CORRECTIONS

Correctional Facilities

HB 10-1083 *(Enacted)*
Department of Corrections Surgery Unit Lease Purchase

HB 10-1219 *(Postponed Indefinitely)*
Authorization to Sell Department of Corrections Facilities

HB 09-1277 *(Enacted)*
Sexual Conduct in Correctional Facilities

HB 10-1294 *(Postponed Indefinitely)*
No International Terrorists in Colorado Federal Prisons

HB 10-1421 *(Postponed Indefinitely)*
Decommission of One Department of Corrections Facility

Corrections Administration and Procedures

SB 10-130 *(Enacted)*
Alignment of Powers Department of Corrections

SB 10-179 *(Postponed Indefinitely)*
Voting Rights of Persons in the Criminal Justice System

SB 10-193 *(Enacted)*
Restraints Used on Pregnant Inmates

HB 10-1286 *(Postponed Indefinitely)*
Corrections Transfers to Public Safety

Inmate Programs

SB 10-054 *(Enacted)*
Educational Services for Juveniles Charged as Adults

HB 10-1109 *(Enacted)*
Inmate Work Program Workers' Compensation

HB 10-1112 *(Enacted)*
Correctional Education and Vocational Program Standards

Parole

SB 10-159 *(Enacted)*
Defendant's Statement to Community Corrections Board

HB 10-1089 *(Enacted)*
No Sexually Violent Predators in Community Return-to-custody Facilities

HB 10-1360 *(Enacted)*
Parole Placement for Technical Violation

HB 10-1374 *(Enacted)*
Parole Changes Evidence-based Practices

The General Assembly considered a number of bills during the 2010 legislative session related to corrections that addressed specific topics such as correctional facilities, administration and procedures in the corrections environment, inmate programs, and parole.

Correctional Facilities

House Bill 10-1083 authorizes the state to enter into lease purchase agreements for up to 12 years in order to purchase a day surgery center to be located at the Denver Reception and Diagnostic Center. The amount of the lease purchase agreement may not exceed $2.8 million, plus reasonable and necessary administrative, monitoring, and closing costs and interest. The bill details certain terms, provisions, and conditions for the lease purchase agreement.

Current law prohibits an employee, contractor, or volunteer of a correctional facility from engaging in sexual conduct with an individual in the custody of the facility. **House Bill 10-1277** extends that prohibition to employees, contractors, or volunteers of juvenile detention or commitment centers and community corrections facilities. Sexual conduct in a correctional institution can be a class 1 misdemeanor, a class 6 felony, or a class 5 felony, depending on the circumstances of the crime.

Three other bills were considered by the General Assembly related to correctional facilities, but all were postponed indefinitely. **House Bill 10-1219** would have authorized the Department of Corrections (DOC) to sell a correctional facility with a total of 956 beds. The DOC would have been required to comply with specified requirements when executing the sale. The bill also would have removed the requirement that the DOC only place inmates classified as medium custody level and below in private prisons.

House Bill 10-1294 would have required the Colorado Attorney General to oppose the placement of detainees from the Guantanamo Bay Detention Camp in any federal or state correctional facility located in Colorado. Federal prisoners also were not to be relocated to Colorado for the purpose of trying them in federal court. Finally, the bill would have prohibited the state from providing resources or selling or leasing space in a state correctional facility to the federal Bureau of Prisons if a prisoner from Guantanamo Bay was placed in Colorado.

House Bill 10-1421, which was lost when the House adhered to its position, would have required the state to decommission one state-run correctional facility of at least 300 beds by November 1, 2010, or create comparable savings. The bill would have required the DOC to direct at least 20 percent of the savings from the decommission to community re-entry recidivism reduction programs and at least 30 percent to vocational, academic, and treatment programs for inmates and to improve staffing ratios at state-operated correctional facilities. The bill provided a process for extending the deadline or suspending the requirement if the DOC was unable to accomplish the decommission by November 1, 2010.

Corrections Administration and Procedures

Senate Bill 10-130 clarifies that the executive director of the DOC, and not the director of the Division of Adult Parole in the DOC, supervises and controls the state's correctional facilities. Additionally, the DOC, and not the Division of Parole in the former Department of Institutions, supervises and controls all honor camps, work release programs, and other adult correctional programs.

Senate Bill 10-193 prohibits the use of restraints on pregnant inmates in the DOC, private contract prisons, county and municipal jails, and Department of Human Services (DHS) facilities under certain circumstances. The use of any restraints is prohibited during labor and delivery. In addition, the use of leg shackles and waist restraints is prohibited during postpartum recovery and transport to or from a medical facility for childbirth.

Restraints may be used in the above situations if the restraints are necessary for a safe childbirth, the inmate poses serious risk of harm to herself or the medical staff, or the inmate poses a substantial risk for escape. If restraints are used, the facility is to maintain a written record of the restraints used, why they were used, and for how long. Such records must be maintained for five years and be available for public inspection, with personal identifying information redacted.

