

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 21-1091

BY REPRESENTATIVE(S) Daugherty and Lynch, Arndt, Bacon, Bird, Bockenfeld, Cutter, Duran, Exum, Froelich, Gonzales-Gutierrez, Herod, Hooton, Kipp, Lontine, Michaelson Jenet, Rich, Sandridge, Snyder, Titone, Weissman, Woodrow, Young, Amabile, Bernett, Esgar, Jodeh, Kennedy, Ricks, Sirota, Tipper, Valdez A., Van Winkle;
also SENATOR(S) Buckner, Gonzales, Kolker, Lee, Moreno.

CONCERNING SENTENCING PARITY FOR JUVENILES CONVICTED AS ADULTS
FOLLOWING THE TRANSFER OF CHARGES WITH JUVENILES CONVICTED
AS ADULTS FOLLOWING THE DIRECT FILING OF CHARGES.

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

SECTION 1. In Colorado Revised Statutes, 19-2-518, **repeal and reenact, with amendments**, (1)(d) as follows:

19-2-518. Transfers - definition. (1) (d) (I) IF A JUVENILE IS CONVICTED IN CASES IN WHICH CRIMINAL CHARGES ARE TRANSFERRED TO THE DISTRICT COURT PURSUANT TO THIS SECTION, THE DISTRICT COURT JUDGE SHALL SENTENCE THE JUVENILE EITHER:

(A) AS AN ADULT; EXCEPT THAT A JUVENILE IS EXCLUDED FROM THE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

MANDATORY MINIMUM SENTENCING PROVISIONS IN SECTION 18-1.3-406, UNLESS THE JUVENILE IS CONVICTED OF A CLASS 1 FELONY OR A SEX OFFENSE THAT IS SUBJECT TO PART 9 OF ARTICLE 1.3 OF TITLE 18; OR

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

(II) THE DISTRICT COURT JUDGE MAY SENTENCE A JUVENILE PURSUANT TO THIS ARTICLE 2 IF THE JUVENILE IS CONVICTED OF A LESSER INCLUDED OR NONENUMERATED FELONY OFFENSE IN CASES IN WHICH CRIMINAL CHARGES ARE TRANSFERRED TO THE DISTRICT COURT PURSUANT TO THIS SECTION. IF THE JUVENILE IS CONVICTED OF ONLY A MISDEMEANOR OFFENSE OR MISDEMEANOR OFFENSES, THE COURT SHALL ADJUDICATE THE JUVENILE A DELINQUENT AND SENTENCE THE JUVENILE PURSUANT TO THIS ARTICLE 2.

(III) IF A JUVENILE IS CONVICTED OF AN OFFENSE THAT IS NOT ELIGIBLE FOR DISTRICT COURT JURISDICTION PURSUANT TO EITHER THIS SECTION OR SECTION 19-2-517, THE JUVENILE SHALL BE REMANDED TO JUVENILE COURT FOR SENTENCING PURSUANT TO THIS ARTICLE 2 .

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

(A) SECTION 19-2-908 (1)(a), REGARDING MANDATORY SENTENCE OFFENDERS;

(B) SECTION 19-2-908 (1)(b), REGARDING REPEAT JUVENILE OFFENDERS;

(C) SECTION 19-2-908 (1)(c), REGARDING VIOLENT JUVENILE OFFENDERS; AND

(D) SECTION 19-2-601, REGARDING AGGRAVATED JUVENILE

OFFENDERS.

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

(VI) WHEN A JUVENILE IS SENTENCED PURSUANT TO THIS ARTICLE 2, THE JUVENILE'S CONVICTION SHALL BE ADJUDICATED AS A JUVENILE DELINQUENCY ADJUDICATION.

(VII) FOR PURPOSES OF THIS SUBSECTION (1)(d), "VIOLENT JUVENILE OFFENDER" HAS THE SAME MEANING AS DEFINED IN SECTION 19-2-516 (3).

SECTION 2. In Colorado Revised Statutes, 16-11-102, **amend** (1.8) as follows:

16-11-102. Presentence or probation investigation. (1.8) Upon the request of either the prosecution or the defense, each presentence report prepared regarding a youthful offender, as defined in section 18-1.3-407, ~~C.R.S.~~, who is eligible for sentencing to the youthful offender system pursuant to section 18-1.3-407.5, 19-2-517 (6), or 19-2-518 ~~(1)(d)(H)~~, ~~C.R.S.~~, **(1)(d)(I)(B)** shall include a determination by the warden of the youthful offender system whether the youthful offender is acceptable for sentencing to the youthful offender system. When making a determination, the warden shall consider the nature and circumstances of the crime, the circumstances and criminal history of the youthful offender, the available bed space in the youthful offender system, and any other appropriate considerations.

SECTION 3. In Colorado Revised Statutes, 18-1.3-407, **amend** (1)(b) and (2)(a)(I) as follows:

18-1.3-407. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections - definitions. (1) (b) It is the further intent of the general assembly in enacting this section that female and male offenders who are eligible for sentencing to the youthful offender system pursuant to section 18-1.3-407.5, ~~or section~~ 19-2-517 (6), or 19-2-518 ~~(1)(d)(H)~~, ~~C.R.S.~~, **(1)(d)(I)(B)** receive equitable treatment in sentencing, particularly in regard

to the option of being sentenced to the youthful offender system. Accordingly, it is the general assembly's intent that necessary measures be taken by the department of corrections to establish separate housing for female and male offenders who are sentenced to the youthful offender system without compromising the equitable treatment of either.

