

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 26, 2010
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB10-1413 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. 19-2-517, Colorado Revised Statutes, is
4 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

5 **19-2-517. Direct filing.** (1) A JUVENILE MAY BE CHARGED BY
6 THE DIRECT FILING OF AN INFORMATION IN THE DISTRICT COURT OR BY
7 INDICTMENT ONLY IF:

8 (a) THE JUVENILE IS SIXTEEN YEARS OF AGE OR OLDER AT THE TIME
9 OF THE COMMISSION OF THE ALLEGED OFFENSE AND:

10 (I) IS ALLEGED TO HAVE COMMITTED A CLASS 1 OR CLASS 2
11 FELONY; OR

12 (II) IS ALLEGED TO HAVE COMMITTED A FELONY ENUMERATED AS
13 A CRIME OF VIOLENCE PURSUANT TO SECTION 18-1.3-406, C.R.S.; OR

14 (III) IS ALLEGED TO HAVE COMMITTED A FELONY OFFENSE
15 DESCRIBED IN PART 1 OF ARTICLE 12 OF TITLE 18, C.R.S., EXCEPT FOR THE
16 POSSESSION OF A HANDGUN BY A JUVENILE, AS SET FORTH IN SECTION
17 18-12-108.5, C.R.S.; OR

1 (IV) IS ALLEGED TO HAVE USED, OR POSSESSED AND THREATENED
2 THE USE OF, A DEADLY WEAPON DURING THE COMMISSION OF A FELONY
3 OFFENSE AGAINST A PERSON DESCRIBED IN ARTICLE 3 OF TITLE 18, C.R.S.;
4 OR

5 (V) IS ALLEGED TO HAVE COMMITTED VEHICULAR HOMICIDE, AS
6 DESCRIBED IN SECTION 18-3-106, C.R.S., VEHICULAR ASSAULT, AS
7 DESCRIBED IN SECTION 18-3-205, C.R.S., OR FELONIOUS ARSON, AS
8 DESCRIBED IN PART 1 OF ARTICLE 4 OF TITLE 18, C.R.S.; OR

9 (VI) IS ALLEGED TO HAVE COMMITTED A CLASS 3 FELONY, OR
10 SEXUAL ASSAULT AS DESCRIBED IN SECTION 18-3-402 (1) (d), C.R.S., OR
11 SECTION 18-3-403 (1) (e), C.R.S., AS IT EXISTED PRIOR TO JULY 1, 2000,
12 AND THE JUVENILE, WITHIN THE TWO PREVIOUS YEARS, HAS BEEN
13 ADJUDICATED A JUVENILE DELINQUENT FOR AN ACT THAT CONSTITUTES A
14 FELONY; OR

15 (VII) IS ALLEGED TO HAVE COMMITTED A DELINQUENT ACT THAT
16 CONSTITUTES A FELONY, AND IS DETERMINED TO BE AN HABITUAL
17 JUVENILE OFFENDER. FOR PURPOSES OF THIS SECTION, "HABITUAL
18 JUVENILE OFFENDER" IS DEFINED IN SECTION 19-1-103 (61).

19 (b) THE JUVENILE IS FOURTEEN OR FIFTEEN YEARS OF AGE AT THE
20 TIME OF THE COMMISSION OF THE ALLEGED OFFENSE AND:

21 (I) IS ALLEGED TO HAVE COMMITTED MURDER IN THE FIRST
22 DEGREE, AS DESCRIBED IN SECTION 18-3-102, C.R.S., OR MURDER IN THE
23 SECOND DEGREE, AS DESCRIBED IN SECTION 18-3-103, C.R.S.; OR

24 (II) IS ALLEGED TO HAVE COMMITTED SEXUAL ASSAULT UNDER
25 THE CIRCUMSTANCES DESCRIBED IN SECTION 18-3-402 (5) (a), C.R.S.; OR

26 (III) IS ALLEGED TO HAVE COMMITTED ANY SEXUAL OFFENSE THAT
27 IS ENUMERATED AS A CRIME OF VIOLENCE PURSUANT TO SECTION
28 18-1.3-406, C.R.S.; OR

