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HOUSE BILL 18-1156

BY REPRESENTATIVE(S) Lee, Lundeen, Arndt, Becker K., Benavidez, Bridges, Buckner, Coleman, Exum, Garnett, Gray, Hamner, Hansen, Herod, Hooton, Humphrey, Jackson, Kennedy, Lontine, McLachlan, Melton, Michaelson Jenet, Pabon, Pettersen, Roberts, Rosenthal, Saine, Salazar, Singer, Valdez, Weissman, Winter, Young, Duran, Kraft-Tharp, Neville P.; also SENATOR(S) Holbert, Kagan, Kefalas, Moreno, Todd.

CONCERNING LIMITATIONS ON PENALTIES FOR TRUANCY.

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

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

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

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

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

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

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

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

(d) The state has a strong interest in preserving limited and costly youth detention beds for youth who have been accused of or adjudicated for dangerous criminal conduct; and

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

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

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

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

(3.5) "CHILD WHO IS HABITUALLY TRUANT" MEANS A CHILD WHO IS SIX YEARS OF AGE ON OR BEFORE AUGUST 1 OF THE YEAR IN QUESTION AND IS UNDER SEVENTEEN YEARS OF AGE AND WHO HAS FOUR UNEXCUSED ABSENCES FROM PUBLIC SCHOOL IN ANY ONE MONTH OR TEN UNEXCUSED ABSENCES FROM PUBLIC SCHOOL DURING ANY ACADEMIC YEAR. ABSENCES

DUE TO SUSPENSION OR EXPULSION OF A CHILD ARE CONSIDERED EXCUSED ABSENCES FOR PURPOSES OF THIS ARTICLE 33.

(5) "Delinquent act" ~~has the same meaning as set forth in section 19-1-103 (36), C.R.S.~~ MEANS A VIOLATION OF ANY STATUTE, ORDINANCE, OR ORDER ENUMERATED IN SECTION 19-2-104 (1)(a). IF A JUVENILE IS ALLEGED TO HAVE COMMITTED OR IS FOUND GUILTY OF A DELINQUENT ACT, THE CLASSIFICATION AND DEGREE OF THE OFFENSE IS DETERMINED BY THE STATUTE, ORDINANCE, OR ORDER THAT THE PETITION ALLEGES WAS VIOLATED. "DELINQUENT ACT" DOES NOT INCLUDE TRUANCY OR HABITUAL TRUANCY.

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

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

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

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

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

(I) ~~"Child who is habitually truant" means a child who has attained the age of six years on or before August 1 of the year in question and is under the age of seventeen years and who has four unexcused absences~~

~~from public school in any one month or ten unexcused absences from public school during any school year. Absences due to suspension or expulsion of a child are considered excused absences for purposes of this subsection (3).~~

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

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

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

22-33-108. Judicial proceedings. (7) (a) If the child OR YOUTH does not comply with the valid court order issued against the child OR YOUTH or against both the parent and the child OR YOUTH, the court may order that an assessment for neglect as described in section 19-3-102 (1) ~~C.R.S.~~, be conducted as provided in section 19-3-501. ~~C.R.S.~~ In addition, the court may order the child OR YOUTH to show cause why he or she should

not be held in contempt of court. WHEN INSTITUTING CONTEMPT OF COURT PROCEEDINGS PURSUANT TO THIS SUBSECTION (7), THE COURT SHALL PROVIDE ALL PROCEDURAL PROTECTIONS MANDATED IN RULE 107 OF THE COLORADO RULES OF CIVIL PROCEDURE, OR ANY SUCCESSOR RULE, CONCERNING PUNITIVE SANCTIONS FOR CONTEMPT.

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

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

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

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

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

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

(D) DETENTION IS LIKELY TO HAVE A DETRIMENTAL EFFECT ON THE CHILD'S OR YOUTH'S SCHOOL ATTENDANCE; AND

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

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

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

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

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

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

19-2-503. Issuance of a lawful warrant taking a juvenile into custody. (3) A warrant for the arrest of a juvenile for violation of the conditions of probation or of a bail bond may be issued by any judge of a court of record or juvenile magistrate upon the report of a juvenile probation officer or upon the verified complaint of any person, establishing to the satisfaction of the judge or juvenile magistrate probable cause to believe that a condition of probation or of a bail bond has been violated and that the arrest of the juvenile is reasonably necessary. The warrant may be executed by any juvenile probation officer or by a peace officer authorized to execute warrants in the county in which the juvenile is found. IF THE WARRANT IS FOR A JUVENILE FOUND IN CONTEMPT OF COURT IN A TRUANCY PROCEEDING, THE COURT SHALL FOLLOW THE PROCEDURES SET FORTH IN SECTION 22-33-108 (7).

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

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

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

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

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO