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| DISTRICT COURT  CITY & COUNTY OF DENVER  1437 Bannock Street  Denver, Colorado 80202 | ▲ **COURT USE ONLY** ▲ |
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| Courtroom: 4G |
| **STANDING ORDER RE: PROCEDURES FOR**  **REVERSE TRANSFER HEARINGS** | |

Other than listing 11 factors a court is to consider, there is little, if any, guidance from the statute on the nature of the reverse transfer hearing (“RTH”). C.R.S. § 19-2.5-801(4)(b). Frankly, the statute is ambiguous as to whether a court must take evidence at all as opposed to proceeding by offers of proof. To provide guidance, I issue this order so that counsel will be aware of the procedures that will be followed in my Court.

1. Burdens and Procedures.
   1. Preliminary Hearing (PH).

When a PH is combined with a RTH, the PH will be held first. As usual, the People bear the burden of proof to establish probable cause for PH eligible offenses.

* 1. Reverse Transfer Hearing.[[1]](#footnote-1)

The RTH will begin once the PH has concluded. As the moving party on the question of whether the case should be transferred to the Juvenile Court, the Defense will present its evidence first for that portion of the hearing,

No party will bear a burden of proof. A party advocating any fact must establish that fact by a preponderance of the evidence (a burden of persuasion). As there is no burden of proof, no rebuttal case will be necessary though one may be permitted if requested and good cause is shown.

Upon the conclusion of the presentation of evidence, the Court will first rule on the PH issues, then it will weigh all established facts and determine, in its discretion, the truth of the proposition: Whether the juvenile and the community would be better served by transferring the case back to juvenile court jurisdiction.

1. The Evidentiary Hearing
   1. Length of the Hearing:

Combined PH/RTH’s will normally be set for a single day. Given the lack of guidance, statutory and case law, the fiscal note and what the legislature was told would be the impact of RTH’s on the Court system is relevant to determining what level of hearing is required.[[2]](#footnote-2) In 2008, when the statute was passed and the fiscal note was being created, the judicial department did not put a fiscal impact on the original bill because it was believed, as set forth in the fiscal note, that the hearings would take a half a day on average—though it does provide that some could take as much as two days. It is significant that the fiscal note follows with, "Judges must consider certain criteria at a reverse transfer hearing, including the seriousness and type of charges and the defendant's criminal history. Assuming that either of those factors is extraordinary, the length of a reverse transfer hearing will be minimal."[[3]](#footnote-3)

Unless the PH will last more than half a day, a full day for the PH/RTH will be sufficient given that the majority of the evidence the Court will consider will be submitted for the Court’s review 30 days prior to the hearing pursuant to the procedures set forth in this Order.

* 1. Rules of Evidence[[4]](#footnote-4)

Given the legislative requirement that the reverse-transfer hearing be set with the preliminary hearing and the instruction from our Court of Appeals that this hearing be viewed as more analogous to a sentencing decision than a finding of guilt, the Court will apply a somewhat relaxed evidentiary standard to the reverse transfer hearing. *See generally People v. A.D.G.*, 855 P.2d 1067 (Colo. App. 1994).

* 1. Evidence in Re C.R.S. § 19-2.5-801(4)(b) Factors.

The reasons most PH/RTH hearings will be completed in a single day are: a) the vast majority of the evidence this Court must consider will be documentary; and b) *all* evidence, except essential testimony not capable of being reduced to writing--which will be strictly limited--will be submitted to the Court 30 days prior to the hearing.

Such pre-filed documentary evidence should suffice for the Court’s assessment of every factor except Factor IV. To that end:

* All experts as to any factor will prepare an opinion letter that will be submitted to the Court 30 days prior to the scheduled hearing.
* Parties will submit all documentary evidence they wish the Court to consider 30 days before the scheduled hearing.

