

CHAPTER 336

CRIMINAL LAW AND PROCEDURE

SENATE BILL 94-201

BY SENATORS Wham, Hopper, Johnson, Norton, Schroeder, and Traylor;
also REPRESENTATIVE Adkins.

AN ACT

**CONCERNING THE ADMINISTRATION OF THE YOUTHFUL OFFENDER SYSTEM IN THE DEPARTMENT OF
CORRECTIONS.**

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

SECTION 1. 16-11-311 (2) (a), as amended by HB94-1141, enacted at the Second Regular Session of the Fifty-ninth General Assembly, and 16-11-311 (2) (b), (4), (5) (a), (5) (c), (6), and (10) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 16-11-311 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, 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. (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 19-2-805 (2) (a) (II), C.R.S. In order to sentence a person 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 ~~parole~~ COMMUNITY supervision. The court shall impose any such sentence to the youthful offender system for a determinate period of not less than ~~one year~~ TWO YEARS nor more than ~~five~~ SIX years, ~~and a mandatory~~ WITH AUTHORITY GRANTED TO THE DEPARTMENT OF CORRECTIONS TO PLACE A YOUTHFUL OFFENDER UNDER A period of ~~parole~~ COMMUNITY supervision for a period of ~~one year~~ NO LESS 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 IS ENCOURAGED TO HAVE A PRESENTENCE INVESTIGATION

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

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. ~~Such revocation shall be in accordance with section 16-11-206.~~

~~(H)~~ (III) For the purposes of this section, "juvenile" means a person who is under the age of eighteen years WHEN THE CRIME IS COMMITTED AND UNDER THE AGE OF NINETEEN YEARS at the time of sentencing pursuant to this section.

(b) Article 22.5 of title 17, C.R.S., concerning time credits, shall not apply to any person sentenced to the youthful offender system; EXCEPT THAT AN OFFENDER WHOSE SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM IS REVOKED PURSUANT TO SUBSECTION (5) OF THIS SECTION MAY RECEIVE ONE DAY OF CREDIT AGAINST AN ADULT SENTENCE IMPOSED BY THE COURT FOLLOWING REVOCATION OF THE SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM FOR EACH DAY THE OFFENDER SERVED IN THE YOUTHFUL OFFENDER SYSTEM, EXCLUDING ANY PERIOD OF TIME DURING WHICH THE OFFENDER WAS UNDER COMMUNITY SUPERVISION.

(2.1) (a) AS ORIGINALLY ENACTED, THIS SECTION APPLIED ONLY TO OFFENSES COMMITTED BY JUVENILES ON OR AFTER SEPTEMBER 13, 1993. FOR PURPOSES OF EXTENDING THE AVAILABILITY OF SENTENCING OPTIONS, A JUVENILE WHO MEETS THE CRITERIA SET FORTH IN SECTION 19-2-805 (2) (a) (II), C.R.S., MAY BE SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM PURSUANT TO THIS SECTION, UNDER THE FOLLOWING CIRCUMSTANCES:

(I) THE JUVENILE IS SENTENCED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT FOR AN OFFENSE COMMITTED PRIOR TO, ON, OR AFTER SEPTEMBER 13, 1993;

(II) THE JUVENILE COMMITTED AN OFFENSE PRIOR TO SEPTEMBER 13, 1993, AND WAS SENTENCED FOR THE OFFENSE ON OR AFTER SEPTEMBER 13, 1993, BUT PRIOR TO THE EFFECTIVE DATE OF THIS ACT. SUCH A JUVENILE MAY ONLY BE RESENTENCED TO THE YOUTHFUL OFFENDER SYSTEM IF A COURT, IN ITS DISCRETION, SO ORDERS IN RESPONSE TO A MOTION FILED IN ACCORDANCE WITH RULE 35 OF THE COLORADO RULES OF CRIMINAL PROCEDURE.

(b) A JUVENILE WHO COMMITTED AN OFFENSE PRIOR TO SEPTEMBER 13, 1993, AND WHO WAS SENTENCED PRIOR TO SEPTEMBER 13, 1993, SHALL NOT BE ELIGIBLE TO BE SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM.

(c) A JUVENILE DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2.1) MAY BE SENTENCED PURSUANT TO THIS SECTION ONLY IF THE JUVENILE MEETS THE AGE REQUIREMENT SET FORTH IN SUBPARAGRAPH (III) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION.

(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:

(a) AN INTAKE, DIAGNOSTIC, AND ORIENTATION PROGRAM;

(b) (I) PHASE I, DURING WHICH TIME A RANGE OF CORE PROGRAMS, SUPPLEMENTARY ACTIVITIES, AND EDUCATIONAL AND PREVOCATIONAL PROGRAMS ARE PROVIDED TO YOUTHFUL OFFENDERS.

(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.

(c) (I) PHASE II, WHICH MAY BE ADMINISTERED DURING THE FIRST THREE MONTHS OF THE PERIOD OF COMMUNITY SUPERVISION AND DURING WHICH TIME THE DEPARTMENT OF CORRECTIONS IS AUTHORIZED TO TRANSFER A YOUTHFUL OFFENDER TO A PRERELEASE HALFWAY FACILITY IN PREPARATION FOR SUPERVISED RELEASE.