29 (IV) IS ALLEGED TO HAVE COMMITTED ANY SEXUAL OFFENSE
30 CLASSIFIED AS A CLASS 3 FELONY, OR SEXUAL ASSAULT AS DESCRIBED IN
31 SECTION 18-3-402 (1) (d), C.R.S., OR SECTION 18-3-403 (1) (e), C.R.S., AS
32 IT EXISTED PRIOR TO JULY 1, 2000, AND THE JUVENILE, WITHIN THE TWO
33 PREVIOUS YEARS, HAS BEEN ADJUDICATED A JUVENILE DELINQUENT FOR

1 AN ACT THAT CONSTITUTES A FELONY; OR

2 (V) IS ALLEGED TO HAVE COMMITTED ANY FELONY SEXUAL
3 OFFENSE AND IS DETERMINED TO BE AN HABITUAL JUVENILE OFFENDER.

4 (c) THE JUVENILE IS FOURTEEN OR FIFTEEN YEARS OF AGE AT THE
5 TIME OF THE COMMISSION OF THE ALLEGED OFFENSE, IS ALLEGED TO HAVE
6 COMMITTED ANY FELONY, AND IS CURRENTLY SERVING A SENTENCE AS A
7 RESULT OF A DIRECT FILING PURSUANT TO THIS SECTION OR A TRANSFER
8 PURSUANT TO SECTION 19-2-518; EXCEPT THAT, IF A JUVENILE IS FOUND
9 NOT GUILTY IN THE DISTRICT COURT OF THE PRIOR FELONY OR ANY LESSER
10 INCLUDED OFFENSE, THE SUBSEQUENT CHARGE SHALL BE REMANDED BACK
11 TO THE JUVENILE COURT.

12 (2) NOTWITHSTANDING THE PROVISIONS OF SECTION 19-2-518,
13 AFTER FILING CHARGES IN THE JUVENILE COURT BUT PRIOR TO THE TIME
14 THAT THE JUVENILE COURT CONDUCTS A TRANSFER HEARING, THE
15 DISTRICT ATTORNEY MAY FILE THE SAME OR DIFFERENT CHARGES AGAINST
16 THE JUVENILE BY DIRECT FILING OF AN INFORMATION IN THE DISTRICT
17 COURT OR BY INDICTMENT PURSUANT TO THIS SECTION. UPON SAID FILING
18 OR INDICTMENT IN THE DISTRICT COURT, THE JUVENILE COURT SHALL NO
19 LONGER HAVE JURISDICTION OVER PROCEEDINGS CONCERNING SAID
20 CHARGES.

21 (3) (a) IN DETERMINING WHETHER TO FILE CHARGES IN DISTRICT
22 COURT PURSUANT TO THIS SECTION, THE DISTRICT ATTORNEY SHALL FIRST
23 CONSIDER THE FOLLOWING CRITERIA:

24 (I) THE SERIOUSNESS OF THE OFFENSE AND WHETHER THE
25 PROTECTION OF THE COMMUNITY REQUIRES RESPONSE OR CONSEQUENCE
26 BEYOND THAT AFFORDED BY THIS ARTICLE;

27 (II) WHETHER THE ALLEGED OFFENSE WAS COMMITTED IN AN
28 AGGRESSIVE, VIOLENT, PREMEDITATED, OR WILLFUL MANNER;

29 (III) WHETHER THE ALLEGED OFFENSE WAS AGAINST PERSONS OR
30 PROPERTY, GREATER WEIGHT BEING GIVEN TO OFFENSES AGAINST
31 PERSONS;

32 (IV) THE AGE OF THE JUVENILE, AND THE MATURITY OF THE
33 JUVENILE AS DETERMINED BY CONSIDERATIONS OF THE JUVENILE'S HOME,

1 ENVIRONMENT, EMOTIONAL ATTITUDE, AND PATTERN OF LIVING;

2 (V) THE RECORD AND PREVIOUS HISTORY OF THE JUVENILE;

3 (VI) THE LIKELIHOOD OF REHABILITATION OF THE JUVENILE BY USE
4 OF THE SENTENCING OPTIONS AVAILABLE IN THE JUVENILE AND DISTRICT
5 COURTS;

6 (VII) THE INTEREST OF THE COMMUNITY IN THE IMPOSITION OF A
7 PUNISHMENT COMMENSURATE WITH THE GRAVITY OF THE OFFENSE;

8 (VIII) THE IMPACT OF THE OFFENSE ON THE VICTIM;

9 (IX) WHETHER THE JUVENILE WAS PREVIOUSLY COMMITTED TO
10 THE DEPARTMENT OF HUMAN SERVICES FOLLOWING AN ADJUDICATION FOR
11 A DELINQUENT ACT THAT CONSTITUTES A FELONY; AND

12 (X) WHETHER THE JUVENILE USED, OR POSSESSED AND
13 THREATENED THE USE OF, A DEADLY WEAPON IN THE COMMISSION OF A
14 DELINQUENT ACT.