All submissions should be organized such that it is clear as to which factor each document pertains. This evidence includes affidavits, police reports, criminal history documents, expert opinion letters, medical documents, mental health evaluations, mental health treatment records, psychological evaluations, IEPs, and anything else relevant to any factor. In sum,

1. Parties will prefile *all* evidence it wishes the Court to consider as to factors:
   1. Factor (I) – seriousness of the offense/protection of community;
   2. Factor (II) – how offense was committed;
   3. Factor (V) – history of prior court-related matters;
      1. The juvenile’s record can be established by records of conviction and sentencing or stipulated to, *see infra*.
      2. Documentation of the juvenile’s prior performance on probation, at DYC, or any other court-ordered program will be pre-filed.
   4. Factor (VI) – current and past mental health status;
      1. The facts relating to this factor are to be established by “relevant mental health or psychological assessments or screenings.”
      2. This factor does *not* contemplate family members testifying about the juvenile’s upbringing or lay opinion about the juvenile’s mental health status.
   5. Factor (VIII) – commensurate punishment.
      1. This factor is probably just oral argument.
2. Parties should stipulate as to factors:
   1. Factor (III) – person or property crime;
   2. Factor (V) – history of prior court-related matters;
      1. The juvenile’s prior convictions or adjudications can be stipulated to.
   3. Factor (X) – prior delinquency and commitment to the Department of Human Services;
   4. Factor (XI) – use of deadly weapon.
   5. If there is a factual dispute as to any of these factors, documentary evidence may be submitted 30 days prior to the hearing as discussed in paragraph (1).
3. Live Testimony not Anticipated Unless Authorized (Victims and Expert Testimony):
   1. Factor (VII) – likelihood of rehabilitation.
      1. All expert opinions relating to this factor must be submitted to the court for its review prior to the hearing.
      2. If necessary, experts will be allowed to testify, but it will be unnecessary for them to repeat what is in their opinion letters. Thus, any testimony on direct will be brief with the majority of the testimony being cross and re-direct.
      3. The Court does not need evidence regarding what YOS is or what the juvenile sentencing structures are and the benefits thereof.
   2. Factor (IX) – victim impact
      1. Victim impact statements and photographs in lieu of live testimony would seem sufficient unless the need for live testimony is established.
4. What will be helpful to the Court. Evidence on issues that the filing deputy couldn’t have known about: Factor (IV) – maturity of the defendant as determined by home, environment, emotional attitude, and pattern of living.
   * 1. The Court does not need evidence of the defendant’s age beyond their DOB; it does not need evidence on the juvenile’s lack of criminal history.
     2. Factor IV is written in the *present tense*. The statute does not call for an exploration of a juvenile’s entire past. While some background *could* be helpful, the Court will not accept testimony from witnesses regarding how the juvenile grew up, how they did in school, or information from years past unless *directly* related to the Court’s assessment of the juvenile’s maturity at *present.* Put another way, Factor IV deals with the “right now” or at the time of the offense, and “considerations of the juvenile’s home, environment, emotional attitude, and pattern of living” are *only* relevant to determining the *current* maturity of the juvenile.
     3. Miscellaneous. To the extent it is relevant to the current maturity of the juvenile, the Court will consider information provided by experts and the juvenile’s family members including clinical testing, mental health diagnoses, past treatment, home life, pattern of living, school, and protective or positive events (e.g. sports or other extracurricular activities). Again, expert opinions, results of testing, past diagnoses and treatment, and school records are the type of evidence that are to be provided to the Court prior to the hearing. The Court will also consider facts from the case about the juvenile’s conduct suggesting they wanted to be treated as an adult.

d. Judicial Notice of Scientific Consensus Opinion Related to Juveniles.

The Court takes judicial notice that recent case law demonstrates scientific support for and adoption of the general principle that juveniles, as a group, are less mature and more impulsive than adults. *See e.g. Kent v. United States*, 383 U.S. 541 (1966); *see also Roper v. Simmons*, 543 U.S. 551, 552‒54, 569 (2005) (declined to follow by *People in Interest of A.C.E.D.,* 433 P.3d 153 (Colo. App. 2018)(acknowledged *Simmons* recognized important differences between children and adults but such reasoning did not apply to understanding of juvenile on meaning of adjudication process); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 132 S. Ct. 2455, 2458 (2012). Expert testimony on this issue is unnecessary.

