

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

INTRODUCED

LLS NO. 21-0426.01 Michael Dohr x4347

HOUSE BILL 21-1091

HOUSE SPONSORSHIP

Daugherty,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

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.

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 FOLLOWING THE FILING OF CRIMINAL CHARGES BY
6 INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO THIS
7 SECTION, THE DISTRICT COURT JUDGE SHALL SENTENCE THE JUVENILE
8 EITHER:

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

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

1 (II) THE DISTRICT COURT JUDGE MAY SENTENCE A JUVENILE
2 PURSUANT TO THIS ARTICLE 2 IF THE JUVENILE IS CONVICTED OF A LESSER
3 INCLUDED OR NONENUMERATED FELONY OFFENSE FOR WHICH CRIMINAL
4 CHARGES COULD NOT HAVE BEEN ORIGINALLY FILED BY INFORMATION OR
5 INDICTMENT IN THE DISTRICT COURT PURSUANT TO THIS SECTION. IF THE
6 JUVENILE IS CONVICTED OF ONLY A MISDEMEANOR OFFENSE OR
7 MISDEMEANOR OFFENSES, THE COURT SHALL ADJUDICATE THE JUVENILE
8 A DELINQUENT AND SENTENCE THE JUVENILE PURSUANT TO THIS ARTICLE
9 2.

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

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

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

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

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

23 (D) SECTION 19-2-601, REGARDING AGGRAVATED JUVENILE
24 OFFENDERS.

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

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

4 (VII) FOR PURPOSES OF THIS SUBSECTION (1)(d), "VIOLENT
5 JUVENILE OFFENDER" HAS THE SAME MEANING AS DEFINED IN SECTION
6 19-2-516 (3).

7 **SECTION 2.** In Colorado Revised Statutes, 16-11-102, **amend**
8 (1.8) as follows:

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

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

23 **18-1.3-407. Sentences - youthful offenders - legislative**
24 **declaration - powers and duties of district court - authorization for**
25 **youthful offender system - powers and duties of department of**
26 **corrections - definitions.** (1) (b) It is the further intent of the general
27 assembly in enacting this section that female and male offenders who are

1 eligible for sentencing to the youthful offender system pursuant to section
2 18-1.3-407.5, ~~or section 19-2-517 (6), or 19-2-518 (1)(d)(H), C.R.S.~~,
3 **(1)(d)(I)(B)** receive equitable treatment in sentencing, particularly in
4 regard to the option of being sentenced to the youthful offender system.
5 Accordingly, it is the general assembly's intent that necessary measures
6 be taken by the department of corrections to establish separate housing
7 for female and male offenders who are sentenced to the youthful offender
8 system without compromising the equitable treatment of either.

9 (2) (a) (I) A juvenile may be sentenced to the youthful offender
10 system created pursuant to this section under the circumstances set forth
11 in section 19-2-517 (6)(a)(II) or 19-2-518 ~~(1)(d)(H), C.R.S.~~ **(1)(d)(I)(B)**.
12 A young adult offender may be sentenced to the youthful offender system
13 created pursuant to this section under the circumstances set forth in
14 section 18-1.3-407.5. In order to sentence a juvenile or young adult
15 offender to the youthful offender system, the court shall first impose upon
16 such person a sentence to the department of corrections in accordance
17 with section 18-1.3-401. The court shall thereafter suspend such sentence
18 conditioned on completion of a sentence to the youthful offender system,
19 including a period of community supervision. The court shall impose any
20 such sentence to the youthful offender system for a determinate period of
21 not fewer than two years nor more than six years; except that a juvenile
22 or young adult offender convicted of a class 2 felony may be sentenced
23 for a determinate period of up to seven years. In imposing such sentence,
24 the court shall grant authority to the department of corrections to place the
25 offender under a period of community supervision for a period of not
26 fewer than six months and up to twelve months any time after the date on
27 which the offender has twelve months remaining to complete the

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

14 **SECTION 4. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, or safety.