

Criminal Law

New Criminal Offenses and Increased Penalties

The General Assembly considered several pieces of legislation which either creates new criminal offenses or increase or lowers the penalties for existing criminal offenses. The following provisions were adopted:

Crimes against persons

In response to increasing reports of serious injuries and deaths on college campuses due to hazing, primarily by fraternities, Senate Bill 99-106 creates the class 3 misdemeanor of hazing. The offense of hazing is defined as an activity which recklessly endangers the health or safety of, or causes a risk of bodily injury to, a person for purposes of initiation or admission into a student organization. The bill clarifies that activities related to athletic events or similar contests or competitions as well as training activities conducted by members of the armed forces are not included in the definition of hazing.

In response to concerns over young adults who target teenagers for sexual relationships, House Bill 99-1070 alters the sexual assault statutes. A person who is at least 10 years older than the victim and who has sex with a victim who is between 15 and 17 years old commits second degree sexual assault, a class 1 misdemeanor under the bill's provisions.

The crime of harassment by stalking is changed to the crime of stalking and the circumstances under which a person is considered to commit the crime of stalking are expanded. Under House Bill 99-1168, the crime of stalking is increased from a class 6 felony to a class 5 felony for a first offense and a class 4 felony for subsequent and aggravated stalking offenses. In addition, the crime of stalking is added to the list of crimes which present an extraordinary risk of harm to society and are, therefore, eligible for increased prison sentences.

Simple harassment is increased from a class 3 misdemeanor to a class 1 misdemeanor under House Bill 99-1168 when an offender harasses a person because of race, color, religion, ancestry, or national origin.

The penalty for the crime of ethnic intimidation resulting in bodily injury is increased from a class 5 felony to a class 4 felony when the offender is physically aided or abetted by one or more persons under House Bill 99-1168.

A new class 1 misdemeanor of neglect of an at-risk juvenile is created in House Bill 99-1168.

Crimes against property

Under current law, second degree aggravated motor vehicle theft (taking another's vehicle without permission or by threat or deception) is a misdemeanor while the theft of items from a motor vehicle (such as a car stereo) can be a felony. In order to correct this inequity and to bring the theft of a motor vehicle statutes in line with other theft statutes, Senate Bill 99-48 stratifies the theft of motor vehicle offenses. Depending on the value of a vehicle worth at least \$500, theft of a motor vehicle is either a class 3, 4, 5, or 6 felony. Only when a vehicle is worth less than \$500 is the offense a class 2 misdemeanor.

In an effort to curb graffiti-related offenses, courts are required to revoke the drivers license of any adult offender who is convicted of, or any juvenile offender who is adjudicated for, any misdemeanor or felony criminal mischief offense involving defacing property. House Bill 99-1027 also provides that the Department of Motor Vehicles is prohibited from issuing a drivers license to a juvenile who has been convicted of criminal mischief when the offense involves defacing property.

The theft by receiving statutes are altered to create a new class 4 felony for theft by receiving when the value of the things involved is at least \$500 but less than \$15,000. When the value of the things is \$15,000 or more, theft by receiving is a class 3 felony under House Bill 99-1168.

Drug crimes

The prevalence of "date rape" on college campuses led legislators to adopt House Bill 99-1095 which criminalizes the possession and use of drugs associated with "date rape." Under the bill's provisions, the possession, manufacture, distribution, dispensing, or sale of the drugs GHB or Ketamine or their precursors is illegal. The bill makes it illegal to cause another person to consume either GHB or Ketamine or their precursors. Violation of any of the provisions is a class 3 felony. A second or subsequent violation is a class 2 felony.

The penalty for the crime of possession of the controlled substance flunitrazepam is increased from a class 5 felony to a class 3 felony and from a class 4 felony to a class 2 felony for a second or subsequent conviction for the same offense. In addition, House Bill 99-1168 requires that a person convicted of an illegal drug offense involving flunitrazepam be subject to a mandatory sentence to at least the midpoint in the presumptive sentencing range but not more than twice the maximum presumptive range (8 to 24 years instead of 4 to 12 years for a first offense class 3 felony).

A new class 6 felony of possession of marihuana in a correctional facility is created. House Bill 99-1168 additionally creates a class 5 felony for a second or subsequent offense and when the initial or subsequent offenses involve more than one ounce of marihuana.

Miscellaneous crimes

The penalty for the crime of driving with a revoked license is decreased from a class 6 felony to a class 1 misdemeanor in House Bill 99-1168. In addition, the new class 6 felony of aggravated driving with a revoked license is created.

Among the provisions creating new offenses or changing the penalties for existing crimes that were not adopted was a bill that would have created a class 1 misdemeanor for possession of large quantities of over-the-counter non-prescription drugs which can be used to make dangerous drugs (House Bill 99-1087). Another bill that was not adopted would have required retail outlets to store products that could be used for creating graffiti (spray paint, paint nozzles, marker pens, glass etching tools) behind a counter which is only accessible by a store clerk (House Bill 99-1021).