The bill also specifies that when an inmate is pregnant and during postpartum recovery and transport to or from a correctional facility, facility staff are to use the least restrictive restraints necessary. When the inmate returns to custody after giving birth, she is also entitled to have a

medical staff person present to ensure that any strip search is conducted in a manner that does not increase the risk of infection or cause pain.

Two other bills were postponed indefinitely that addressed the administration and policies of correctional facilities in Colorado. **House Bill 10-1286** would have transferred the DOC and the Division of Youth Corrections in the DHS to the Department of Public Safety.

Senate Bill 10-179 would have allowed certain persons convicted of a felony who completed terms of imprisonment, as defined by the bill, to register to vote. Specifically, it would have expanded voting eligibility for persons convicted of a felony who were:

- serving a sentence of parole;
- serving a direct sentence in a community corrections program;
- placed in a community corrections program under a deferred judgement; and
- sentenced to federal supervised release.

The bill also would have placed requirements on jail administrators, sheriffs, youth corrections facilities, parole officers, probation officers, community correction programs, and others to inform persons about voting rights and to make voting material and information available. Voting material included registration forms, mail-in ballot applications, copies of the ballot information booklet (Blue Book), and other election-related mailings.

Inmate Programs

Under the federal Prison Industry Enhancement Certification Program (PIECP), the federal Bureau of Justice Assistance certifies that local or state prison industry programs meet all the necessary requirements to be exempt from federal restrictions on prisoner-made goods in interstate commerce. As a condition of participating in the PIECP, prison industry programs are required to carry workers' compensation insurance for any inmates working in such a program.

House Bill 10-1109 clarifies that the term "employee," for workers' compensation purposes, includes an inmate of a city, county, or city and county jail who is working, performing services, or participating in a training, rehabilitation, or work release program that is certified by the PIECP. Public entities are authorized to select one or more worker's compensation insurance methods. Finally, workers' compensation benefits for an injury or occupational disease arising from an inmate's participation in a PIECP-certified program will not be suspended for the period of time during which the inmate is incarcerated.

House Bill 10-1112 adds vocational training to the Correctional Education Program offered to offenders in the DOC. It changes the objectives of the program to state that every offender in a correctional facility who has the expectation of release from custody within five years and lacks basic and functional literacy skills must receive basic education instruction and have the opportunity to acquire at least entry-level marketable vocational skills.

On or before December 31, 2010, the DOC is required to develop a plan for each educational or vocational program offered as a part of the program. The department is encouraged to use a

vocational skills assessment to determine the vocational needs of each offender who is eligible for the program, and assign him or her to a program based on such an assessment.

The program must use curriculum that is either approved by the Department of Education or the State Board for Community Colleges and Occupational Education or described as part of an agreement or contract with school districts, charter schools, private schools, community colleges, junior colleges, state colleges and universities, trade unions, private occupational schools, private businesses, the Colorado Department of Labor and Employment (DOLE), state and local governments, or appropriate private agencies. The DOLE is required to provide data on current market trends and labor needs in Colorado to the DOC on an annual basis.

When considering an offender for transfer, the department must take into account the enrollment of the offender in the program unless he or she is granted parole or placed in a community corrections facility. If the offender is transferred to another DOC facility, the department is encouraged to give the offender priority for placement in a comparable educational or vocational program, provided one exists at the new facility.

The bill creates a new annual reporting requirement for the DOC concerning educational and vocational programs and specifies the data that must be collected and reported.

Senate Bill 10-054 requires school districts to provide educational services for no more than four hours per week during the regular school year to juveniles who are charged as adults in criminal matters and are being held pending trial in county jails or other facilities that detain adult offenders. School districts may provide educational services directly or ensure they are provided through a board of cooperative services, an administrative unit, or a contract with a person or entity. The school districts are required to comply with the federal Individuals with Disabilities Education Act when the juvenile has a disability. The districts are not required to provide educational services to juveniles who have graduated from high school, received a GED, or refused such services. Juveniles who refuse services must be offered a weekly chance to accept services.

Educational services do not need to be provided in the absence of an appropriate and safe environment for the provision of such services or if the juvenile is violent toward or physically injures a school district employee or contractor. Proper notice must be given to the juvenile, his or her parent or legal guardian, the juvenile's defense attorney, and the court if no appropriate and safe environment is available.

Each school district in which a jail or other facility for the detention of adult offenders is located is required to designate a contact person, who may be the child welfare education liaison. When applicable, the designated contact person is responsible for contacting the juvenile detention facility in which the juvenile was previously held to request any educational or other necessary information. The contact person will also be responsible for ensuring that the juvenile receives educational services while he or she is detained in the jail.