15 (b) THE AMOUNT OF WEIGHT GIVEN TO EACH OF THE FACTORS
16 LISTED IN PARAGRAPH (a) OF THIS SUBSECTION (3) IS DISCRETIONARY WITH
17 THE DISTRICT ATTORNEY. THE INSUFFICIENCY OF ANY FACTOR OR SET OF
18 FACTORS SHALL NOT PRECLUDE THE DISTRICT ATTORNEY FROM CHARGING
19 BY DIRECT FILING, SO LONG AS THE DISTRICT ATTORNEY IS SATISFIED THAT
20 THE INFORMATION AVAILABLE SUPPORTS THE DECISION.

21 (4) (a) IF, AFTER OR CONTEMPORANEOUSLY WITH THE FILING OF A
22 DELINQUENCY PETITION AND AFTER INITIAL CONSIDERATION OF THE
23 FACTORS SET FORTH IN SUBSECTION (3) OF THIS SECTION, THE DISTRICT
24 ATTORNEY BELIEVES THE CASE MAY BE APPROPRIATE FOR CHARGING BY
25 DIRECT FILING, THE DISTRICT ATTORNEY SHALL FILE WITH THE JUVENILE
26 COURT, WITH A COPY TO THE JUVENILE'S COUNSEL OF RECORD, OR TO THE
27 JUVENILE IF THE JUVENILE HAS WAIVED COUNSEL OR IF THERE IS NO
28 COUNSEL OF RECORD, A NOTICE OF CONSIDERATION OF DIRECT FILE. NO
29 LATER THAN FORTY-EIGHT HOURS AFTER THE FILING OF THE NOTICE OF
30 CONSIDERATION, THE JUVENILE COURT SHALL READVICE THE JUVENILE OF
31 HIS OR HER RIGHT TO COUNSEL. IF THE JUVENILE HAS PREVIOUSLY WAIVED
32 HIS OR HER RIGHT TO COUNSEL, THE JUVENILE SHALL HAVE AN
33 OPPORTUNITY TO WITHDRAW SUCH WAIVER.

1 (b) AFTER THE FILING OF THE NOTICE OF CONSIDERATION OF
2 DIRECT FILE, THE JUVENILE SHALL HAVE FOURTEEN DAYS TO PROVIDE TO
3 THE DISTRICT ATTORNEY ANY AND ALL INFORMATION THE JUVENILE
4 REQUESTS THE DISTRICT ATTORNEY TO CONSIDER RELATING TO THE
5 FACTORS SET FORTH IN SUBSECTION (3) OF THIS SECTION IN MAKING THE
6 DECISION WHETHER TO DIRECT FILE CHARGES. THE DISTRICT ATTORNEY
7 SHALL NOT DIRECT FILE CHARGES UNTIL THE FOURTEEN-DAY PERIOD FOR
8 CONSIDERATION HAS PASSED. NOTHING IN THIS SECTION SHALL REQUIRE
9 THE DISTRICT ATTORNEY TO EXTEND THE PERIOD FOR CONSIDERATION;
10 NOR SHALL ANYTHING IN THIS SECTION PROHIBIT THE DISTRICT ATTORNEY
11 FROM AGREEING WITH THE JUVENILE'S COUNSEL OF RECORD TO EXTEND
12 THE PERIOD FOR CONSIDERATION. FURTHER, NOTHING IN THIS SECTION
13 SHALL PRECLUDE THE DISTRICT ATTORNEY FROM DIRECT FILING THE
14 CHARGES AFTER THE EXPIRATION OF THE PERIOD FOR CONSIDERATION.

15 (c) THE JUVENILE COURT SHALL NOT ACCEPT A PLEA OF GUILTY
16 DURING THE PERIOD FOR CONSIDERATION OF DIRECT FILE UNLESS THE PLEA
17 IS ENTERED WITH THE AGREEMENT OF THE DISTRICT ATTORNEY.

