

Criminal Law Issues

Numerous bills proposed changes to the criminal justice laws. These bills are categorized as follows: crime; drugs; fugitives; victims; domestic violence; sex offenders; interstate compacts; and procedures.

Criminal offenses and penalties. Several bills proposed changes to criminal penalties or created new crimes as follow:

an offender convicted of being an habitual traffic offender and who is subsequently convicted of driving under a revoked license will be required to serve a mandatory term of imprisonment in a county jail (House Bill 00-1426);

persons who engage in the unauthorized use of a trademark, trade name, logo, or otherwise recognized indication of product source would have been guilty of the crime of trademark counterfeiting, a class 1 misdemeanor for the first offense and a class 5 or class 6 felony for the second or subsequent offenses (House Bill 00-1378, not adopted);

the crime of ethnic intimidation would have been expanded to include intimidation of a person because of that person's physical or mental disability, age, or sexual orientation. Penalties would have ranged from a class 1 misdemeanor to a class 4 felony (House Bill 00-1168 and Senate Bill 00-032, neither bill was adopted);

the definition of first degree forgery (a class 5 felony) is expanded to include use of document-making implements to produce false identification documents such as drivers licenses. The definition of criminal possession of forgery devices (a class 6 felony) is expanded to include possession of document-making implements to produce false identification documents (House Bill 00-1111);

courts are required to order an evaluation prior to sentencing offenders convicted of committing cruelty to animals. Further, the mandatory sentence for animal cruelty is the same as for a class 1 misdemeanor (House Bill 00-1330);

the class 3 misdemeanor crime of escape is expanded to include individuals serving a sentence for a municipal violation (House Bill 00-1107); and

the class 3 misdemeanor of harassment is expanded to include threats made by use of a computer, computer program, or computer network (House Bill 00-1107).

Drugs. The General Assembly considered, but did not adopt, House Bill 00-1044 to create the class 4 felony of possession of certain drugs with the intent to manufacture amphetamine, methamphetamine, or any controlled substance. Lawmakers passed legislation (House Bill 00-1107) to reclassify in state

statutes certain controlled substances in order to conform to federal drug classification schedules. Lawmakers also passed a bill to establish and fund three-year demonstration programs to study the use of drug courts in the state. Finally, the statutes regarding drug offenses near schools are clarified to require judges to sentence such drug offenders to an enhanced sentence (House Bill 00-1107).

Fugitives. Two bills addressed the growing problem of persons who have outstanding arrest warrants. Under House Bill 00-1153, the Department of Revenue may cancel or deny a driver's license or license renewal for persons who have outstanding warrants or judgements for failure to appear. Under House Bill 00-1423 (not adopted), the Department of Revenue would have further been prohibited from registering or renewing the registration of a motor vehicle and would also have been prohibited from refunding any income tax refund or credit to any person who has an outstanding warrant or judgement for failure to appear.

Victims of crime. Two bills address crime victims. Under House Bill 00-1377, the Colorado Crime Victim Compensation Act and the Colorado Open Records Act are amended to: clarify the process by which profits from a crime are paid to victims of crime; impose a civil penalty for failure to comply with the provisions of the act; and provide for the confidentiality of materials received, made, or kept by a crime victim compensation board or district attorney concerning an application for victim's compensation.

After a study of the issue of criminal restitution in Colorado, the General Assembly passed a bill (House Bill 00-1199) to tighten the statutes regarding restitution. Under the bill, every order of conviction for a felony, misdemeanor, petty offense, or traffic offense is required to include an order for restitution. The bill also establishes: that restitution orders are final civil judgements that remain in effect until restitution is paid in full; that restitution orders must include future interest, attorney fees, and costs; and that an order for restitution can operate as a lien on all personal property. The bill makes numerous other changes designed to increase the collections of court-ordered criminal restitution.

Domestic violence. Under House Bill 00-1263, local domestic violence treatment boards and the Domestic Violence Treatment Commission are repealed and the Domestic Violence Offender Management Board is created in their place. Under the bill's provisions, the board's duties are spelled out in statute and domestic violence offenders will be evaluated prior to being granted probation or parole

Sex offenders. Three bills make changes to current law regarding sex offenders. House Bill 00-1317 makes changes to sex offender reporting requirements and creates the new class 5 and class 6 felonies of sexual conduct in penal institutions (targeting corrections employees who engage in sexual conduct with prisoners). Further, House Bill 00-1317 makes changes to the membership of the sex offender management board. House Bill 00-1239 increases the sentence for any defendant convicted as a habitual sex offender against children to three times the maximum sentence specified in statutes for the felony or misdemeanor of which the offender is convicted. House Bill 00-1232 requires the Colorado Bureau of Investigation to post on the Internet identifying information, including a picture, of certain sex offenders. An offender's failure to comply with the requirements to submit or sit for a photograph and to provide other information is deemed failure to register as a sex offender, a class 2 misdemeanor.