Criminal law and procedures

Several bills were introduced which affect how criminal cases are investigated and prosecuted. These criminal law procedural bills are technical in nature and generally apply to how law enforcement and prosecutors handle criminal cases. Among the items the legislature approved are the following:

The class 2 petty offense designation for the illegal possession or consumption of alcohol by a minor is deleted and the crime becomes an unclassified offense so that offenders charged with the offense are no longer eligible for a jury trial (House Bill 99-1168).

The class 1 public nuisance statute is amended under House Bill 99-1168 to specify that all equipment, including computer hardware or software, used in committing the crimes of sexual exploitation of a minor or computer crime is considered a public nuisance and therefore subject to forfeiture.

The statutes governing appeals of a felony conviction are amended to remove a defendant's right to an appellate review of the propriety of a sentence if the sentence was within the range agreed upon by both parties in a plea agreement (House Bill 99-1168).

Under House Bill 99-1172, a defendant who pleads guilty by reason of insanity is required to cooperate with a court-ordered examination of his or her mental condition at the risk of not being able to call his or her own expert witnesses to testify to his or her mental condition.

Under current law, offenders must be tried in the jurisdiction in which the offense occurred. Senate Bill 99-48 allows that offenders charged with motor vehicle theft may be tried not only in the jurisdiction

where the theft occurred, but also in any jurisdiction through which the motor vehicle was operated or transported, or in the jurisdiction in which the motor vehicle was recovered.

The statute regarding the right to bail after conviction while awaiting appeal is amended to specify that bail while awaiting an appeal is not allowed for persons convicted of murder, felony sexual assault involving the use of a deadly weapon or committed against a child under 15, any statutory crime of violence, or any felony involving the use of a firearm (House Bill 99-1162).

Offenders. The General Assembly considered legislation which places requirements on offenders. Two bills, both of which were adopted, require offenders to submit to DNA tests. Under House Bill 99-1235, offenders convicted of an offense involving a crime of violence, second degree murder, first degree assault, second degree kidnaping, first degree arson, burglary, or aggravated robbery must submit to DNA testing as a condition of probation (currently, only offenders convicted of an offense involving unlawful sexual behavior are required to submit to DNA testing). Under House Bill 99-1260, offenders who are convicted of an offense involving unlawful sexual behavior and sentenced directly to jail or a community corrections program are required to submit to DNA testing.

One bill placing requirements on convicted offenders which was considered but not adopted by the legislature is Senate Bill 99-115 which would have required that any person convicted of a violent crime (defined in the bill) within the past five years disclose that fact when applying to renew a driver's license or identification card. The Department of Revenue would have been required to disclose the conviction information on the individual's drivers license or identification card in order to inform law enforcement in the case the person is questioned by law enforcement. Additionally, the Department of Revenue would have been required to revoke the license of a person who failed to disclose a conviction.

Restitution. The General Assembly considered the issue of restitution. Under House Bill 99-1254, offenders would have been required to make monthly payments in specified amounts in restitution. The bill would have also specified who would be responsible for monitoring and collecting the restitution depending on how the offender was being supervised (parole or probation). The bill would have additionally provided penalties for an offender who failed to pay restitution. However, the restitution provisions of House Bill 99-1254 were not adopted. The bill was amended to call for a study of the issue of restitution. The Legislative Council Staff is required to conduct the study and report to the Legislative Council by September 1, 1999.

Under House Bill 99-1162, an order of restitution may include any amount spent by any law enforcement agency in making undercover purchases of drugs in order to obtain evidence against the defendant.

Sex offenders. One bill made several changes, some technical in nature, others substantive, to the statutes governing sex offenses and sex offenders. House Bill 99-1260 made the following changes:

Colorado statutes are clarified to require that any sex offender convicted under federal law register as a sex offender in Colorado. In addition, a sex offender convicted in another state must register as a sex offender in Colorado when the offender moves to the state.

The sex offender registration requirements are amended to specify that when a sex offender provides false information when registering, he or she will be deemed to have committed the crime of failure to register as a sex offender.

Offenders who are convicted of an offense involving unlawful sexual behavior and sentenced directly to jail or a community corrections program are required to submit to DNA testing.

Courts are allowed, as a condition of probation, to sentence a sex offender to a community corrections program. After serving the minimum sentence in the program, the community corrections program is required to notify the Judicial Department when it determines that the offender is ready to live in the community. The decision is to be made pursuant to specific criteria established by the sex offender management board. After considering recommendations from the Judicial Department, the court may order the sex offender to be released from a community corrections facility and may require the offender to participate in an intensive supervision probation program.

The Department of Corrections is allowed to determine whether an offender who is identified as a sexually violent predator should be subject to community notification proceedings. To assist the Department in making the determination, the Sex Offender Management Board is required to adopt a risk assessment instrument and to develop criteria for determining whether community notification is appropriate.

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