

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-0695.01 Jane Ritter x4342

HOUSE BILL 18-1156

HOUSE SPONSORSHIP

Lee, Lundeen

SENATE SPONSORSHIP

Holbert,

House Committees
Judiciary

Senate Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON PENALTIES FOR TRUANCY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill clarifies in the Colorado Children's Code and in the "School Attendance Law of 1963" that a "delinquent act" does not include truancy or habitual truancy. A child who is habitually truant and who refuses to follow a plan to rehabilitate his or her truancy may be subject to various sanctions by the court in a truancy proceeding, but the sanctions must not include placement in a juvenile detention facility.

The bill removes the authority of a judge or magistrate to issue a warrant to take a juvenile into temporary custody for a truancy action,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
April 17, 2018

SENATE
Amended 2nd Reading
April 16, 2018

HOUSE
3rd Reading Unamended
March 20, 2018

HOUSE
Amended 2nd Reading
March 19, 2018

including contempt proceedings for refusal to comply with a truancy plan, or for failure to appear for a truancy or contempt action. The court may, however, issue an order to show cause requiring the juvenile's appearance in court and may impose additional age-appropriate sanctions.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) The general assembly has previously declared, in House Bill
5 11-1053, enacted in 2011, that "[t]he best practice for addressing truancy
6 is a graduated approach that includes early intervention", and that youth
7 who are truant and "who have committed no criminal offense . . . may be
8 physically and emotionally unprepared for the stress" of the juvenile
9 justice system;

10 (b) Yet, in 2017, youth who were truant were held in secure
11 confinement in a facility more than forty times;

12 (c) National and Colorado studies clearly demonstrate that placing
13 a youth in secure confinement for truancy alone is counterproductive and
14 harmful to the youth and the community for the following reasons:

15 (I) A youth who was detained for truancy is 14.5 times less likely
16 to graduate from high school than a youth who was found truant but not
17 detained; and

18 (II) Detention for truancy increases the likelihood of future
19 criminal behavior. Youth who are truant are not charged with any
20 criminal conduct, but placing these youth in secure confinement with
21 youth who are charged with criminal conduct increases the likelihood the
22 truant youth will subsequently engage in criminal behavior.

23 (d) The state has a strong interest in preserving limited and costly

1 youth detention beds for youth who have been accused of or adjudicated
2 for dangerous criminal conduct; and

3 (e) Truancy by a youth does not pose an inherent or immediate
4 threat to the safety of the youth or the community.

5 (2) The general assembly therefore finds that youth in Colorado
6 should not be placed in secure confinement for truancy alone. The general
7 assembly further finds that the power of the court to sanction youth for
8 contempt, including sanctions of detention and incarceration, is an
9 inherent power of the court that may not be abrogated by the legislature,
10 pursuant to article III of the state constitution.

11 **SECTION 2.** In Colorado Revised Statutes, 22-33-102, **amend**
12 the introductory portion and (5); and **add** (3.5) as follows:

13 **22-33-102. Definitions.** As used in this ~~article~~ ARTICLE 33, unless
14 the context otherwise requires:

15 (3.5) "CHILD WHO IS HABITUALLY TRUANT" MEANS A CHILD WHO
16 IS SIX YEARS OF AGE ON OR BEFORE AUGUST 1 OF THE YEAR IN QUESTION
17 AND IS UNDER SEVENTEEN YEARS OF AGE AND WHO HAS FOUR UNEXCUSED
18 ABSENCES FROM PUBLIC SCHOOL IN ANY ONE MONTH OR TEN UNEXCUSED
19 ABSENCES FROM PUBLIC SCHOOL DURING ANY ACADEMIC YEAR. ABSENCES
20 DUE TO SUSPENSION OR EXPULSION OF A CHILD ARE CONSIDERED EXCUSED
21 ABSENCES FOR PURPOSES OF THIS ARTICLE 33.