Interstate compacts. Three bills address interstate compacts related to the supervision of offenders. Under Senate Bill 00-191 the Governor is allowed to enter into the Interstate Compact for Adult Offender Supervision. The compact creates an interstate commission under which agreements may be reached to monitor probationers and parolees who move from state to state. A second bill, House Bill 00-1254, requires nonresidential treatment programs that treat criminal offenders from other states to register with the Colorado Interstate Compact for Parole Supervision in the Department of Corrections. The bill also requires out-of-state offenders coming to Colorado to obtain approval from the compact and creates a class 5 felony for out-of-state offenders who fail to get such approval. Another bill, House Bill 00-1106 ratifies Colorado's participation in the National Crime Prevention and Privacy Compact. The compact is designed to facilitate authorized and uniform criminal-history record exchanges for non-criminal justice purposes.

Criminal law procedures. Several bills proposed numerous changes in criminal law procedures. Three of those bills (none were adopted) proposed changes in the way a sentence to death is imposed in class 1 felonies. Two of the bills, House Bill 00-1299 and Senate Bill 00-070, were identical and proposed that the trial judge, and not the three-judge panel in current law, determine whether to sentence a defendant to death or to life imprisonment. A third bill, Senate Bill 00-028, would have required the trial jury, and not the three-judge panel, determine whether to sentence a defendant to death or life imprisonment.

Among the highlights of other proposals to change criminal law procedure:

an additional aggravating factor of "possession of a weapon used to commit a class 1 felony" is created for the purposes of imposing the death penalty (House Bill 00-1234);

new provisions for "no-knock raids" require that: in addition to current statutory requirements, district attorneys review and approve search warrants; and specify requirements for confidential informants who provide grounds for issuing a search warrant. Further, the Division on Criminal Justice is required to review existing policies regarding no-knock search warrants and to report a model policy to the Governor and the General Assembly (Senate Bill 00-208);

bail bonding agents are required to report to the Division of Insurance on the number of persons for whom the bonding agent has provided a bond and who have failed to appear. Pretrial services programs are required to provide an annual report to the Judicial Department on the number of defendants under pretrial release programs who have failed to appear (Senate Bill 00-192);

current statutory requirements that the Office of Alternate Defense Counsel represent partially indigent defendants are repealed (House Bill 00-1174);

provisions granting every person convicted of a crime a right to make application for postconviction review would have been repealed and such postconviction review would have been discretionary upon review of the Colorado Supreme Court. Further, grounds for granting postconviction relief would have been limited and a claim for postconviction relief would have been denied under certain circumstances (House Bill 00-1327, not adopted);

law enforcement's burden of proof for all matters in a public nuisance or contraband forfeiture action would have been changed from a preponderance of evidence to clear and convincing evidence and courts would have been required to order a law enforcement agency to pay interest when currency or other negotiable instruments were ordered to be returned to the defendant. Further, courts would have been allowed to appoint counsel in a public nuisance or contraband forfeiture action when a defendant was found financially unable to obtain counsel and courts would have been required to vacate a temporary restraining order under certain circumstances including when forfeiture would cause substantial hardship to the defendant (House Bill 00-1369, not adopted);

crime victims would have been allowed to petition the court to close all or part of a criminal justice record to the public (House Bill 00-1443, not adopted);

requirements for county coroners to perform an autopsy prior to releasing organs to an organ procurement agency would have been specified as well as requirements for county coroners withholding organs as evidence in a criminal or civil proceeding (Senate Bill 00-216, not adopted);

courts would have been prohibited from sentencing an offender who is 65 or older to the DOC unless the person was convicted of certain kinds of offenses (Senate Bill 00-13, not adopted);

criminal prosecutors may offer into evidence the videotaped, out-of-court statement of an at-risk person (Senate Bill 00-014);

all offenders convicted of specified offenses, all persons sentenced as habitual offenders, and all persons discharged from the DOC who are not placed on parole are required to submit to blood testing for genetic markers (House Bill 00-1166); and

offenders who were convicted of or pled guilty to certain violent or sexual crimes and offenders who were in the custody on the DOC, on probation, or on parole as of July 1, 2000 are all required to undergo genetic blood testing (Senate Bill 00-121).

Comments to: lcs.ga@state.co.us