1. Limits on Use of Evidence Obtained at Reverse Transfer Hearing.

Given the nature of the evidence presented relating to certain factors, the Court issues the following order limiting the prosecution’s use of certain evidence presented by the juvenile during the reverse transfer hearing at trial.

The factors which may be considered by the district court in a reverse transfer hearing seem to fall into 3 categories:

1. "Inadmissible factors:" Those factors which would elicit factual information which is irrelevant to the People's case-in-chief and are inadmissible at trial:
   1. Factor (V) - history of prior court-related matters;
   2. Factor (VII) – likelihood of rehabilitation;
   3. Factor (VIII) - commensurate punishment; and
   4. Factor (X) - prior delinquency and commitment to the Department of Human Services.
2. “Mental health factors:” Those factors which address the juvenile’s mental health, and which are irrelevant to the People's case in-chief and would be admissible at trial only if the juvenile places his mental health at issue:
   1. Factor (IV) – maturity of the defendant as determined by home, environment, emotional attitude, and pattern of living; and
   2. Factor (VI) - mental health assessments of the defendant.
3. “Criminal factors: "Those factors which elicit factual information about the alleged offense:
   1. Factor (I) – seriousness of the offense;
   2. Factor (II) – how offense was committed;
   3. Factor (III) – person or property crime;
   4. Factor (IX) – victim impact; and
   5. Factor (XI) – use of deadly weapon

Regarding the “mental health factors” information received for the first time at the reverse transfer hearing related to the defendant's maturity and mental health background: This information is similar to information generated to determine a criminal defendant’s competence to proceed with criminal proceedings under C.R.S. § 16-8.5-102(4), (9), (12) and C.R.S. § 16-8.5-105(3). That statutory process prohibits the admission at a subsequent criminal trial, directly or indirectly, of information revealed for the first time during a competency hearing concerning the social and mental health history of the defendant. C.R.S. § 16-8.5-108(1). Based on the similarity in purpose and function of a district court's determination of the competency of a criminal defendant and the social utility of proceedings against a juvenile in district court, the treatment of evidence of the defendant's social and mental history revealed for the first time at a reverse transfer hearing will be treated in the same manner as such evidence revealed for the first time in a competency hearing and this evidence is now ordered inadmissible at trial except as noted above.

The “criminal factors” could elicit two categories of evidence that may be relevant at a subsequent trial.

1. Testimony of the juvenile and the Fifth Amendment.

Testimony elicited from the juvenile might incriminate the defendant, and/or reveal for the first time information which the prosecution may use to further investigate and discover incriminating information. This raises the question of whether the juvenile is forced to choose between his or her constitutional right against self-incrimination under the Fifth Amendment to the Constitution of the United States and their statutory right to a reverse transfer hearing under C.R.S. § 19-2.5-801(4)(a).

The purpose of a reverse transfer hearing and the juvenile’s decision to testify is not akin to the juvenile's decision to waive his Fifth Amendment right and testify at a trial on the merits. A reverse transfer hearing has no bearing on guilt or innocence and only addresses jurisdictional issues of further criminal proceedings.

