

Criminal Justice

New Crimes

The General Assembly considered several bills to create new crimes.

SB 05-017, postponed indefinitely, would have created the class 1 misdemeanor of **engaging in sexual activity with the knowledge of being infected with HIV**. Individuals with HIV would have been guilty of a class 1 misdemeanor for engaging in sex with any other individual, including a spouse. The bill created an affirmative defense against the crime if the infected individual notified the sexual partner prior to sexual activity.

The possession, purchase, sale, or use of an **Alcohol Without Liquid (AWOL) device** is a class 2 misdemeanor under **SB 05-034**. Alcohol Without Liquid devices are defined as machines or appliances that mix alcoholic beverages with oxygen to produce a vapor that can be inhaled or snorted.

Under **SB 05-137**, **theft of personal identifying information** is a class 1 misdemeanor. Theft of personal identifying information is described as unlawfully entering a trash receptacle and taking documents from the trash with the intent to defraud another person of personal identifying information (including a social security number, personal identification number, password, pass code, driver license or identification card number, passport number, biometric data, or an employer, student, or military identification number).

HB 05-1014 creates the class 1 misdemeanor of **making a credible threat** against a student, school official, or employee of an educational institution, or against an invitee who is on the premises of an educational institution. "Credible threat" is defined as a threat or physical action that would cause a reasonable person to be in fear of bodily injury with a deadly weapon or death.

HB 05-1110 limits the **retail sale of over-the-counter drugs that can be used to manufacture methamphetamine**. The bill restricts the packaging of methamphetamine precursor drugs for retail sale to blister packs with each blister containing not more than two dosage units. The bill restricts the amount of over-the-counter methamphetamine precursor drugs that may be sold in one transaction to three packages. The bill also prohibits the sale of more than two methamphetamine precursor drugs in one single retail sale. Violation of any of the bill's provisions is a class 2 misdemeanor. Retail owners, operators, managers, and supervisors who did not have knowledge of the sale, did not participate in the sale, or did not knowingly direct the person making the sale to do so are not liable under the bill's provisions.

HB 05-1160 creates several **crimes related to unlawful recordings**:

- dealing in unlawfully packaged recorded articles (possession, advertising, sale, or reselling of records, discs, wires, tapes, or films without the actual name and address of the manufacturer and the name of the actual performer or group) is a class 1 misdemeanor;

- unlawful recording of a live performance on record, compact disc, video disc, wire, tape, or film with the intent to sell the article for profit is a class 1 misdemeanor; and
- offering for sale or resale, distributing, or possessing any unlawfully recorded live performance is a class 1 misdemeanor.

Abuse of a corpse is a class 2 misdemeanor. Under **HB 1188**, "abuse of a corpse" is defined as removing the body or remains of any person from a grave without the consent of the individual who has the right to dispose of the remains.

Patronizing a prostitute is a class 1 misdemeanor when the offense is committed subsequent to two prior convictions under **HB 05-1338**.

HB 05-1347 creates the class 1 misdemeanor of **gathering personal information by deception**, described as knowingly making or conveying a materially false statement over a computer or computer network, over the telephone, or by any other electronic medium with the intent to obtain, record, or access the personal identifying information of another.

Underage Drinking

The General Assembly considered several pieces of legislation to combat underage drinking. Two of the bills created additional penalties for activities related to underage drinking.

HB 05-1183 specifically targets underage binge drinking by creating the class 1 misdemeanor of the sale, serving, giving, or procuring of any alcoholic beverage to an individual under the age of 21. The bill also addresses penalties for illegal possession of alcoholic beverages by an underage person by increasing the fine for a first offense to up to \$250. The bill creates new penalties for second and subsequent possession offenses as follows:

- a second illegal possession offense is punishable by a fine of up to \$500 and the court is required to order the defendant to submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program. The court may order the defendant to perform up to 24 hours of public service;
- a third or subsequent offense is a class 2 misdemeanor (\$250 to \$1,000 fine or 3 months to 1 year in the county jail, or both fine and imprisonment). In addition, the court is required to order the defendant to submit to and complete an alcohol and assessment, an alcohol education program, or an alcohol treatment program.

The bill also provides immunity from prosecution for underage individuals who provide assistance to another individual due to alcohol consumption.

Under **HB 05-1306**, the Department of Revenue is required to immediately suspend the driver license of any individual convicted of the sale, serving, giving to, or procuring any alcoholic beverage for an individual under the age of 21. The department is also required to immediately suspend the driver license of an individual who allows an underage individual to use his or her driver license for the unlawful purchase of alcoholic beverages.

Identity Theft

The General Assembly considered several bills related to identity theft.

