

CHAPTER 77

CORRECTIONS

HOUSE BILL 09-1122

BY REPRESENTATIVE(S) Roberts, Levy, Merrifield, Apuan, Court, Curry, Ferrandino, Fischer, Green, Kerr A., Labuda, Massey, McGihon, Nikkel, Pace, Priola, Ryden, Solano, Tipton, Todd, Waller;
also SENATOR(S) Morse, Bacon, Boyd, Foster, Groff, Hudak, Newell, Schwartz, Shaffer B., Williams.

AN ACT

CONCERNING INCREASING THE AGE OF PERSONS ELIGIBLE FOR SENTENCING TO THE YOUTHFUL OFFENDER SYSTEM.

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

SECTION 1. Part 4 of article 1.3 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-1.3-407.5. Sentences - young adult offenders - youthful offender system - repeal. (1) (a) ON OR AFTER OCTOBER 1, 2009, A YOUNG ADULT OFFENDER MAY BE SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM IN THE DEPARTMENT OF CORRECTIONS IN ACCORDANCE WITH SECTION 18-1.3-407, UNDER THE FOLLOWING CIRCUMSTANCES:

(I) THE YOUNG ADULT OFFENDER IS CONVICTED OF A FELONY ENUMERATED AS A CRIME OF VIOLENCE PURSUANT TO SECTION 18-1.3-406; OR

(II) THE YOUNG ADULT OFFENDER IS CONVICTED OF A FELONY OFFENSE DESCRIBED IN PART 1 OF ARTICLE 12 OF THIS TITLE; OR

(III) THE YOUNG ADULT OFFENDER USED, OR POSSESSED AND THREATENED THE USE OF, A DEADLY WEAPON DURING THE COMMISSION OF A FELONY OFFENSE AGAINST A PERSON, AS SET FORTH IN ARTICLE 3 OF THIS TITLE; OR

(IV) THE YOUNG ADULT OFFENDER IS CONVICTED OF VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106, VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205, OR FELONIOUS ARSON, AS DESCRIBED IN PART 1 OF ARTICLE 4 OF THIS TITLE; OR

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

(V) THE YOUNG ADULT OFFENDER IS CONVICTED OF A FELONY OFFENSE DESCRIBED IN SECTION 18-1.3-401 AS A CLASS 3 FELONY, OTHER THAN THE FELONIES DESCRIBED IN SECTION 18-3-402 (1) (d) AND SECTION 18-3-403 (1) (e), AS IT EXISTED PRIOR TO JULY 1, 2000, AND HAS, WITHIN THE TWO PREVIOUS YEARS, BEEN ADJUDICATED A JUVENILE DELINQUENT FOR A DELINQUENT ACT THAT WOULD CONSTITUTE A FELONY IF COMMITTED BY AN ADULT; OR

(VI) THE YOUNG ADULT OFFENDER IS CONVICTED OF A FELONY OFFENSE, AND IS DETERMINED TO HAVE BEEN AN "HABITUAL JUVENILE OFFENDER", AS DEFINED IN SECTION 19-1-103 (61), C.R.S.

(b) THE OFFENSES DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL INCLUDE THE ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT SUCH OFFENSES.

(2) (a) NOTWITHSTANDING THE CIRCUMSTANCES DESCRIBED IN SUBSECTION (1) OF THIS SECTION, A YOUNG ADULT OFFENDER SHALL BE INELIGIBLE FOR SENTENCING TO THE YOUTHFUL OFFENDER SYSTEM IF THE YOUNG ADULT OFFENDER IS CONVICTED OF ANY OF THE FOLLOWING:

(I) A CLASS 1 OR CLASS 2 FELONY; OR

(II) A SEXUAL OFFENSE DESCRIBED IN SECTION 18-6-301 OR 18-6-302 OR PART 4 OF ARTICLE 3 OF THIS TITLE; OR

(III) ANY OFFENSE, IF THE YOUNG ADULT OFFENDER HAS RECEIVED A SENTENCE TO THE YOUTHFUL OFFENDER SYSTEM FOR ANY PRIOR CONVICTION.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2), A YOUNG ADULT OFFENDER WHO IS CHARGED WITH FIRST DEGREE MURDER AS DESCRIBED IN SECTION 18-3-102 (1) (b) AND PLEADS GUILTY TO A CLASS 2 FELONY AS A RESULT OF A PLEA AGREEMENT IS ELIGIBLE FOR SENTENCING TO THE YOUTHFUL OFFENDER SYSTEM IF THE YOUNG ADULT OFFENDER WOULD BE ELIGIBLE FOR SENTENCING TO THE YOUTHFUL OFFENDER SYSTEM FOR A CONVICTION OF THE FELONY UNDERLYING THE CHARGE OF FIRST DEGREE MURDER AS DESCRIBED IN SECTION 18-3-102 (1) (b).