(2) (a) (I) A juvenile may be sentenced to the youthful offender system created pursuant to this section under the circumstances set forth in section 19-2-517 (6)(a)(II) or 19-2-518 ~~(1)(d)(H)~~, C.R.S. **(1)(d)(I)(B)**. A young adult offender may be sentenced to the youthful offender system created pursuant to this section under the circumstances set forth in section 18-1.3-407.5. In order to sentence a juvenile or young adult offender to the youthful offender system, the court shall first impose upon such person a sentence to the department of corrections in accordance with section 18-1.3-401. The court shall thereafter suspend such sentence conditioned on completion of a sentence to the youthful offender system, including a period of community supervision. The court shall impose any such sentence to the youthful offender system for a determinate period of not fewer than two years nor more than six years; except that a juvenile or young adult offender convicted of a class 2 felony may be sentenced for a determinate period of up to seven years. In imposing such sentence, the court shall grant authority to the department of corrections to place the offender under a period of community supervision for a period of not fewer than six months and up to twelve months any time after the date on which the offender has twelve months remaining to complete the determinate sentence. The court may award an offender sentenced to the youthful offender system credit for presentence confinement; except that such credit shall not reduce the offender's actual time served in the youthful offender system to fewer than two years. The court shall have a presentence investigation conducted before sentencing a juvenile or young adult offender pursuant to this section. Upon the request of either the prosecution or the defense, the presentence report shall include a determination by the warden of the youthful offender system whether the offender is acceptable for sentencing to the youthful offender system. When making a determination, the warden shall consider the nature and circumstances of the crime; the age, circumstances, and criminal history of the offender; the available bed space in the youthful offender system; and any other appropriate considerations.

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

follows:

19-2.5-802. Transfers. (1) (d) (I) IF A JUVENILE IS CONVICTED IN CASES IN WHICH CRIMINAL CHARGES ARE TRANSFERRED TO THE DISTRICT COURT PURSUANT TO THIS SECTION, THE DISTRICT COURT JUDGE SHALL SENTENCE THE JUVENILE EITHER:

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

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

(II) THE DISTRICT COURT JUDGE MAY SENTENCE A JUVENILE PURSUANT TO THIS ARTICLE 2.5 IF THE JUVENILE IS CONVICTED OF A LESSER INCLUDED OR NONENUMERATED FELONY OFFENSE IN CASES IN WHICH CRIMINAL CHARGES ARE TRANSFERRED TO THE DISTRICT COURT PURSUANT TO THIS SECTION. IF THE JUVENILE IS CONVICTED OF ONLY A MISDEMEANOR OFFENSE OR MISDEMEANOR OFFENSES, THE COURT SHALL ADJUDICATE THE JUVENILE A DELINQUENT AND SENTENCE THE JUVENILE PURSUANT TO THIS ARTICLE 2.5.

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

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

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

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

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

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

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

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

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

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

16-11-102. Presentence or probation investigation. (1.8) At the request of either the prosecution or the defense, each presentence report prepared regarding a youthful offender, as defined in section 18-1.3-407, who is eligible for sentencing to the youthful offender system pursuant to section 18-1.3-407.5, 19-2.5-801 (5), or 19-2.5-802 ~~(1)(d)(H)~~ **(1)(d)(I)(B)** must include a determination by the warden of the youthful offender system whether the youthful offender is acceptable for sentencing to the youthful offender system. When making a determination, the warden shall consider the nature and circumstances of the crime, the circumstances and criminal history of the youthful offender, the available bed space in the youthful offender system, and any other appropriate considerations.

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

18-1.3-407. Sentences - youthful offenders - powers and duties

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

(2) (a) (I) A juvenile may be sentenced to the youthful offender system created pursuant to this section under the circumstances set forth in section 19-2.5-801 (5)(a)(II) or 19-2.5-802 ~~(1)(d)(H)~~ **(1)(d)(I)(B)**. A young adult offender may be sentenced to the youthful offender system created pursuant to this section under the circumstances set forth in section 18-1.3-407.5. In order to sentence a juvenile or young adult offender to the youthful offender system, the court shall first impose upon such person a sentence to the department of corrections in accordance with section 18-1.3-401. The court shall thereafter suspend such sentence conditioned on completion of a sentence to the youthful offender system, including a period of community supervision. The court shall impose any such sentence to the youthful offender system for a determinate period of not fewer than two years nor more than six years; except that a juvenile or young adult offender convicted of a class 2 felony may be sentenced for a determinate period of up to seven years. In imposing the sentence, the court shall grant authority to the department of corrections to place the offender under a period of community supervision for a period of not fewer than six months and up to twelve months any time after the date on which the offender has twelve months remaining to complete the determinate sentence. The court may award an offender sentenced to the youthful offender system credit for presentence confinement; except that such credit shall not reduce the offender's actual time served in the youthful offender system to fewer than two years. The court shall have a presentence investigation conducted before sentencing a juvenile or young adult offender pursuant to this section. Upon the request of either the prosecution or the defense, the presentence report must include a determination by the warden of the youthful offender system whether the offender is acceptable for sentencing

to the youthful offender system. When making a determination, the warden shall consider the nature and circumstances of the crime; the age, circumstances, and criminal history of the offender; the available bed space in the youthful offender system; and any other appropriate considerations.

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

SECTION 8. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO