

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 21-0426.01 Michael Dohr x4347

HOUSE BILL 21-1091

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A BILL FOR AN ACT

101 **CONCERNING SENTENCING PARITY FOR JUVENILES CONVICTED AS**
102 **ADULTS FOLLOWING THE TRANSFER OF CHARGES WITH**
103 **JUVENILES CONVICTED AS ADULTS FOLLOWING THE DIRECT**
104 **FILING OF CHARGES.**

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>.)

Under current law, a juvenile convicted as an adult following the direct filing of charges in district court is not subject to the mandatory minimum sentencing provisions for crimes of violence. However, a

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
Amended 2nd Reading
April 20, 2021

HOUSE
3rd Reading Unamended
March 2, 2021

HOUSE
Amended 2nd Reading
March 1, 2021

juvenile convicted as an adult following the transfer of charges from juvenile court to district court is subject to the mandatory minimum sentencing for crimes of violence. The bill adds language to the juvenile transfer statute to mirror the language currently found in the juvenile direct file statutes, so a juvenile transferred to adult court is subject to the same sentencing provisions as a juvenile who is in adult court based on a direct file.

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

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

4 **19-2-518. Transfers - definition.** (1) (d) (I) IF A JUVENILE IS
5 CONVICTED IN CASES IN WHICH CRIMINAL CHARGES ARE TRANSFERRED TO
6 THE DISTRICT COURT PURSUANT TO THIS SECTION, THE DISTRICT COURT
7 JUDGE SHALL SENTENCE THE JUVENILE EITHER:

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

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

21 (II) THE DISTRICT COURT JUDGE MAY SENTENCE A JUVENILE
22 PURSUANT TO THIS ARTICLE 2 IF THE JUVENILE IS CONVICTED OF A LESSER

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

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

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

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

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

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

20 (D) SECTION 19-2-601, REGARDING AGGRAVATED JUVENILE
21 OFFENDERS.

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

25 (VI) WHEN A JUVENILE IS SENTENCED PURSUANT TO THIS ARTICLE
26 2, THE JUVENILE'S CONVICTION SHALL BE ADJUDICATED AS A JUVENILE
27 DELINQUENCY ADJUDICATION.

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

4 **SECTION 2.** In Colorado Revised Statutes, 16-11-102, **amend**
5 (1.8) as follows:

6 **16-11-102. Presentence or probation investigation.** (1.8) Upon
7 the request of either the prosecution or the defense, each presentence
8 report prepared regarding a youthful offender, as defined in section
9 18-1.3-407, ~~C.R.S.~~, who is eligible for sentencing to the youthful offender
10 system pursuant to section 18-1.3-407.5, 19-2-517 (6), or 19-2-518
11 ~~(1)(d)(H), C.R.S.~~, **(1)(d)(I)(B)** shall include a determination by the
12 warden of the youthful offender system whether the youthful offender is
13 acceptable for sentencing to the youthful offender system. When making
14 a determination, the warden shall consider the nature and circumstances
15 of the crime, the circumstances and criminal history of the youthful
16 offender, the available bed space in the youthful offender system, and any
17 other appropriate considerations.

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

20 **18-1.3-407. Sentences - youthful offenders - legislative**
21 **declaration - powers and duties of district court - authorization for**
22 **youthful offender system - powers and duties of department of**
23 **corrections - definitions.** (1) (b) It is the further intent of the general
24 assembly in enacting this section that female and male offenders who are
25 eligible for sentencing to the youthful offender system pursuant to section
26 18-1.3-407.5, ~~or section~~ 19-2-517 (6), or 19-2-518 ~~(1)(d)(H), C.R.S.~~,
27 **(1)(d)(I)(B)** receive equitable treatment in sentencing, particularly in

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

6 (2) (a) (I) A juvenile may be sentenced to the youthful offender
7 system created pursuant to this section under the circumstances set forth
8 in section 19-2-517 (6)(a)(II) or 19-2-518 ~~(1)(d)(H)~~, **C.R.S. (1)(d)(I)(B)**.

9 A young adult offender may be sentenced to the youthful offender system
10 created pursuant to this section under the circumstances set forth in
11 section 18-1.3-407.5. In order to sentence a juvenile or young adult
12 offender to the youthful offender system, the court shall first impose upon
13 such person a sentence to the department of corrections in accordance
14 with section 18-1.3-401. The court shall thereafter suspend such sentence
15 conditioned on completion of a sentence to the youthful offender system,
16 including a period of community supervision. The court shall impose any
17 such sentence to the youthful offender system for a determinate period of
18 not fewer than two years nor more than six years; except that a juvenile
19 or young adult offender convicted of a class 2 felony may be sentenced
20 for a determinate period of up to seven years. In imposing such sentence,
21 the court shall grant authority to the department of corrections to place the
22 offender under a period of community supervision for a period of not
23 fewer than six months and up to twelve months any time after the date on
24 which the offender has twelve months remaining to complete the
25 determinate sentence. The court may award an offender sentenced to the
26 youthful offender system credit for presentence confinement; except that
27 such credit shall not reduce the offender's actual time served in the

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

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

14 **19-2.5-802. [Formerly 19-2-518] Transfers. (1) (d) (I) IF A**
15 **JUVENILE IS CONVICTED IN CASES IN WHICH CRIMINAL CHARGES ARE**
16 **TRANSFERRED TO THE DISTRICT COURT PURSUANT TO THIS SECTION, THE**
17 **DISTRICT COURT JUDGE SHALL SENTENCE THE JUVENILE EITHER:**

18 **(A) AS AN ADULT; EXCEPT THAT A JUVENILE IS EXCLUDED FROM**
19 **THE MANDATORY MINIMUM SENTENCING PROVISIONS IN SECTION**
20 **18-1.3-406, UNLESS THE JUVENILE IS CONVICTED OF A CLASS 1 FELONY OR**
21 **A SEX OFFENSE THAT IS SUBJECT TO PART 9 OF ARTICLE 1.3 OF TITLE 18; OR**

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

1 IF THE JUVENILE RECEIVED A SENTENCE TO THE DEPARTMENT OF
2 CORRECTIONS OR TO THE YOUTHFUL OFFENDER SYSTEM FOR THE PRIOR
3 OFFENSE.

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

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

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

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

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

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

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

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

4 (VI) WHEN A JUVENILE IS SENTENCED PURSUANT TO THIS ARTICLE
5 2.5, THE JUVENILE'S CONVICTION SHALL BE ADJUDICATED AS A JUVENILE
6 DELINQUENCY ADJUDICATION.

7 (VII) FOR PURPOSES OF THIS SUBSECTION (1)(d), "VIOLENT
8 JUVENILE OFFENDER" HAS THE SAME MEANING AS DEFINED IN SECTION
9 19-2.5-1125 (3).

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

12 **16-11-102. Presentence or probation investigation.** (1.8) At the
13 request of either the prosecution or the defense, each presentence report
14 prepared regarding a youthful offender, as defined in section 18-1.3-407,
15 who is eligible for sentencing to the youthful offender system pursuant to
16 section 18-1.3-407.5, 19-2.5-801 (5), or 19-2.5-802 ~~(1)(d)(H)~~ **(1)(d)(I)(B)**
17 must include a determination by the warden of the youthful offender
18 system whether the youthful offender is acceptable for sentencing to the
19 youthful offender system. When making a determination, the warden shall
20 consider the nature and circumstances of the crime, the circumstances and
21 criminal history of the youthful offender, the available bed space in the
22 youthful offender system, and any other appropriate considerations.

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

25 **18-1.3-407. Sentences - youthful offenders - powers and duties**
26 **of district court - authorization for youthful offender system - powers**
27 **and duties of department of corrections - legislative declaration -**

1 definitions. (1) (b) It is the further intent of the general assembly in
2 enacting this section that female and male offenders who are eligible for
3 sentencing to the youthful offender system pursuant to section
4 18-1.3-407.5 or section 19-2.5-801 (5) or 19-2.5-802 ~~(1)(d)(H)~~
5 (1)(d)(I)(B) receive equitable treatment in sentencing, particularly in
6 regard to the option of being sentenced to the youthful offender system.
7 Accordingly, it is the general assembly's intent that the department of
8 corrections take necessary measures to establish separate housing for
9 female and male offenders who are sentenced to the youthful offender
10 system without compromising the equitable treatment of either.

11 (2) (a) (I) A juvenile may be sentenced to the youthful offender
12 system created pursuant to this section under the circumstances set forth
13 in section 19-2.5-801 (5)(a)(II) or 19-2.5-802 ~~(1)(d)(H)~~ (1)(d)(I)(B.) A
14 young adult offender may be sentenced to the youthful offender system
15 created pursuant to this section under the circumstances set forth in
16 section 18-1.3-407.5. In order to sentence a juvenile or young adult
17 offender to the youthful offender system, the court shall first impose upon
18 such person a sentence to the department of corrections in accordance
19 with section 18-1.3-401. The court shall thereafter suspend such sentence
20 conditioned on completion of a sentence to the youthful offender system,
21 including a period of community supervision. The court shall impose any
22 such sentence to the youthful offender system for a determinate period of
23 not fewer than two years nor more than six years; except that a juvenile
24 or young adult offender convicted of a class 2 felony may be sentenced
25 for a determinate period of up to seven years. In imposing the sentence,
26 the court shall grant authority to the department of corrections to place the
27 offender under a period of community supervision for a period of not

1 fewer than six months and up to twelve months any time after the date on
2 which the offender has twelve months remaining to complete the
3 determinate sentence. The court may award an offender sentenced to the
4 youthful offender system credit for presentence confinement; except that
5 such credit shall not reduce the offender's actual time served in the
6 youthful offender system to fewer than two years. The court shall have a
7 presentence investigation conducted before sentencing a juvenile or
8 young adult offender pursuant to this section. Upon the request of either
9 the prosecution or the defense, the presentence report must include a
10 determination by the warden of the youthful offender system whether the
11 offender is acceptable for sentencing to the youthful offender system.
12 When making a determination, the warden shall consider the nature and
13 circumstances of the crime; the age, circumstances, and criminal history
14 of the offender; the available bed space in the youthful offender system;
15 and any other appropriate considerations.

16 **SECTION 7. Effective date.** This act takes effect upon passage;
17 except that sections 4, 5, and 6 of this act take effect only if Senate Bill
18 21-059 becomes law and take effect upon the effective date of this act or
19 Senate Bill 21-059, whichever is later.

20 **SECTION 8. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, or safety.