SB 05-137 allows individuals to freeze consumer reports held by a consumer reporting agency. The bill specifies a procedure by which consumers may place a freeze on consumer reports and also specifies a procedure by which the freeze may be removed or temporarily lifted. The bill provides that consumer reports may not be frozen for certain purposes including child support enforcement investigations, investigations to collect delinquent taxes or court orders, investigations for purposes of assessing restitution in a court proceeding, or investigations pursuant to criminal background checks. The bill also creates the class 1 misdemeanor of theft of personal identifying information described as unlawfully entering a trash receptacle and taking documents from the trash with the intent to defraud another person of personal identifying information.

HB 05-1116, postponed indefinitely, would have created the class 4 felony of identity theft, described as the use of personal identifying information of another living person during the commission of criminal impersonation. The bill also required courts to sentence defendants who were convicted of identity theft subsequent to a prior conviction for forgery, criminal possession of a forgery device, criminal impersonation, identity theft, or unauthorized use of a financial transaction device to at least the midpoint of the presumptive sentencing range.

HB 05-1226, postponed indefinitely, would have required operators of commercial websites that collect personal identifying information through the Internet to conspicuously post its privacy policy on its website. The bill specified the minimum requirements of the posted privacy policy. The bill also created several new offenses related to identity theft as follows:

- gathering personal information by deception, described as obtaining, recording, or accessing personal identifying information of another from a computer or computer network by means of misrepresentation, was a class 1 misdemeanor (a similar provision was included in **HB 05-1347** which was adopted by the General Assembly);
- unlawfully gathering from a trash receptacle documents containing personal identification information with the intent to defraud another was a class 1 misdemeanor (this provision was included in **SB 05-137** which was adopted by the General Assembly); and
- the offense of unlawful possession of personal identifying information was changed from a class 1 misdemeanor to a class 5 felony.

HB 05-1347 creates the class 1 misdemeanor of gathering personal information by deception, described as knowingly making or conveying a materially false statement over a computer or computer network, over the telephone, or by any other electronic medium with the intent to obtain, record, or access the personal identifying information of another.

Sex Offenders

Under **HB 05-1035**, individuals requesting from the Colorado Bureau of Investigation a list of offenders on the CBI's sex offender registry are no longer limited to receiving only the names of offenders who live in the same law enforcement agency jurisdiction as the requester. In addition, the CBI may post on the State of Colorado Internet homepage the names of registered sex offenders.

Similarly, local law enforcement agencies may now, at the agency's discretion, release information regarding a registered sex offender to an individual who does not reside in the agency's jurisdiction. The bill also allows local law enforcement agencies to post on their websites sex offender registration information on the following categories of offenders from their registration lists:

- adults convicted of felony sex offenses;
- adults convicted of second or subsequent specified misdemeanor sex offenses;
- juveniles adjudicated for two or more offenses involving unlawful sexual behavior or for a crime of violence; and
- juveniles adjudicated for a sex offense that would have been a felony if committed by an adult.

HB 05-1308 requires courts to order defendants who have been charged with sex offenses and found not guilty by reason of insanity to register as sex offenders upon release from commitment. Previously, courts had the discretion to require such offenders to register.

Criminal Sentencing

HB 05-1109 as introduced made numerous changes to the laws governing the sentencing of juveniles who are charged as adults. Among the changes, the bill: modified the kinds of charges district attorneys would be allowed to file directly in district court for juvenile offenders; expanded the list of juvenile offenders convicted as adults that the courts could sentence to the Youthful Offender System; reduced the maximum in the sentencing range for certain offenses committed by juveniles charged as adults; and allowed the Executive Director of the Department of Corrections to refer to community corrections facilities certain juvenile offenders who are serving a sentence for an offense committed prior to the bill's effective date. As adopted by the General Assembly, **HB 05-1109** established a legislative oversight committee and task force to study and make recommendations on changes to Colorado law regarding juveniles in the adult criminal justice system. The bill was vetoed by the Governor.

Two bills were introduced proposing changes to adult criminal sentencing laws in response to recent U.S. Supreme Court Decisions regarding findings of aggravating circumstances and a defendant's right to a trial by jury. SB 05-215, postponed indefinitely, would have restructured the presumptive sentencing ranges by increasing the maximum in the range in order to allow courts to sentence offenders in cases with aggravating circumstances to longer sentences. The bill also specified sentencing requirements for courts sentencing offenders convicted of offenses with extraordinary aggravating circumstances. HB 05-1327 would have made changes to criminal charging procedures when aggravating circumstances are alleged and would have required courts to provide jury instructions in considering aggravating circumstances. The bill would have set up a

procedure for courts to follow when sentencing based on aggravating circumstances. HB 05-1327 was withdrawn by the bill sponsor prior to a hearing in the first house committee of reference.