

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

April 15, 2021

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB21-1091 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the consent calendar:

1 Amend reengrossed bill, page 6, after line 10 insert:

2 **"SECTION 4.** In Colorado Revised Statutes, 19-2.5-802, **repeal**
3 **and reenact, with amendments, as relocated by Senate Bill 21-059**
4 (1)(d) as follows:

5 **19-2.5-802. [Formerly 19-2-518] Transfers.** (1) (d) (I) IF A
6 JUVENILE IS CONVICTED IN CASES IN WHICH CRIMINAL CHARGES ARE
7 TRANSFERRED TO THE DISTRICT COURT PURSUANT TO THIS SECTION, THE
8 DISTRICT COURT JUDGE SHALL SENTENCE THE JUVENILE EITHER:

9 (A) AS AN ADULT; EXCEPT THAT A JUVENILE IS EXCLUDED FROM
10 THE MANDATORY MINIMUM SENTENCING PROVISIONS IN SECTION
11 18-1.3-406, UNLESS THE JUVENILE IS CONVICTED OF A CLASS 1 FELONY OR
12 A SEX OFFENSE THAT IS SUBJECT TO PART 9 OF ARTICLE 1.3 OF TITLE 18; OR

13 (B) TO THE YOUTHFUL OFFENDER SYSTEM IN THE DEPARTMENT OF
14 CORRECTIONS IN ACCORDANCE WITH SECTION 18-1.3-407; EXCEPT THAT
15 A JUVENILE IS NOT ELIGIBLE FOR SENTENCING TO THE YOUTHFUL
16 OFFENDER SYSTEM IF THE JUVENILE IS CONVICTED OF A CLASS 1 FELONY;
17 ANY SEXUAL OFFENSE DESCRIBED IN SECTION 18-6-301 OR 18-6-302, OR
18 PART 4 OF ARTICLE 3 OF TITLE 18; OR A SECOND OR SUBSEQUENT OFFENSE,
19 IF THE JUVENILE RECEIVED A SENTENCE TO THE DEPARTMENT OF
20 CORRECTIONS OR TO THE YOUTHFUL OFFENDER SYSTEM FOR THE PRIOR
21 OFFENSE.

22 (II) THE DISTRICT COURT JUDGE MAY SENTENCE A JUVENILE

1 PURSUANT TO THIS ARTICLE 2.5 IF THE JUVENILE IS CONVICTED OF A
2 LESSER INCLUDED OR NONENUMERATED FELONY OFFENSE IN CASES IN
3 WHICH CRIMINAL CHARGES ARE TRANSFERRED TO THE DISTRICT COURT
4 PURSUANT TO THIS SECTION. IF THE JUVENILE IS CONVICTED OF ONLY A
5 MISDEMEANOR OFFENSE OR MISDEMEANOR OFFENSES, THE COURT SHALL
6 ADJUDICATE THE JUVENILE A DELINQUENT AND SENTENCE THE JUVENILE
7 PURSUANT TO THIS ARTICLE 2.5.

8 (III) IF A JUVENILE IS CONVICTED OF AN OFFENSE THAT IS NOT
9 ELIGIBLE FOR DISTRICT COURT JURISDICTION PURSUANT TO EITHER THIS
10 SECTION OR SECTION 19-2.5-801, THE JUVENILE SHALL BE REMANDED TO
11 JUVENILE COURT FOR SENTENCING PURSUANT TO THIS ARTICLE 2.5.

12 (IV) IN THE CASE OF A PERSON WHO IS SENTENCED AS A JUVENILE
13 PURSUANT TO THIS SUBSECTION (1)(d), THE FOLLOWING PROVISIONS
14 APPLY:

15 (A) SECTION 19-2.5-1126 (1)(a), REGARDING MANDATORY
16 SENTENCE OFFENDERS;

17 (B) SECTION 19-2.5-1126 (1)(b), REGARDING REPEAT JUVENILE
18 OFFENDERS;

19 (C) SECTION 19-2.5-1126 (1)(c), REGARDING VIOLENT JUVENILE
20 OFFENDERS; AND

21 (D) SECTION 19-2.5-1127, REGARDING AGGRAVATED JUVENILE
22 OFFENDERS.

23 (V) THE COURT IN ITS DISCRETION MAY APPOINT A GUARDIAN AD
24 LITEM FOR A JUVENILE FOLLOWING THE TRANSFER OF CHARGES TO THE
25 DISTRICT COURT PURSUANT TO THIS SECTION.