22 (5) "Delinquent act" ~~has the same meaning as set forth in section~~
23 ~~19-1-103(36), C.R.S.~~ MEANS A VIOLATION OF ANY STATUTE, ORDINANCE,
24 OR ORDER ENUMERATED IN SECTION 19-2-104 (1)(a). IF A JUVENILE IS
25 ALLEGED TO HAVE COMMITTED OR IS FOUND GUILTY OF A DELINQUENT
26 ACT, THE CLASSIFICATION AND DEGREE OF THE OFFENSE IS DETERMINED BY
27 THE STATUTE, ORDINANCE, OR ORDER THAT THE PETITION ALLEGES WAS

1 VIOLATED. "DELINQUENT ACT" DOES NOT INCLUDE TRUANCY OR HABITUAL
2 TRUANCY.

3 **SECTION 3.** In Colorado Revised Statutes, 22-33-104.5, **amend**
4 (3) introductory portion and (3)(b) as follows:

5 **22-33-104.5. Home-based education - legislative declaration -**
6 **definitions - guidelines.** (3) The following guidelines ~~shall~~ apply to a
7 nonpublic home-based educational program:

8 (b) A child who is participating in a nonpublic home-based
9 educational program ~~shall~~ IS not ~~be~~ subject to compulsory school
10 attendance as provided in this ~~article~~ ARTICLE 33; except that any child
11 who is habitually truant, as defined in ~~section 22-33-107 (3)~~ SECTION
12 22-33-102 (3.5), at any time during the last six months that the child
13 attended school before proposed enrollment in a nonpublic home-based
14 educational program may not be enrolled in the program unless the child's
15 parents first submit a written description of the curricula to be used in the
16 program along with the written notification of establishment of the
17 program required in ~~paragraph (c) of this subsection (3)~~ SUBSECTION
18 (3)(e) OF THIS SECTION to any school district within the state.

19 **SECTION 4.** In Colorado Revised Statutes, 22-33-107, **amend**
20 (3)(b) introductory portion and (4); and **repeal** (3)(a)(I) as follows:

21 **22-33-107. Enforcement of compulsory school attendance -**
22 **definitions.** (3) (a) As used in this subsection (3):

23 (I) ~~"Child who is habitually truant" means a child who has attained~~
24 ~~the age of six years on or before August 1 of the year in question and is~~
25 ~~under the age of seventeen years and who has four unexcused absences~~
26 ~~from public school in any one month or ten unexcused absences from~~
27 ~~public school during any school year. Absences due to suspension or~~

1 ~~expulsion of a child are considered excused absences for purposes of this~~
2 ~~subsection (3).~~

3 (b) The board of education of each school district shall adopt and
4 implement policies and procedures concerning elementary and secondary
5 school attendance, including but not limited to policies and procedures to
6 work with children who are habitually truant. The policies and procedures
7 must include provisions for the development of a plan. The plan must be
8 developed with the goal of assisting the child to remain in school and,
9 when practicable, with the full participation of the child's parent,
10 guardian, or legal custodian. Appropriate school personnel shall make all
11 reasonable efforts to meet with the parent, guardian, or legal custodian of
12 the child to review and evaluate the reasons for the child's truancy. The
13 appropriate school personnel are encouraged to work with the local
14 community services group to develop the plan. THE PLAN MUST BE IN
15 COMPLIANCE WITH SECTION 22-33-108 (7) AND INCLUDE APPROPRIATE
16 SANCTIONS OTHER THAN PLACEMENT IN A JUVENILE DETENTION FACILITY
17 FOR A CHILD WHO IS HABITUALLY TRUANT AND WHO HAS REFUSED TO
18 COMPLY WITH THE PLAN. The policies and procedures may also include
19 but need not be limited to the following:

20 (4) On or before September 15, 2010, and on or before September
21 15 each year thereafter, the board of education of each school district
22 shall report to the department of education the number of ~~students~~
23 ~~identified as~~ CHILDREN WHO ARE habitually truant, as defined in
24 ~~paragraph (a) of subsection (3) of this section~~ SECTION 22-33-102 (3.5),
25 for the preceding academic year. The department shall post this
26 information for each school district on its website for the public to access
27 and may post additional information reported by school districts related

1 to truancy.