18 (d) THE DISTRICT ATTORNEY IS ENCOURAGED TO PROVIDE THE
19 JUVENILE'S COUNSEL OF RECORD AN OPPORTUNITY TO MEET TO DISCUSS
20 ANY AND ALL INFORMATION RELEVANT TO THE FACTORS SET FORTH IN
21 SUBSECTION (3) OF THIS SECTION BEFORE A DECISION TO DIRECT FILE
22 OCCURS. HOWEVER, THE LACK OF ANY SUCH MEETING SHALL NOT
23 REQUIRE AN EXTENSION OF THE PERIOD FOR CONSIDERATION.

24 (e) AT THE DISCRETION OF THE DISTRICT ATTORNEY, THE
25 PROVISIONS OF THIS SUBSECTION (4) SHALL NOT APPLY TO CHARGES FOR
26 FIRST DEGREE MURDER AS DESCRIBED IN SECTION 18-3-102, C.R.S.,
27 SECOND DEGREE MURDER, AS DESCRIBED IN SECTION 18-3-103, C.R.S., OR
28 ANY SEXUAL OFFENSE THAT IS ELIGIBLE FOR DIRECT FILE PURSUANT TO
29 SUBSECTION (1) OF THIS SECTION.

30 (5) UPON THE DIRECT FILING OF CHARGES IN THE DISTRICT COURT
31 PURSUANT TO THIS SECTION, THE DISTRICT ATTORNEY SHALL FILE A
32 WRITTEN STATEMENT LISTING THE SPECIFIC FACTORS SET FORTH IN
33 SUBSECTION (3) OF THIS SECTION UPON WHICH THE DECISION TO DIRECT
34 FILE WAS BASED.

35 (6) (a) IF A JUVENILE IS CONVICTED FOLLOWING THE FILING OF
36 CRIMINAL CHARGES BY INFORMATION OR INDICTMENT IN THE DISTRICT

1 COURT PURSUANT TO THIS SECTION, THE DISTRICT JUDGE SHALL SENTENCE
2 THE JUVENILE AS FOLLOWS:

3 (I) AS AN ADULT; OR

4 (II) TO THE YOUTHFUL OFFENDER SYSTEM IN THE DEPARTMENT OF
5 CORRECTIONS IN ACCORDANCE WITH SECTION 18-1.3-407, C.R.S.; EXCEPT
6 THAT A JUVENILE SHALL BE INELIGIBLE FOR SENTENCING TO THE
7 YOUTHFUL OFFENDER SYSTEM IF THE JUVENILE IS CONVICTED OF:

8 (A) A CLASS 1 FELONY;

9 (B) ANY SEXUAL OFFENSE DESCRIBED IN SECTION 18-6-301 OR
10 18-6-302, C.R.S., OR PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S.; OR

11 (C) A SECOND OR SUBSEQUENT OFFENSE, IF THE JUVENILE
12 RECEIVED A SENTENCE TO THE DEPARTMENT OF CORRECTIONS OR TO THE
13 YOUTHFUL OFFENDER SYSTEM FOR THE PRIOR OFFENSE; OR

14 (III) PURSUANT TO THE PROVISIONS OF THIS ARTICLE, IF THE
15 JUVENILE IS LESS THAN SIXTEEN YEARS OF AGE AT THE TIME OF
16 COMMISSION OF THE CRIME AND IS CONVICTED OF AN OFFENSE OTHER
17 THAN A CLASS 1 OR CLASS 2 FELONY, A CRIME OF VIOLENCE AS DEFINED
18 UNDER SECTION 18-1.3-406, C.R.S., OR AN OFFENSE DESCRIBED IN
19 SUBPARAGRAPH (V) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS
20 SECTION AND THE JUDGE MAKES A FINDING OF SPECIAL CIRCUMSTANCES.

21 (b) THE DISTRICT COURT JUDGE MAY SENTENCE A JUVENILE
22 PURSUANT TO THE PROVISIONS OF THIS ARTICLE IF THE JUVENILE IS
23 CONVICTED OF A LESSER INCLUDED OR NONENUMERATED OFFENSE FOR
24 WHICH CRIMINAL CHARGES COULD NOT HAVE BEEN ORIGINALLY FILED BY
25 INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO THIS
26 SECTION.

