1.3-406, C.R.S.; or
- Is alleged to have committed a felony offense involving a weapon; or
- Is alleged to have used or possessed and threatened to use a deadly weapon, as defined in section 18-12-101, C.R.S., in the commission of a felony crime against a person; or
- Is alleged to have committed vehicular homicide, vehicular assault, or felonious arson; or
- Is alleged to have committed a felony and has previously been tried as an adult and found guilty or has been determined to be an habitual juvenile offender, as defined in section 19-1-103 (61), C.R.S.; or
- Is 16 years of age or older, has committed a class 1, 2, or 3 felony, and within the previous two years has been tried and convicted as a juvenile delinquent for an act that would constitute a felony if committed by an adult.

Juveniles who have been charged by direct file and convicted may be sentenced as adults, or, if they have not committed certain offenses, they may be sentenced to either the youthful offender system in the Department of Corrections or to the Colorado juvenile justice system.

Transfer

Under section 19-2-518, C.R.S., the juvenile court may order a juvenile's case transferred to the district court if:

- The juvenile is 12 or 13 years of age and is alleged to have committed an act that, if committed by an adult, would constitute a class 1 or 2 felony or a

crime of violence, as defined in section 18-1.3-406, C.R.S.; or

- The juvenile is 14 years of age or older and has committed an act that constitutes a felony.

If the juvenile satisfies one of these criteria, the juvenile court must then determine, after investigation and a hearing, if it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction and try the juvenile in juvenile court. Upon that determination, the juvenile court may waive jurisdiction and transfer the case to the district court for criminal proceedings. Based on the crime the juvenile is convicted of committing and his or her previous criminal history, the district court judge may sentence the juvenile as an adult, sentence him or her to the youthful offender system, or sentence him or her according to the juvenile sentencing provisions.

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