2 **SECTION 5.** In Colorado Revised Statutes, 22-33-108, **amend**
3 **(7)** as follows:

4 **22-33-108. Judicial proceedings.** (7) (a) If the child OR YOUTH
5 does not comply with the valid court order issued against the child OR
6 YOUTH or against both the parent and the child OR YOUTH, the court may
7 order that an assessment for neglect as described in section 19-3-102 (1)
8 ~~C.R.S.~~, be conducted as provided in section 19-3-501. ~~C.R.S.~~ In addition,
9 the court may order the child OR YOUTH to show cause why he or she
10 should not be held in contempt of court. ~~WHEN INSTITUTING CONTEMPT~~
11 ~~OF COURT PROCEEDINGS PURSUANT TO THIS SUBSECTION (7), THE COURT~~
12 ~~SHALL PROVIDE ALL PROCEDURAL PROTECTIONS MANDATED IN RULE 107~~
13 ~~OF THE COLORADO RULES OF CIVIL PROCEDURE, OR ANY SUCCESSOR RULE,~~
14 ~~CONCERNING PUNITIVE SANCTIONS FOR CONTEMPT.~~

15 (a.5) A JUDGE OR MAGISTRATE OF ANY COURT MAY ISSUE A
16 WARRANT THAT AUTHORIZES THE TAKING INTO TEMPORARY CUSTODY OF
17 A CHILD OR YOUTH WHO HAS FAILED TO APPEAR FOR A COURT HEARING
18 FOR A TRUANCY OR CONTEMPT ACTION; EXCEPT THAT ANY SUCH WARRANT
19 MUST PROVIDE FOR RELEASE OF THE CHILD OR YOUTH FROM TEMPORARY
20 CUSTODY ON AN UNSECURED PERSONAL RECOGNIZANCE BOND THAT IS
21 COSIGNED BY THE CHILD'S OR YOUTH'S PARENT OR LEGAL GUARDIAN OR,
22 IF THE CHILD OR YOUTH IS IN THE CUSTODY OF THE DEPARTMENT OF
23 HUMAN SERVICES, COSIGNING MAY BE ACCOMPLISHED BY A
24 REPRESENTATIVE OF THE DEPARTMENT OF HUMAN SERVICES. IN THE
25 ALTERNATIVE, THE WARRANT MAY DIRECT THAT THE CHILD OR YOUTH
26 MUST ONLY BE ARRESTED WHILE COURT IS IN SESSION AND THAT HE OR SHE
27 BE TAKEN DIRECTLY TO COURT FOR AN APPEARANCE RATHER THAN

1 BOOKED INTO SECURE CONFINEMENT.

2 (b) The court may impose sanctions after a finding of contempt
3 that may include, but need not be limited to, community service to be
4 performed by the child OR YOUTH, supervised activities, participation in
5 services for at-risk students, as described by section 22-33-204, and other
6 activities having goals that shall ensure THE GOAL OF ENSURING that the
7 child OR YOUTH has an opportunity to obtain a quality education.

8 (c) (I) If the court finds that the child OR YOUTH has refused to
9 comply with the plan created for the child OR YOUTH pursuant to section
10 22-33-107 (3), the court may impose on the child OR YOUTH, as a sanction
11 for contempt of court, a sentence of detention for no more than ~~five days~~
12 FORTY-EIGHT HOURS in a juvenile detention facility operated by or under
13 contract with the department of human services pursuant to section
14 19-2-402 C.R.S., and any rules promulgated by the Colorado supreme
15 court. THE COURT SHALL NOT SENTENCE A CHILD OR YOUTH TO DETENTION
16 AS A SANCTION FOR CONTEMPT OF COURT UNLESS THE COURT FINDS THAT
17 DETENTION IS IN THE BEST INTEREST OF THE CHILD OR YOUTH AS WELL AS
18 THE PUBLIC. IN MAKING SUCH A FINDING, THE COURT SHALL CONSIDER THE
19 FOLLOWING FACTORS, INCLUDING THAT:

20 (A) THE CHILD OR YOUTH HAS VIOLATED A VALID COURT ORDER;

21 (B) NATIONAL AND COLORADO-SPECIFIC EVIDENCE SHOWS THAT
22 DETAINING CHILDREN AND YOUTH FOR TRUANCY ALONE IS
23 COUNTERPRODUCTIVE AND HARMFUL TO CHILDREN AND YOUTH;

24 (C) THE LEGISLATIVE INTENT IS THAT A CHILD OR YOUTH WHO IS
25 TRUANT MUST NOT BE PLACED IN SECURE CONFINEMENT FOR TRUANCY
26 ALONE;

27 (D) DETENTION IS LIKELY TO HAVE A DETRIMENTAL EFFECT ON

1 THE CHILD'S OR YOUTH'S SCHOOL ATTENDANCE; AND

2 (E) DETENTION IS LIKELY TO HAVE AN EFFECT ON THE CHILD'S OR
3 YOUTH'S FUTURE INVOLVEMENT WITH THE CRIMINAL JUSTICE SYSTEM.