27 (7) IN THE CASE OF A PERSON WHO IS SENTENCED AS A JUVENILE
28 PURSUANT TO SUBSECTION (6) OF THIS SECTION, THE FOLLOWING
29 PROVISIONS SHALL APPLY:

30 (a) SECTION 19-2-908(1)(a), REGARDING MANDATORY SENTENCE
31 OFFENDERS;

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

3 (c) SECTION 19-2-908 (1) (c), REGARDING VIOLENT JUVENILE
4 OFFENDERS; AND

5 (d) SECTION 19-2-601, REGARDING AGGRAVATED JUVENILE
6 OFFENDERS.

7 (8) THE COURT IN ITS DISCRETION MAY APPOINT A GUARDIAN AD
8 LITEM FOR A JUVENILE CHARGED BY THE DIRECT FILING OF AN
9 INFORMATION IN THE DISTRICT COURT OR BY INDICTMENT PURSUANT TO
10 THIS SECTION.

11 (9) THE OFFENSES DESCRIBED IN THIS SECTION SHALL INCLUDE
12 ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT SUCH OFFENSES.

13 **SECTION 2.** 19-2-518 (1) (d) (II) (B), (1) (d) (II) (C), (1) (d) (II)
14 (D), (1) (d.5), and (5), Colorado Revised Statutes, are amended to read:

15 **19-2-518. Transfers.** (1) (d) (II) In cases in which criminal
16 charges are transferred to the district court pursuant to the provisions of
17 this section, the judge of the district court may sentence to the youthful
18 offender system created in section 18-1.3-407, C.R.S., any juvenile who
19 would otherwise be sentenced pursuant to the provisions of subparagraph
20 (I) of this paragraph (d); except that a juvenile shall be ineligible for
21 sentencing to the youthful offender system if the juvenile is convicted of:

22 ~~(B) A class 2 felony as a result of a plea agreement in cases where~~
23 ~~the juvenile is charged with a class 1 felony;~~

24 ~~(C) A class 2 felony and the juvenile has one or more prior~~
25 ~~convictions for a crime of violence, as defined in section 18-1.3-406,~~
26 ~~C.R.S., or prior adjudications for an offense that would constitute a crime~~
27 ~~of violence if committed by an adult;~~

28 ~~(D) A class 2 felony and the juvenile is sixteen years of age or~~
29 ~~older;~~

30 ~~(d.5) Notwithstanding the provisions of subparagraph (H) of~~
31 ~~paragraph (d) of this subsection (1), a juvenile who is charged with first~~

1 ~~degree murder as described in section 18-3-102(1)(b), C.R.S., and pleads~~
2 ~~guilty to a class 2 felony as a result of a plea agreement is eligible for~~
3 ~~sentencing to the youthful offender system if the juvenile would be~~
4 ~~eligible for sentencing to the youthful offender system for a conviction of~~
5 ~~the felony underlying the charge of first degree murder as described in~~
6 ~~section 18-3-102(1)(b), C.R.S.~~

7 (5) When an action has been remanded to the juvenile court
8 pursuant to section 19-2-517 (1) ~~(a)-(IV)~~ (c) and the prosecution seeks
9 waiver of jurisdiction pursuant to this section, the court's findings from
10 the prior transfer hearing regarding the factor listed in paragraph (c) of
11 subsection (4) of this section shall establish prima facie evidence that to
12 retain jurisdiction in juvenile court would be contrary to the best interests
13 of the juvenile or of the community.

14 **SECTION 3.** 16-11-102 (1.8), Colorado Revised Statutes, is
15 amended to read:

16 **16-11-102. Presentence or probation investigation.** (1.8) Upon
17 the request of either the prosecution or the defense, each presentence
18 report prepared regarding a youthful offender, as defined in section
19 18-1.3-407, C.R.S., who is eligible for sentencing to the youthful offender
20 system pursuant to section 18-1.3-407.5, 19-2-517 ~~(3)~~ (6), or 19-2-518 (1)
21 (d) (II), ~~or (1)-(1.5)~~, C.R.S., shall include a determination by the warden
22 of the youthful offender system whether the youthful offender is
23 acceptable for sentencing to the youthful offender system. When making
24 a determination, the warden shall consider the nature and circumstances
25 of the crime, the circumstances and criminal history of the youthful
26 offender, the available bed space in the youthful offender system, and any
27 other appropriate considerations.

28 **SECTION 4.** 18-1.3-104 (1) (h) (I), Colorado Revised Statutes,
29 is amended to read:

30 **18-1.3-104. Alternatives in imposition of sentence.** (1) Within
31 the limitations of the applicable statute pertaining to sentencing and
32 subject to the provisions of this title, the trial court has the following
33 alternatives in entering judgment imposing a sentence:

34 (h) (I) If the defendant is eligible pursuant to section 18-1.3-407.5
35 or section 19-2-517 ~~(3)~~ (6), C.R.S., the defendant may be sentenced to the

1 youthful offender system in accordance with section 18-1.3-407.

2 **SECTION 5.** 18-1.3-407 (1) (b) and (2) (a) (I) and the
3 introductory portion to 18-1.3-407 (2.1) (a), Colorado Revised Statutes,
4 are amended to read:

5 **18-1.3-407. Sentences - youthful offenders - legislative**
6 **declaration - powers and duties of district court - authorization for**
7 **youthful offender system - powers and duties of department of**
8 **corrections - definitions.** (1) (b) It is the further intent of the general
9 assembly in enacting this section that female and male offenders who are
10 eligible for sentencing to the youthful offender system pursuant to section
11 18-1.3-407.5 or section 19-2-517 ~~(3)~~ (6) or 19-2-518 (1) (d) (II), ~~or (1)~~
12 ~~(d.5)~~; C.R.S., receive equitable treatment in sentencing, particularly in
13 regard to the option of being sentenced to the youthful offender system.
14 Accordingly, it is the general assembly's intent that necessary measures
15 be taken by the department of corrections to establish separate housing
16 for female and male offenders who are sentenced to the youthful offender
17 system without compromising the equitable treatment of either.

18 (2) (a) (I) A juvenile may be sentenced to the youthful offender
19 system created pursuant to this section under the circumstances set forth
20 in section 19-2-517 ~~(3)(a)(II) or (3)(a.5)~~ (6) (a) (II) or 19-2-518 (1) (d)
21 (II), ~~or (1)(d.5)~~; C.R.S. A young adult offender may be sentenced to the
22 youthful offender system created pursuant to this section under the
23 circumstances set forth in section 18-1.3-407.5. In order to sentence a
24 juvenile or young adult offender to the youthful offender system, the
25 court shall first impose upon such person a sentence to the department of
26 corrections in accordance with section 18-1.3-401. The court shall
27 thereafter suspend such sentence conditioned on completion of a sentence
28 to the youthful offender system, including a period of community
29 supervision. The court shall impose any such sentence to the youthful
30 offender system for a determinate period of not fewer than two years nor
31 more than six years; except that a juvenile or young adult offender
32 convicted of a class 2 felony may be sentenced for a determinate period
33 of up to seven years. In imposing such sentence, the court shall grant
34 authority to the department of corrections to place the offender under a
35 period of community supervision for a period of not fewer than six
36 months and up to twelve months any time after the date on which the
37 offender has twelve months remaining to complete the determinate
38 sentence. The court may award an offender sentenced to the youthful

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

13 (2.1) (a) As originally enacted, this section applied only to
14 offenses committed by juveniles on or after September 13, 1993. For
15 purposes of extending the availability of sentencing options, a juvenile
16 who meets the criteria set forth in section 19-2-517 ~~(3)~~ (6) (a) (II), C.R.S.,
17 may be sentenced to the youthful offender system pursuant to this section,
18 under the following circumstances:

19 **SECTION 6. Act subject to petition - effective date -**
20 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
21 following the expiration of the ninety-day period after final adjournment
22 of the general assembly (August 11, 2010, if adjournment sine die is on
23 May 12, 2010); except that, if a referendum petition is filed pursuant to
24 section 1 (3) of article V of the state constitution against this act or an
25 item, section, or part of this act within such period, then the act, item,
26 section, or part shall not take effect unless approved by the people at the
27 general election to be held in November 2010 and shall take effect on the
28 date of the official declaration of the vote thereon by the governor.

29 (2) (a) Except as otherwise provided in paragraph (b) of this
30 subsection (2), the provisions of this act shall apply to the filing of
31 charges on or after the effective date of this act.

32 (b) Section 19-2-517 (6) and (7), Colorado Revised Statutes, as
33 enacted in section 1 of this act shall apply to persons sentenced on or after
34 the effective date of this act."

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