

CHAPTER 227

CORRECTIONS

SENATE BILL 00-140

BY SENATOR Anderson;
also REPRESENTATIVES Lawrence, Clarke, Coleman, Gagliardi, George, Kaufman, Mace, Tapia, Vigil, and Williams S.

AN ACT

CONCERNING THE YOUTHFUL OFFENDER SYSTEM, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 16-11-311 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

16-11-311. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections - repeal. (1) (c) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT YOUTHFUL OFFENDERS SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM BE HOUSED AND SERVE THEIR SENTENCES IN A FACILITY SPECIFICALLY DESIGNED AND PROGRAMMED FOR THE YOUTHFUL OFFENDER SYSTEM AND THAT YOUTHFUL OFFENDERS SO SENTENCED BE HOUSED SEPARATE FROM AND NOT BROUGHT INTO DAILY PHYSICAL CONTACT WITH ADULT INMATES SENTENCED TO THE DEPARTMENT OF CORRECTIONS, EXCEPT AS SPECIFICALLY PROVIDED UNDER SUBSECTION (5) OF THIS SECTION.

(d) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT YOUTHFUL OFFENDERS SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM BE SENTENCED AS ADULTS AND BE SUBJECT TO ALL LAWS AND DEPARTMENT OF CORRECTIONS RULES, REGULATIONS, AND STANDARDS PERTAINING TO ADULT INMATES, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

SECTION 2. 16-11-311 (2) (a) (I), (2) (a) (II), (2) (a.5), (3) (e), (3.3) (b) (II), (3.4) (b), (3.4) (c), (5), (8), and (10) (c), Colorado Revised Statutes, are amended, and the said 16-11-311 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

16-11-311. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections - repeal. (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 (3) (a) (II) or 19-2-518 (1) (d) (II), C.R.S. In order to sentence a juvenile to the youthful offender system, the court shall first impose upon such person a sentence to the department of corrections in accordance with section 18-1-105, C.R.S. 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 ~~less~~ FEWER than two years nor more than six years; except that a juvenile 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 a youthful offender under a period of community supervision for a period of ~~no less~~ NOT FEWER than six months and up to twelve months any time after the date on which the youthful offender has twelve months remaining to complete the determinate sentence. The court may award a juvenile sentenced to the youthful offender system credit for presentence confinement; except that such credit shall not reduce the juvenile's actual time served in the youthful offender system to ~~less~~ FEWER than two years. The court ~~is encouraged to~~ SHALL have a presentence investigation conducted before sentencing a juvenile pursuant to this section.

(II) Upon the successful completion of the programs in the youthful offender system, including the mandatory period of supervision, the sentence to the department of corrections shall have been completed. Whenever a person is returned to the district court for revocation pursuant to subsection (5) of this section, the court shall impose the original sentence following the revocation of the sentence to the youthful offender system, EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION.

(a.5) During any period of incarceration under the youthful offender system, privileges including, but not limited to, televisions, radios, AND entertainment systems, ~~cigarettes, and access to snacks~~ shall not be available for a youthful offender unless such privileges have been earned under a merit system.

(3) The department of corrections shall develop and implement a youthful offender system for offenders sentenced in accordance with subsection (2) of this section. The youthful offender system shall be under the direction and control of the executive director of the department of corrections. The youthful offender system shall be based on the following principles:

(e) The system should promote among offenders the creation and development of new group cultures which result in ~~the application of positive peer influence which promotes behavioral change~~ A TRANSITION TO PROSOCIAL BEHAVIOR; and

(3.3) The youthful offender system consists of the following components, and the department of corrections has the authority described in paragraphs (a) to (d) of this subsection (3.3) in connection with the administration of the components:

(b) (II) ~~In connection with the administration of the component described in~~

~~subparagraph (I) of this paragraph (b), the department of corrections may contract with providers to operate phase I of the system as the youthful offender system reaches its capacity at the specified location and until permanent facilities are available for the youthful offender system. Youthful offenders under the supervision of a contract provider during phase I are to be returned to the supervision of the department of corrections upon completion of phase I.~~

(3.4) In addition to the powers granted to the department of corrections in subsection (3.3) of this section, the department of corrections may:

(b) Operate an emancipation program and provide other support or monitoring services and residential placement for youthful offenders participating in phases II and PHASE III under the youthful offender system for whom family reintegration poses difficulties. The department of corrections shall provide reintegration support services to a youthful offender placed in an emancipation house.