(3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, A "YOUNG ADULT OFFENDER" MEANS A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE BUT UNDER TWENTY YEARS OF AGE AT THE TIME THE CRIME IS COMMITTED AND UNDER TWENTY-ONE YEARS OF AGE AT THE TIME OF SENTENCING PURSUANT TO THIS SECTION.

(4) THIS SECTION IS REPEALED, EFFECTIVE OCTOBER 1, 2012.

SECTION 2. 16-11-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-11-102. Presentence or probation investigation. (1.8) UPON THE REQUEST OF EITHER THE PROSECUTION OR THE DEFENSE, EACH PRESENTENCE REPORT PREPARED REGARDING A YOUTHFUL OFFENDER, AS DEFINED IN SECTION 18-1.3-407,

C.R.S., WHO IS ELIGIBLE FOR SENTENCING TO THE YOUTHFUL OFFENDER SYSTEM PURSUANT TO SECTION 18-1.3-407.5, 19-2-517 (3), OR 19-2-518 (1) (d) (II) OR (1) (d.5), C.R.S., SHALL INCLUDE A DETERMINATION BY THE WARDEN OF THE YOUTHFUL OFFENDER SYSTEM WHETHER THE YOUTHFUL OFFENDER IS ACCEPTABLE FOR SENTENCING TO THE YOUTHFUL OFFENDER SYSTEM. WHEN MAKING A DETERMINATION, THE WARDEN SHALL CONSIDER THE NATURE AND CIRCUMSTANCES OF THE CRIME, THE CIRCUMSTANCES AND CRIMINAL HISTORY OF THE YOUTHFUL OFFENDER, THE AVAILABLE BED SPACE IN THE YOUTHFUL OFFENDER SYSTEM, AND ANY OTHER APPROPRIATE CONSIDERATIONS.

SECTION 3. 18-1.3-104 (1) (h) (I), Colorado Revised Statutes, is amended to read:

18-1.3-104. Alternatives in imposition of sentence. (1) Within the limitations of the applicable statute pertaining to sentencing and subject to the provisions of this title, the trial court has the following alternatives in entering judgment imposing a sentence:

(h) (I) If the defendant is eligible pursuant to SECTION 18-1.3-407.5 OR section 19-2-517 (3), C.R.S., the defendant may be sentenced to the youthful offender system in accordance with section 18-1.3-407.

SECTION 4. 18-1.3-401, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-1.3-401. Felonies classified - presumptive penalties. (14) THE COURT MAY SENTENCE A DEFENDANT TO THE YOUTHFUL OFFENDER SYSTEM CREATED IN SECTION 18-1.3-407, IF THE DEFENDANT IS AN ELIGIBLE YOUNG ADULT OFFENDER PURSUANT TO SECTION 18-1.3-407.5.

SECTION 5. 18-1.3-407 (1) (b), (1) (c), (1) (d), (2) (a) (I), (2) (a) (II), (2) (a) (III), (2) (a.5), (2) (b), (3.3), (3.4) (a), (3.4) (b), and (3.5), the introductory portion to 18-1.3-407 (5) (b) (I), and 18-1.3-407 (5) (c), (11.5) (a) (I), (11.5) (c), and (12), Colorado Revised Statutes, are amended to read:

18-1.3-407. Sentences - youthful offenders - legislative declaration - powers and duties of district court - authorization for youthful offender system - powers and duties of department of corrections - definitions. (1) (b) It is the further intent of the general assembly in enacting this section that female and male offenders ~~for whom charges have been directly filed in the district court and who have been convicted in the district court~~ WHO ARE ELIGIBLE FOR SENTENCING TO THE YOUTHFUL OFFENDER SYSTEM PURSUANT TO SECTION 18-1.3-407.5 OR SECTION 19-2-517 (3) OR 19-2-518 (1) (d) (II) OR (1) (d.5), C.R.S., receive equitable treatment in sentencing, particularly in regard to the option of being sentenced to the youthful offender system. ~~pursuant to section 19-2-517 (3) or 19-2-518 (1) (d) (II) or (1) (d.5), C.R.S.~~ Accordingly, it is the general assembly's intent that necessary measures be taken by the department of corrections to establish separate housing for female and male offenders who are sentenced to the youthful offender system without compromising the equitable treatment of either.

