



Colorado Legislative Council Staff

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MEMORANDUM

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August 20, 2002

TO: Representative Peter Groff

FROM: Carl Jarrett, Principal Analyst, and Colette S. Peters, Research Associate, 303-866-3521

SUBJECT: Circumstances Under Which a District Attorney May Charge a Juvenile as an Adult

This memorandum responds to your request for information on the circumstances under which juveniles can be charged as adults in district court by a district attorney. Colorado law provides that juveniles can be tried as adults in district court when a district attorney files criminal charges against the juvenile in district court, or when a juvenile court transfers a case from juvenile court to district court. This memorandum lists the circumstances under which juveniles can be charged as adults and transferred from juvenile court to district court. The memorandum also lists the possible sentences when such juveniles are convicted.

Direct File in District Court

Colorado law allows district attorneys to bypass the juvenile court system and charge juveniles as adults in district court for certain crimes. A district attorney may charge a juvenile as an adult when:

- the juvenile is 14 years or older and is alleged to have committed a class 1 or class 2 felony;

- the juvenile is 14 years of age or older and is alleged to have:
 - N committed a felony that is a crime of violence¹;
 - N committed a felony offense relating to firearms and weapons except for the possession of a handgun by a juvenile;
 - N used, or possessed and threatened the use of, a deadly weapon during the commission of felony offenses against the person; or
 - N committed vehicular homicide, vehicular assault, or felonious arson;
- the juvenile has, within the two previous years, been adjudicated a juvenile delinquent for a delinquent act that constitutes a felony, is 16 or older, and has allegedly committed a class 3 felony;
- the juvenile is 14 or older, has allegedly committed a delinquent act that constitutes a felony, and has previously been subject to proceedings in district court resulting from a direct file or a transfer from juvenile court to district court; except that if the juvenile was found not guilty in district court for the prior felony, the subsequent charge must be remanded back to juvenile court; or
- the juvenile is 14 or older, has allegedly committed a delinquent act constituting a felony, and is determined to be an "habitual juvenile offender."

Sentencing juveniles who are convicted as adults. Colorado law dictates how judges must sentence juveniles who are convicted as adults. District court judges must sentence such juveniles as follows:

- as an adult (to the Department of Corrections (DOC)); or
- to the Youthful Offender System (YOS) in the DOC if the juvenile is 14 years of age or older, and:
 - N is alleged to have committed a felony that is a crime of violence;
 - N is alleged to have committed a felony offense relating to firearms and weapons except for the possession of a handgun by a juvenile;
 - N is alleged to have used, or possessed and threatened the use of, a deadly weapon during the commission of felony offenses against the person;
 - N is alleged to have committed vehicular homicide,

1. Any crime against an at-risk adult or at-risk juvenile; murder; first or second degree assault; kidnapping; sexual assault; aggravated robbery; first degree arson; first degree burglary; escape or criminal extortion. "Crime of violence" also includes any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim.

vehicular assault, or felonious arson; or

N is determined to be an "habitual juvenile offender."

A juvenile is ineligible for sentencing to the YOS and must be sentenced to the DOC if the juvenile is convicted of:

- a class 1 felony;
- a class 2 felony resulting from a plea agreement where the juvenile was charged with a class 1 felony;
- a class 2 felony when the juvenile has one or more prior convictions for a crime of violence or prior adjudications for an offense that would constitute a crime of violence if committed by an adult;
- a class 2 felony when the juvenile is 16 or older;
- incest or aggravated incest or any crime involving unlawful sexual behavior; or
- a second or subsequent offense for the following when such juvenile received a sentence to the DOC or to the YOS for the prior offense:
 - N a felony that is a crime of violence;
 - N a felony offense relating to firearms and weapons except for the possession of a handgun by a juvenile;
 - N use, or possession and threatening the use of, a deadly weapon during the commission of felony offenses against the person;
 - N vehicular homicide, vehicular assault, or felonious arson; or
 - N adjudication as an "habitual juvenile offender."

Transfers From Juvenile Court

Transfer of a juvenile to district court. Colorado law allows a juvenile court to transfer a juvenile to criminal proceedings in district court. The juvenile may be transferred if:

- a petition filed in juvenile court alleges the juvenile is:
 - N twelve or 13 years of age and has committed a delinquent act that constitutes a class 1 or class 2 felony or a crime of violence; or
 - N fourteen years of age or older and has committed a delinquent act that constitutes a felony; and

- the juvenile court finds it would not be in the best interest of the juvenile or the public to retain jurisdiction.

Sentencing juveniles who have been transferred. The district court must sentence a juvenile as an adult if the juvenile:

- is convicted of a class 1 felony;
- is convicted of a crime of violence;
- committed a delinquent act that constitutes a class 1 or 2 felony or a crime of violence and is 12 or 13 years of age and was previously adjudicated a mandatory sentence offender, a violent juvenile offender, or an aggravated juvenile offender; or
- committed a delinquent act that constitutes a felony and is 14 years of age or older and was previously adjudicated a mandatory sentence offender, a violent juvenile offender, or an aggravated juvenile offender.

Judges have the discretion to sentence transferred juveniles convicted of the above listed crimes to an adult prison or the YOS. However, the law does not allow a district court to sentence a transferred juvenile to the YOS if the juvenile is convicted of:

- a class 1 felony;
- a class 2 felony resulting from a plea agreement where the juvenile was charged with a class 1 felony;
- a class 2 felony when the juvenile has one or more prior convictions for a crime of violence or prior adjudications for an offense that would constitute a crime of violence if committed by an adult;
- a class 2 felony when the juvenile is sixteen or older; or
- incest or aggravated incest or any crime involving unlawful sexual behavior.