~~(c) Contract for programs that are comparable to the youthful offender system for female youthful offenders sentenced to the youthful offender system until permanent facilities are available for the youthful offender system.~~

(4.3) THE YOUTHFUL OFFENDER SYSTEM SHALL PROVIDE SEX OFFENDER TREATMENT SERVICES FOR ANY OFFENDER WHO IS SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM AND WHO HAS A HISTORY OF COMMITTING ANY SEX OFFENSE AS DEFINED IN SECTION 16-11.7-102 (3) OR WHO HAS A HISTORY OF COMMITTING ANY OTHER OFFENSE, THE UNDERLYING FACTUAL BASIS OF WHICH INCLUDES A SEX OFFENSE. PRIOR TO JULY 1, 2002, THE SEX OFFENDER TREATMENT SERVICES PROVIDED PURSUANT TO THIS SUBSECTION (4.3) SHALL COMPLY WITH ANY EXISTING NATIONAL STANDARDS FOR JUVENILE SEX OFFENDER TREATMENT. ON AND AFTER JULY 1, 2002, THE SEX OFFENDER TREATMENT SERVICES PROVIDED PURSUANT TO THIS SUBSECTION (4.3) SHALL COMPLY WITH THE JUVENILE SEX OFFENDER TREATMENT STANDARDS ADOPTED BY THE SEX OFFENDER MANAGEMENT BOARD PURSUANT TO SECTION 16-11.7-103.

(5) (a) Except as otherwise provided by paragraph (b) of this subsection (5), the department of corrections shall implement a procedure for the transfer of an offender to another facility ~~for vocational or training services or~~ when an offender in the system poses a danger to himself or herself or others. ~~and has been convicted of a class 3 felony and has attained the age of eighteen years.~~ The executive director of the department of corrections shall review any transfer determination by the department prior to the actual transfer of an inmate, including a transfer back to the district court for revocation of the sentence to the youthful offender system. A TRANSFER PURSUANT TO THIS PARAGRAPH (a) SHALL BE LIMITED TO A PERIOD NOT TO EXCEED SIXTY DAYS, AT WHICH TIME THE OFFENDER SHALL BE RETURNED TO THE YOUTHFUL OFFENDER FACILITY TO COMPLETE HIS OR HER SENTENCE OR RETURNED TO THE DISTRICT COURT FOR REVOCATION OF THE SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM. IN NO CASE SHALL AN OFFENDER INITIALLY SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM BE HELD IN ISOLATION OR SEGREGATION OR IN AN ADULT FACILITY FOR LONGER THAN SIXTY CONSECUTIVE DAYS WITHOUT ACTION BY THE SENTENCING COURT.

(b) (I) An offender who is THOUGHT TO BE mentally ill or developmentally

disabled BY A MENTAL HEALTH CLINICIAN, AS DEFINED BY REGULATION OF THE DEPARTMENT OF CORRECTIONS may be transferred to another facility ~~However, such transfer shall be in accordance with the procedures set forth in section 17-23-101, C.R.S.~~ FOR A PERIOD NOT TO EXCEED SIXTY DAYS FOR DIAGNOSTIC VALIDATION OF SAID ILLNESS OR DISABILITY. AT THE CONCLUSION OF THE SIXTY-DAY PERIOD, THE PSYCHIATRISTS OR OTHER APPROPRIATE PROFESSIONALS CONDUCTING THE DIAGNOSIS SHALL FORWARD TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS THEIR FINDINGS, WHICH AT A MINIMUM SHALL INCLUDE A STATEMENT OF WHETHER THE OFFENDER HAS THE ABILITY TO WITHSTAND THE RIGORS OF THE YOUTHFUL OFFENDER SYSTEM. IF THE DIAGNOSIS DETERMINES THAT THE OFFENDER IS INCAPABLE OF COMPLETING THE YOUTHFUL OFFENDER PROGRAM DUE TO A MENTAL ILLNESS OR DEVELOPMENTAL DISABILITY, THE EXECUTIVE DIRECTOR SHALL FORWARD SUCH DETERMINATION TO THE SENTENCING COURT. BASED ON THE DETERMINATION, THE SENTENCING COURT SHALL REVIEW THE OFFENDER'S SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM AND MAY:

(A) IMPOSE THE OFFENDER'S ORIGINAL SENTENCE TO THE DEPARTMENT OF CORRECTIONS; OR

(B) RECONSIDER AND REDUCE THE OFFENDER'S SENTENCE TO THE DEPARTMENT OF CORRECTIONS IN CONSIDERATION OF THE OFFENDER'S MENTAL ILLNESS OR DEVELOPMENTAL DISABILITY.

(II) ANY OFFENDER WHO IS RESENTENCED PURSUANT TO THIS PARAGRAPH (b) SHALL CONTINUE TO BE TREATED AS AN ADULT FOR PURPOSES OF SENTENCING AND SHALL NOT BE SENTENCED PURSUANT TO ARTICLE 2 OF TITLE 19, C.R.S.

(III) IN NO EVENT SHALL THE SENTENCING COURT, AFTER REVIEWING THE OFFENDER'S SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM PURSUANT TO THIS PARAGRAPH (b), INCREASE THE OFFENDER'S SENTENCE TO THE DEPARTMENT OF CORRECTIONS DUE TO THE OFFENDER'S DIAGNOSIS OF MENTAL ILLNESS OR DETERMINATION OF DEVELOPMENTAL DISABILITY.