(II) IN CONNECTION WITH THE COMPONENT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), THE DEPARTMENT OF CORRECTIONS IS AUTHORIZED TO OPERATE OR TO CONTRACT WITH A PRERELEASE HALFWAY HOUSE FOR YOUTHFUL OFFENDERS. THE DEPARTMENT OF CORRECTIONS OR THE CONTRACT PROVIDER SHALL ADMINISTER THE PRERELEASE PROGRAM UNDER THE DEPARTMENT OF CORRECTIONS WITH MINIMUM RESTRICTED SECURITY AND SHALL PROVIDE FOR TWENTY-FOUR-HOUR CUSTODY OF YOUTHFUL OFFENDERS. IN ADDITION, TO THE EXTENT POSSIBLE, ANY YOUTHFUL OFFENDER TRANSFERRED TO A PRERELEASE HALFWAY FACILITY SHALL BE SEGREGATED FROM ANY AREA IN SUCH FACILITY THAT HOUSES ADULT OFFENDERS.

(d) PHASE III, WHICH IS TO BE ADMINISTERED FOR THE PERIOD OF COMMUNITY SUPERVISION THAT REMAINS AFTER THE COMPLETION OF PHASE II AND DURING WHICH THE YOUTHFUL OFFENDER IS MONITORED AS THE OFFENDER REINTEGRATES INTO SOCIETY.

(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:

(a) TRANSFER A YOUTHFUL OFFENDER TO AN APPROPRIATE FACILITY FOR THE PURPOSE OF ACCOMPLISHING A YOUTHFUL OFFENDER'S REDIRECTION GOALS, AS LONG AS THE TRANSFER DOES NOT JEOPARDIZE THE SAFETY AND WELFARE OF THE YOUTHFUL OFFENDER;

(b) OPERATE AN "EMANCIPATION HOUSE" FOR YOUTHFUL OFFENDERS PARTICIPATING IN PHASES II AND 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) The youthful offender system shall provide for ~~parole~~ COMMUNITY supervision which shall consist of highly structured surveillance and monitoring and educational and treatment programs. ~~Parole~~ COMMUNITY supervision shall be administered by the ~~department's adult parole supervision staff in accordance with the provisions of article 2 of title 17, C.R.S.; however,~~ DEPARTMENT OF CORRECTIONS, AND revocation of ~~parole~~ THE INMATE'S SUPERVISION STATUS shall be subject to the provisions of subsections (2) and (5) of this section.

(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. ~~Except as otherwise provided by paragraph (c) of this subsection (5), the board of parole~~ 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. WHEN THE DEPARTMENT SEEKS TO REVOKE A YOUTHFUL OFFENDER'S SENTENCE TO THE DEPARTMENT OF CORRECTIONS, THE EXECUTIVE DIRECTOR SHALL REVIEW THE DEPARTMENT'S DECISION IN ACCORDANCE WITH SECTION 24-4-105, C.R.S.

(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. AFTER THE EXECUTIVE DIRECTOR UPHOLDS THE DEPARTMENT'S DECISION, THE DEPARTMENT SHALL NOTIFY THE DISTRICT ATTORNEY OF RECORD, AND THE DISTRICT ATTORNEY OF RECORD SHALL BE RESPONSIBLE FOR SEEKING THE REVOCATION OF THE YOUTHFUL OFFENDER'S SENTENCE AND THE IMPOSITION OF THE ORIGINAL SENTENCE.

(6) The department of corrections shall establish and enforce standards for the youthful offender system. Offenders in the youthful offender system, including those under COMMUNITY supervision, shall be considered inmates for the purposes of section 17-1-111, C.R.S.

(10) (a) On or before January 30, 1994, the department of corrections shall submit a report to the capital development committee and the joint budget committee concerning the youthful offender system AND THEREAFTER SHALL SUBMIT AN ANNUAL UPDATED REPORT that includes but is not necessarily limited to the following:

(I) The specific content and structure of the programs for offenders in the youthful offender system, including staffing ratios for each program, a description of the daily routine of offenders that includes the amount of offenders' time that is allocated to each program, and an explanation of how the programs are related to the principles described in subsection (3) of this section;

(II) The process used for transition to ~~parole~~ COMMUNITY supervision, whether offenders may be returned to their original environment for the ~~parole~~ SUPERVISED period, the specific means of ~~parole~~ COMMUNITY supervision, and the specific educational and treatment programs provided to offenders during their ~~parole~~ SUPERVISED period;

(III) The procedure for transferring an offender to another facility for vocational or training services or when an offender poses a danger to himself or herself or others, and identification of the facilities used for such purposes;

(IV) The specific criteria and procedures for determining successful completion of the programs in the youthful offender system, for determining whether an offender cannot successfully complete the sentence, and for revocation of ~~parole~~ COMMUNITY SUPERVISION;

(V) A SUMMARY OF THE RECIDIVISM RATE FOR OFFENDERS WHO COMPLETE THE PROGRAMS IN THE YOUTHFUL OFFENDER SYSTEM THAT TRACKS SUCH OFFENDERS FOR FIVE YEARS FOLLOWING RELEASE FROM THE YOUTHFUL OFFENDER SYSTEM.

SECTION 2. 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: June 3, 1994