

# LAW SUMMARY

*Office of Legislative Legal Services*



## ***WHEN A CHILD CAN BE TRIED AS AN ADULT<sup>1</sup>***

A person who is less than 18 years of age is a juvenile under Colorado law. When charged with a crime, he or she is treated differently than an adult. The Colorado juvenile justice system and juvenile courts have jurisdiction<sup>2</sup> over 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 cigarettes or tobacco products to minors;
- Certain laws concerning ethyl alcohol and marijuana;
- County or municipal ordinances, the penalty of which may be a jail sentence of more than ten days (except traffic ordinances); and
- Any court order made pursuant to the provisions of the children's code contained in title 19, C.R.S.

But, there are certain acts that may warrant moving 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.

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<sup>1</sup> This summary contains information commonly requested from the Office of Legislative Legal Services. It does not represent an official legal opinion 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.

<sup>2</sup> Section 19-2-104, C.R.S.

As a general rule, the likelihood that a district attorney may 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 age at which a child may be tried as an adult is 12**, 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**

The district attorney may file charges against a juvenile directly in the district court<sup>3</sup> only if:

The juvenile was 16 years of age or older at the time the offense was allegedly committed and:

- Is alleged to have committed a class 1 or 2 felony; or
- Is alleged to have committed a sexual assault that is a crime of violence<sup>4</sup> or a sexual assault under the circumstances described in section 18-3-402 (5) (a), C.R.S.; or
- Is alleged to have committed a felony enumerated as a crime of violence<sup>5</sup>, or sexual assault,<sup>6</sup> sexual assault on a child,<sup>7</sup> or sexual assault on a child by one in a position of trust;<sup>8</sup> and
  - Has a prior adjudicated felony offense; or
  - Has previously been subject to proceedings in district court as a result of a direct filing or a transfer.

After a juvenile is charged in district court, the juvenile may ask the district court for a reverse-transfer hearing. The juvenile must make the request at or before the time to request a preliminary hearing, and then the court sets the reverse-transfer hearing for the same time as the preliminary hearing. If, after a reverse-transfer hearing, the court finds that the juvenile and community would be better served by juvenile proceedings, the court orders the case to

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<sup>3</sup> Section 19-2-517, C.R.S.

<sup>4</sup> Section 18-1.3-406, C.R.S.

<sup>5</sup> Section 18-1.3-406, C.R.S.

<sup>6</sup> Section 18-3-402, C.R.S.

<sup>7</sup> Section 18-3-405, C.R.S.

<sup>8</sup> Section 18-3-405.3, C.R.S.

juvenile court. If, after a preliminary hearing, the district court does not find probable cause for a direct-file-eligible offense, the court remands the case to the juvenile court.

A juvenile's non-felony conviction must be remanded to juvenile court and, when a juvenile sentence is selected, the conviction converts to a juvenile adjudication. A juvenile sentenced under a direct file shall be treated as a juvenile adjudication.

## **Transfer**

The juvenile court may order a juvenile's case transferred to the district court<sup>9</sup> if:

- The juvenile was 12 or 13 years of age at the time the juvenile allegedly committed a delinquent act that would constitute a class 1 or 2 felony or a crime of violence<sup>10</sup> if committed by an adult; or
- The juvenile was 14 years of age or older at the time the juvenile allegedly committed a delinquent act that would constitute a felony if committed by an adult.

If the district attorney seeks to transfer the juvenile to district court, the juvenile court must determine, after an 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. If the court makes that determination, it may waive jurisdiction and transfer the case to the district court for criminal proceedings. 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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<sup>9</sup> Section 19-2-518, C.R.S.

<sup>10</sup> Section 18-1.3-406, C.R.S.