4 (II) THERE IS A REBUTTABLE PRESUMPTION THAT A CHILD OR
5 YOUTH MUST RECEIVE CREDIT FOR TIME SERVED IF HE OR SHE IS
6 SENTENCED TO DETENTION PURSUANT TO SUBSECTION (7)(c)(I) OF THIS
7 SECTION FOR VIOLATING A VALID COURT ORDER TO ATTEND SCHOOL. IF
8 THE COURT REBUTS THIS PRESUMPTION, IT SHALL EXPLAIN ITS REASONING
9 ON THE RECORD.

10 SECTION 6. In Colorado Revised Statutes, 19-1-103, amend
11 (36) as follows:

12 19-1-103. Definitions. As used in this title 19 or in the specified
13 portion of this title 19, unless the context otherwise requires:

14 (36) "Delinquent act", as used in article 2 of this ~~title~~ TITLE 19,
15 means a violation of any statute, ordinance, or order enumerated in
16 section 19-2-104 (1)(a). If a juvenile is alleged to have committed or is
17 found guilty of a delinquent act, the classification and degree of the
18 offense shall be IS determined by the statute, ordinance, or order that the
19 petition alleges was violated. "DELINQUENT ACT" DOES NOT INCLUDE
20 TRUANCY OR HABITUAL TRUANCY.

21 SECTION 7. In Colorado Revised Statutes, 19-2-503, amend
22 (3) as follows:

23 19-2-503. Issuance of a lawful warrant taking a juvenile into
24 custody. (3) A warrant for the arrest of a juvenile for violation of the
25 conditions of probation or of a bail bond may be issued by any judge of
26 a court of record or juvenile magistrate upon the report of a juvenile
27 probation officer or upon the verified complaint of any person,

1 establishing to the satisfaction of the judge or juvenile magistrate
2 probable cause to believe that a condition of probation or of a bail bond
3 has been violated and that the arrest of the juvenile is reasonably
4 necessary. The warrant may be executed by any juvenile probation officer
5 or by a peace officer authorized to execute warrants in the county in
6 which the juvenile is found. IF THE WARRANT IS FOR A JUVENILE FOUND
7 IN CONTEMPT OF COURT IN A TRUANCY PROCEEDING, THE COURT SHALL
8 FOLLOW THE PROCEDURES SET FORTH IN SECTION 22-33-108 (7).

9 **SECTION 8.** In Colorado Revised Statutes, 19-2-310, **amend** (2)
10 as follows:

11 **19-2-310. Appropriations to department of human services for**
12 **services to juveniles - definition.** (2) For the purposes of this section, a
13 "juvenile" also includes a youth ten years of age and older but less than
14 ~~thirteen~~ SEVENTEEN years of age who ~~received a district court filing and~~
15 ~~who otherwise could not be detained~~ IS HABITUALLY TRUANT, AS DEFINED
16 IN SECTION 22-33-102 (3.5), AND WHO THE COURT HAS ORDERED TO SHOW
17 CAUSE WHY HE OR SHE SHOULD NOT BE HELD IN CONTEMPT OF COURT
18 PURSUANT TO SECTION 22-33-108 (7), WHEN FUNDS ARE EXPENDED FOR
19 SERVICES THAT ARE INTENDED TO PREVENT THE YOUTH FROM BEING HELD
20 IN DETENTION OR SENTENCED TO DETENTION.

21 **SECTION 9. Act subject to petition - effective date.** This act
22 takes effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly (August
24 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
25 referendum petition is filed pursuant to section 1 (3) of article V of the
26 state constitution against this act or an item, section, or part of this act
27 within such period, then the act, item, section, or part will not take effect

1 unless approved by the people at the general election to be held in
2 November 2018 and, in such case, will take effect on the date of the
3 official declaration of the vote thereon by the governor.