(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 WHO HAVE NOT BEEN SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM, except as specifically provided under subsection (5) of this section. The facility that houses offenders sentenced to the youthful offender system shall be limited to two hundred fifty-six beds.

(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.

(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 (3) (a.5) or 19-2-518 (1) (d) (II) or (1) (d.5), C.R.S. A YOUNG ADULT OFFENDER MAY BE SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM CREATED PURSUANT TO THIS SECTION UNDER THE CIRCUMSTANCES SET FORTH IN SECTION 18-1.3-407.5. In order to sentence a juvenile OR YOUNG ADULT OFFENDER to the youthful offender system, the court shall first impose upon such person a sentence to the department of corrections in accordance with section 18-1.3-401. 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 fewer than two years nor more than six years; except that a juvenile OR YOUNG ADULT OFFENDER 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~~ THE offender under a period of community supervision for a period of 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~~ AN OFFENDER sentenced to the youthful offender system credit for presentence confinement; except that such credit shall not reduce the ~~juvenile's~~ OFFENDER'S actual time served in the youthful offender system to fewer than two years. The court shall have a presentence investigation conducted before sentencing a juvenile OR YOUNG ADULT OFFENDER pursuant to this section. UPON THE REQUEST OF EITHER THE PROSECUTION OR THE DEFENSE, THE PRESENTENCE REPORT SHALL INCLUDE A DETERMINATION BY THE WARDEN OF THE YOUTHFUL OFFENDER SYSTEM WHETHER THE OFFENDER IS ACCEPTABLE FOR SENTENCING TO THE YOUTHFUL OFFENDER SYSTEM. WHEN MAKING A DETERMINATION, THE WARDEN SHALL CONSIDER THE NATURE AND CIRCUMSTANCES OF THE CRIME; THE AGE, CIRCUMSTANCES, AND CRIMINAL HISTORY OF THE OFFENDER; THE AVAILABLE BED SPACE IN THE YOUTHFUL OFFENDER SYSTEM; AND ANY OTHER APPROPRIATE CONSIDERATIONS.

(II) Upon the successful completion of the ~~programs in~~ DETERMINATE SENTENCE TO the youthful offender system, including the mandatory period of COMMUNITY supervision, the SUSPENDED sentence PURSUANT to ~~the department of corrections~~ SECTION 18-1.3-401 shall have been completed. Whenever ~~a person~~ AN OFFENDER 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.

(III) For the purposes of this section, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "Juvenile" means a person who is under ~~the age of~~ eighteen years OF AGE when the crime is committed and under ~~the age of nineteen~~ TWENTY-ONE years OF AGE at the time of sentencing pursuant to this section.

(B) "YOUNG ADULT OFFENDER" MEANS A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE BUT UNDER TWENTY YEARS OF AGE WHEN THE CRIME IS COMMITTED AND UNDER TWENTY-ONE YEARS OF AGE AT THE TIME OF SENTENCING PURSUANT TO THIS SECTION.

(C) "YOUTHFUL OFFENDER" OR "OFFENDER" MEANS A JUVENILE OR A YOUNG ADULT OFFENDER WHO HAS BEEN SENTENCED TO THE YOUTHFUL OFFENDER SYSTEM OR WHO IS ELIGIBLE FOR SENTENCING TO THE YOUTHFUL OFFENDER SYSTEM.

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

(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~~ THE SUSPENDED 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.

(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~~ PHASE;

(b) Phase I, during which time a range of core programs, supplementary activities, and educational and prevocational programs AND SERVICES are provided to ~~youthful~~ offenders;

(c) (I) Phase II, which may be administered during the last three months of the period of institutional confinement and during which time the department of corrections is authorized to transfer a ~~youthful~~ AN offender to a twenty-four-hour custody residential program that serves ~~youth~~ YOUTHFUL OFFENDERS.