The purpose of a reverse transfer hearing is not unlike the purpose of a hearing to suppress statements of the defendant prior to trial. By testifying in a suppression hearing, a defendant does not implicate their Fifth Amendment right against self-incrimination because that right only attaches regarding issues of guilt and innocence. *People v. Turtura*, 921 P.2d 40, 43 (Colo.1996). A defendant who decides to testify at a suppression hearing is subject to cross-examination regarding the evidentiary issues addressed in the defendant's motion to suppress and to associated issues of credibility, but not as to other issues. The prosecution must limit its questioning to the scope of direct examination, and the defendant may invoke their Fifth Amendment right. However, if the defendant testifies at trial, his prior testimony may be used to impeach his trial testimony; further, testimony given by a defendant in support of a motion to suppress evidence on Fourth Amendment grounds cannot be admitted in evidence against the defendant at trial on the issue of guilt unless the defendant makes no objection, *People v. Spies*, 615 P.2d 710, 712 (Colo. 1980), or to impeach the testimony of other defense witnesses regarding the defendant's prior statements. *See People v. Dembry*, 91 P.3d 431, 434‒35 (Colo. App. 2003). *Simmons v. United States*, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968).

These principles and standards will be applied to such evidence obtained in the RTH.

1. Testimony of other witnesses.

The evidentiary limitations which apply to the juvenile’s testimony at the reverse transfer hearing, as set forth above, do not apply to any other witness who testifies on the defendant's behalf regarding the "criminal factors."

The court will allow the district attorney to use any testimony at the reverse transfer hearing by any witness, other than the defendant, for any direct or derivative purpose at trial or during the police investigation.

1. Document Submission Schedule and Procedural Order:

* All experts will prepare an opinion letter.
* A status conference will be set prior to the PH/RTH.
* All CV’s, expert opinion letters, mental health or psychological assessments or screenings, and *all* other relevant information a party wishes the Court to consider are to be submitted 30 days prior to the hearing.
* A proposed witness list along with a statement of each witness’s anticipated testimony is to be submitted for the Court’s 30 days prior to the PH/RTH. These will be discussed, and if necessary pared down or limited, at the status conference.
* The Court will accept stipulations applicable to any statutory factor at the status conference.
* Objections to any evidence or proposed testimony will be heard at the status conference.

**SO ORDERED** this Wednesday, March 26, 2025

BY THE COURT:



Eric M. Johnson

District Court Judge

1. The Court reached the conclusions in this section after reviewing *People v. A.D.G.,* 855 P.2d 1067 (Colo. App. 1994). This case considered whether a burden of proof exists under the transfer statute, C.R.S. § 19-2-518, governing when a felony juvenile case may be transferred to District Court. The statute is, in its relevant parts, the mirror image of the reverse transfer statute, and includes strikingly similar provisions. [↑](#footnote-ref-1)
2. Fiscal notes have been used by the Court of Appeals to determine legislative intent. *Bd. of Cnty. Comm'rs v. Colo. Dep't of Pub. Health & Env't*, 2020 COA 50, ¶ 28 n.7, 490 P.3d 695*, aff'd in part and vacated in part on other grounds*, 2021 CO 43, 488 P.3d 1065 (Fiscal notes can, in some circumstances, be helpful in gleaning legislative intent to the extent they provide a glimpse into what was known at the time the amendment was being considered.) [↑](#footnote-ref-2)
3. The fiscal note memorializes that the Office of the Public Defender told the legislature that one attorney could handle 1,500 such proceedings or hearings each year. “Using that standard, each hearing requires 1.4 hours of attorney time.” [↑](#footnote-ref-3)
4. The Reverse Transfer Statute provides that the “court shall set the reverse-transfer hearing with the preliminary hearing.” C.R.S. § 19-2.5-801(4)(a). With the exception of privileged communications and determination of whether a witness is competent to testify, the rules of evidence do not apply to preliminary hearings, and the rules of procedure authorize the court to “temper the rules of evidence in the exercise of sound judicial discretion.” C.R.E. 1101(d)(3); Crim. P. Rules 5(a)(4) and 7(h)(3). The Colorado appellate courts have also issued a number of opinions permitting the use of reliable but not excessive hearsay evidence. See, e.g.,Maestas *v.* District Court, 541 P. 2d 889, 892 (Colo. 1975); People ex rel.VanMeveren *v.* District Court, 575 P. 2d 405 (Colo. 1978). [↑](#footnote-ref-4)