26 (VI) WHEN A JUVENILE IS SENTENCED PURSUANT TO THIS ARTICLE
27 2.5, THE JUVENILE'S CONVICTION SHALL BE ADJUDICATED AS A JUVENILE
28 DELINQUENCY ADJUDICATION.

29 (VII) FOR PURPOSES OF THIS SUBSECTION (1)(d), "VIOLENT
30 JUVENILE OFFENDER" HAS THE SAME MEANING AS DEFINED IN SECTION
31 19-2.5-1125 (3).

32 **SECTION 5.** In Colorado Revised Statutes, 16-11-102, **amend**
33 **as amended by Senate Bill 21-059** (1.8) as follows:

34 **16-11-102. Presentence or probation investigation.** (1.8) At the
35 request of either the prosecution or the defense, each presentence report
36 prepared regarding a youthful offender, as defined in section 18-1.3-407,
37 who is eligible for sentencing to the youthful offender system pursuant to
38 section 18-1.3-407.5, 19-2.5-801 (5), or 19-2.5-802 ~~(1)(d)(II)~~ **(1)(d)(I)(B)**
39 must include a determination by the warden of the youthful offender
40 system whether the youthful offender is acceptable for sentencing to the
41 youthful offender system. When making a determination, the warden shall

1 consider the nature and circumstances of the crime, the circumstances and
2 criminal history of the youthful offender, the available bed space in the
3 youthful offender system, and any other appropriate considerations.

4 **SECTION 6.** In Colorado Revised Statutes, 18-1.3-407, **amend**
5 **as amended by Senate Bill 21-059** (1)(b) and (2)(a)(I) as follows:

6 **18-1.3-407. Sentences - youthful offenders - powers and duties**
7 **of district court - authorization for youthful offender system - powers**
8 **and duties of department of corrections - legislative declaration -**
9 **definitions.** (1) (b) It is the further intent of the general assembly in
10 enacting this section that female and male offenders who are eligible for
11 sentencing to the youthful offender system pursuant to section
12 18-1.3-407.5 or section 19-2.5-801 (5) or 19-2.5-802 ~~(1)(d)(H)~~
13 **(1)(d)(I)(B)** receive equitable treatment in sentencing, particularly in
14 regard to the option of being sentenced to the youthful offender system.
15 Accordingly, it is the general assembly's intent that the department of
16 corrections take necessary measures to establish separate housing for
17 female and male offenders who are sentenced to the youthful offender
18 system without compromising the equitable treatment of either.

19 (2) (a) (I) A juvenile may be sentenced to the youthful offender
20 system created pursuant to this section under the circumstances set forth
21 in section 19-2.5-801 (5)(a)(II) or 19-2.5-802 ~~(1)(d)(H)~~ **(1)(d)(I)(B)**. A
22 young adult offender may be sentenced to the youthful offender system
23 created pursuant to this section under the circumstances set forth in
24 section 18-1.3-407.5. In order to sentence a juvenile or young adult
25 offender to the youthful offender system, the court shall first impose upon
26 such person a sentence to the department of corrections in accordance
27 with section 18-1.3-401. The court shall thereafter suspend such sentence
28 conditioned on completion of a sentence to the youthful offender system,
29 including a period of community supervision. The court shall impose any
30 such sentence to the youthful offender system for a determinate period of
31 not fewer than two years nor more than six years; except that a juvenile
32 or young adult offender convicted of a class 2 felony may be sentenced
33 for a determinate period of up to seven years. In imposing the sentence,
34 the court shall grant authority to the department of corrections to place the
35 offender under a period of community supervision for a period of not
36 fewer than six months and up to twelve months any time after the date on
37 which the offender has twelve months remaining to complete the
38 determinate sentence. The court may award an offender sentenced to the
39 youthful offender system credit for presentence confinement; except that
40 such credit shall not reduce the offender's actual time served in the
41 youthful offender system to fewer than two years. The court shall have a

1 presentence investigation conducted before sentencing a juvenile or
2 young adult offender pursuant to this section. Upon the request of either
3 the prosecution or the defense, the presentence report must include a
4 determination by the warden of the youthful offender system whether the
5 offender is acceptable for sentencing to the youthful offender system.
6 When making a determination, the warden shall consider the nature and
7 circumstances of the crime; the age, circumstances, and criminal history
8 of the offender; the available bed space in the youthful offender system;
9 and any other appropriate considerations.

10 **SECTION 7. Effective date.** This act takes effect upon passage;
11 except that sections 4, 5, and 6 of this act take effect only if Senate Bill
12 21-059 becomes law and take effect upon the effective date of this act or
13 Senate Bill 21-059, whichever is later."

14 Renumber succeeding section accordingly.

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