

**Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0695.01 Jane Ritter x4342

**HOUSE BILL 18-1156**

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**A BILL FOR AN ACT**

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

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**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.

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.

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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 THE  
13 COLORADO RULES OF CIVIL PROCEDURE CONCERNING PUNITIVE SANCTIONS  
14 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. Act subject to petition - effective date.** This act  
10 takes effect at 12:01 a.m. on the day following the expiration of the  
11 ninety-day period after final adjournment of the general assembly (August  
12 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a  
13 referendum petition is filed pursuant to section 1 (3) of article V of the  
14 state constitution against this act or an item, section, or part of this act  
15 within such period, then the act, item, section, or part will not take effect  
16 unless approved by the people at the general election to be held in  
17 November 2018 and, in such case, will take effect on the date of the  
18 official declaration of the vote thereon by the governor.