(IV) ANY OFFENDER WHO IS DIAGNOSED AS HAVING MENTAL ILLNESS OR DETERMINED TO HAVE A DEVELOPMENTAL DISABILITY AND IS THEREFORE INCAPABLE OF COMPLETING HIS OR HER SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM MAY BE HOUSED IN ANY DEPARTMENT OF CORRECTIONS FACILITY DEEMED APPROPRIATE BY THE EXECUTIVE DIRECTOR OR TRANSFERRED IN ACCORDANCE WITH PROCEDURES SET FORTH IN SECTION 17-23-101, C.R.S., PENDING ACTION BY THE SENTENCING COURT WITH REGARD TO THE OFFENDER'S SENTENCE.

(c) The department of corrections shall implement a procedure for returning offenders who cannot successfully complete the sentence to the youthful offender system to the district court. ~~for the imposition of the original sentence.~~ ANY OFFENDER RETURNED TO THE DISTRICT COURT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5) OR BECAUSE HE OR SHE CANNOT SUCCESSFULLY COMPLETE THE SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM FOR REASONS OTHER THAN MENTAL ILLNESS OR A DEVELOPMENTAL DISABILITY SHALL RECEIVE IMPOSITION OF THE ORIGINAL SENTENCE TO THE DEPARTMENT OF CORRECTIONS. After the executive director upholds the department's decision, THE OFFENDER MAY BE HELD IN ANY CORRECTIONAL FACILITY DEEMED APPROPRIATE BY THE EXECUTIVE DIRECTOR;

EXCEPT THAT ANY OFFENDER WHO CANNOT SUCCESSFULLY COMPLETE THE SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM FOR REASONS OTHER THAN MENTAL ILLNESS OR A DEVELOPMENTAL DISABILITY SHALL BE TRANSFERRED, WITHIN THIRTY DAYS AFTER THE EXECUTIVE DIRECTOR UPHOLDS THE DEPARTMENT'S DECISION, TO A COUNTY JAIL FOR HOLDING PRIOR TO RESENTENCING. The department shall notify the district attorney of record, and the district attorney of record shall be responsible for seeking the revocation OR REVIEW of the youthful offender's sentence and the imposition of the original sentence OR MODIFICATION OF THE ORIGINAL SENTENCE PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (5). THE DISTRICT COURT SHALL REVIEW THE OFFENDER'S SENTENCE WITHIN ONE HUNDRED TWENTY DAYS AFTER NOTIFICATION TO THE DISTRICT ATTORNEY OF RECORD BY THE DEPARTMENT OF CORRECTIONS THAT THE OFFENDER IS NOT ABLE TO COMPLETE THE SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM.

(8) The department of corrections may and is encouraged to contract with any private or public entity for the provision of services and facilities under the youthful offender system. ~~The contracting for such facilities shall not delay the availability of necessary required space.~~

(10) (c) The division of criminal justice shall independently monitor and evaluate, OR CONTRACT WITH A PUBLIC OR PRIVATE ENTITY TO INDEPENDENTLY MONITOR AND EVALUATE, the youthful offender system addressing the criteria described in paragraph (a) of this subsection (10). ON OR BEFORE NOVEMBER 1, 2002, AND ON OR BEFORE NOVEMBER 1 EVERY TWO YEARS THEREAFTER, THE DIVISION OF CRIMINAL JUSTICE SHALL REPORT ITS FINDINGS, OR THE FINDINGS OF THE CONTRACT ENTITY, TO THE JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.

SECTION 3. 16-11-311 (3.4), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16-11-311. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections - repeal. (3.4) In addition to the powers granted to the department of corrections in subsection (3.3) of this section, the department of corrections may:

(d) CONTRACT WITH ANY PUBLIC OR PRIVATE ENTITY, INCLUDING BUT NOT LIMITED TO A SCHOOL DISTRICT, FOR PROVISION OR CERTIFICATION OF EDUCATIONAL SERVICES. OFFENDERS RECEIVING EDUCATIONAL SERVICES OR DIPLOMAS FROM A SCHOOL DISTRICT UNDER AN AGREEMENT ENTERED INTO PURSUANT TO THIS PARAGRAPH (d) SHALL NOT BE INCLUDED IN COMPUTING THE SCHOOL DISTRICT'S STUDENT PERFORMANCE ON STATEWIDE ASSESSMENTS PURSUANT TO SECTION 22-7-409, C.R.S., OR THE SCHOOL DISTRICT'S OVERALL ACADEMIC PERFORMANCE GRADE OR SCHOOL IMPROVEMENT GRADE PURSUANT TO PART 6 OF ARTICLE 7 OF TITLE 22, C.R.S.

SECTION 4. Appropriation - adjustment in 2000 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of corrections, for the fiscal year beginning July 1, 2000, the sum of one hundred three thousand three hundred ninety-one dollars (\$103,391) and 2.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriations act for the fiscal year beginning July 1, 2000, shall be adjusted as follows:

(a) The general fund appropriation to the capital construction fund outlined in section 3 (1) (f) is reduced by one hundred three thousand three hundred ninety-one dollars (\$103,391).

(b) The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by one hundred three thousand three hundred ninety-one dollars (\$103,391).

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 26, 2000