(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 ~~youth~~ residential program for those sentenced as youthful

offenders. The department of corrections or the contract provider shall provide for twenty-four-hour custody of ~~youthful~~ offenders in phase II.

(d) (I) 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~~ DURING REINTEGRATION into society.

(II) After the department determines appropriate phase III placement, the department shall notify, no later than thirty days prior to placement, the local law enforcement agency for the jurisdiction in which the offender shall be placed for phase III. The notice shall include the offender's name, the crime committed by the offender, the disposition of the offender's case, and the basis for the placement. The local law enforcement agency may appeal the placement, if the placement is in a jurisdiction other than the jurisdiction where the offender was convicted, it may appeal to the executive director OF THE DEPARTMENT at least fifteen days prior to the placement. Except that the local law enforcement agency may not appeal, if the placement is in the jurisdiction where the ~~juvenile~~ OFFENDER was residing at the time the offense was committed. If there is an appeal, after considering the department's basis for placement and the local law enforcement's basis for appeal, the executive director shall make the final determination of the placement.

(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~~ THE offender's redirection goals, as long as the transfer does not jeopardize the safety and welfare of the ~~youthful~~ offender;

(b) Operate an emancipation program and provide other support or monitoring services and residential placement for ~~youthful~~ offenders participating in phase 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~~ AN offender placed in an emancipation house.

(3.5) The executive director of the department of corrections shall have final approval on the hiring and transferring of staff for the youthful offender system. In staffing the youthful offender system, the executive director shall select persons who are trained in the treatment of ~~juveniles~~ YOUTHFUL OFFENDERS or will be trained in the treatment of ~~juveniles~~ YOUTHFUL OFFENDERS prior to working with such ~~juveniles~~ POPULATION, are trained to act as role models and mentors pursuant to paragraph (c) of subsection (3) of this section, and are best equipped to enable the youthful offender system to meet the principles specified in subsection (3) of this section. The executive director shall make a recommendation to the department of personnel regarding the classification of positions with the youthful offender system, taking into account the level of education and training required for such positions.

(5) (b) (I) An offender who is thought to have a mental illness or developmental disability by a mental health clinician, as defined by regulation of the department of corrections, may be transferred to another facility 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 HIS OR HER SENTENCE TO the youthful offender ~~program~~ SYSTEM 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:

(c) The department of corrections shall implement a procedure for returning offenders who cannot successfully complete the sentence to the youthful offender system, or who fail to comply with the terms or conditions of the youthful offender system, to the district court. ~~Any~~ AN 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, or because he or she fails to comply with the terms or conditions of the youthful offender system, shall receive imposition of the original sentence to the department of corrections. After the executive director OF THE DEPARTMENT upholds the department's decision, the offender may be held in any correctional facility deemed appropriate by the executive director; except that ~~any~~ AN offender who cannot successfully complete the sentence to the youthful offender system for reasons other than mental illness or a developmental disability, or because he or she fails to comply with the terms or conditions of the youthful offender system, 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 or fails to comply with the terms or conditions of the youthful offender ~~program~~ SYSTEM.

(11.5) (a) (I) ~~Any juvenile~~ AN OFFENDER who is sentenced to the youthful offender system shall submit to and pay for collection and a chemical testing of a biological substance sample from the ~~juvenile~~ OFFENDER to determine the genetic markers thereof.

(c) Any moneys received from ~~juveniles~~ OFFENDERS pursuant to paragraph (a) of this subsection (11.5) shall be deposited in the offender identification fund created in section 24-33.5-415.6, C.R.S.

(12) The general assembly recognizes that the increased number of violent ~~juvenile~~ crimes COMMITTED BY JUVENILES AND YOUNG ADULTS is a problem faced by all the states of this nation. By creating the youthful offender system, Colorado stands at the forefront of the states in creating a new approach to ~~solving the~~ ADDRESSING THIS problem. ~~of violent juvenile offenders.~~ The general assembly

also declares that the cost of implementing and operating the youthful offender system will create a burden on the state's limited resources. Accordingly, the general assembly directs the department of corrections to seek out and accept available federal, state, and local public funds, including project demonstration funds, and private moneys and private systems for the purpose of conducting the youthful offender system.

SECTION 6. Act subject to petition - effective date - applicability. (1) This act shall take effect October 1, 2009.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to offenses committed on or after the applicable effective date of this act.

Approved: April 2, 2009