The school district providing educational services may include a juvenile in its pupil enrollment if the school district provides services on or before October 1 or may seek reimbursement from another school district or charter school if the juvenile was included in the other district's or charter school's pupil enrollment for the applicable budget year. If the juvenile was not included in

the state's pupil enrollment, the school district may seek reimbursement from the Colorado Department of Education. The school district providing services will also receive an amount equal to the daily rate established for approved facility schools multiplied by the number of weekdays during the period in which the juvenile is held and receiving services. A school district that provides special education services is also authorized to seek excess costs tuition for a juvenile with an individualized education program (IEP) from the juvenile's school district of residence. The per pupil amount for juveniles who are not counted in pupil enrollment and moneys to pay the daily rate reimbursement for FY 2010-11 are appropriated from the Read-to-Achieve Cash Fund.

The official in charge of a jail or other facility where a juvenile charged as an adult is detained pending trial is required to request educational services. He or she must provide an appropriate and safe environment for the provision of such services. Such officials are also required to annually collect specified nonidentifying data and submit the information to the Division of Criminal Justice (DCJ) in the Department of Public Safety. The DCJ is required to make such information available to a member of the public upon request.

Finally, when determining the appropriate placement for a juvenile offender who is charged as an adult, the juvenile justice community in the appropriate judicial district, the district attorney, and the defense counsel are required to consider the juvenile's educational needs.

Parole

House Bill 10-1089 requires that a parolee who is designated by the court as a sexually violent predator (SVP), and has his or her parole revoked by the State Parole Board, be confined to a place of confinement designated by the executive director of the DOC. Currently, at the discretion of the parole board, some individuals on revoked parole may spend up to 180 days in a community return to custody facility (CRCF), which are contract facilities with a significant amount of freedom and flexibility regarding offenders.

House Bill 10-1360 allows certain parolees to be placed in a CRCF rather than a state correctional facility, including those who:

- commit a technical violation that does not involve the commission of a crime;
- have no active felony warrants, felony detainers, or pending felony criminal charges; and
- are on parole for a class 4 nonviolent felony (except menacing, stalking, any unlawful sexual behavior, or a crime against an at-risk adult or at-risk juvenile).

A parolee who commits a technical parole violation that does not involve the commission of a crime and was not on parole for a crime of violence may have his or her parole revoked for a period of no more than 90 days if he or she is assessed as below high risk. If he or she is assessed as high risk or greater, he or she may be revoked for a period up to 180 days.

If the parole board determines that the parolee is in need of and amenable to treatment, the board is required to consider placement in:

- a residential treatment program under contract with the Department of Public Safety for the treatment of substance abuse, mental illness, or co-occurring disorders that may include an intensive residential treatment program, therapeutic community, or mental health program; or
- an outpatient program for the treatment of substance abuse, mental illness, or co-occurring disorders.

A parolee may be placed in a residential treatment program only with the approval of the program and the corresponding community corrections board. The level of treatment ordered by the parole board must be consistent with the treatment need level of the parolee based on an assessment instrument approved for use by the Division of Behavioral Health in the Department of Human Services. If the parolee does not successfully complete treatment, the board may consider additional treatment at the same or a higher level.

The duties of a community parole officer include supervising offenders in the community and providing assistance to parolees to secure employment, housing, and other services to support their successful reintegration into the community while recognizing the need for public safety. The Division of Adult Parole in the DOC is required to provide the House and Senate Judiciary committees with a status report regarding the effect of the bill on parole outcomes and the use of any moneys allocated pursuant to the bill.

House Bill 10-1374 directs the Sex Offender Management Board (in consultation with the DOC, the Judicial Branch, the DCJ, and the State Board of Parole) to develop specific sex offender release guidelines for use by the State Board of Parole in determining when to release a sex offender on parole. The DCJ and the parole board are directed to develop an administrative release guideline for use by the board in evaluating all applications for parole. The guidelines are to include release recommendations for each risk category of offender. The DOC and the parole board are directed to develop administrative revocation guidelines for use by the board in making decisions about parole revocation. Training will be provided on the use of the administrative release and administrative revocation guidelines.

The bill also repeals the statutory provision that requires a parole officer to arrest a parolee if he or she does not have lawful permission to be in a particular place (e.g., a county other than the one to which the individual was paroled).

Up to 12 days of earned time each month may be deducted from an offender's sentence provided he or she:

- is serving a sentence for a class 4, class 5, or class 6 felony;
- has not incurred a class I code of penal discipline violation within the 24 months immediately preceding the time of crediting or during his or her entire period of incarceration if such period is less than 24 months;

- has not incurred a class II code of penal discipline violation within the 12 months immediately preceding the time of crediting or during his or her entire period of incarceration if such period is less than 12 months;
- is program compliant; and
- was not convicted of certain specified felony offenses.

The DCJ is required to develop a risk assessment scale for use by the parole board that includes criteria shown to be good predictors of the risk of recidivism. The DCJ, the DOC, and the parole board are required to develop parole board action forms that provide the rationale for decisions made by the board. The parole board is required to use the risk assessment scale and the administrative guidelines, and to consider a new set of factors when making decision about parole releases. The board is also required to use the administrative revocation guidelines and consider a new set of factors when making decisions about parole revocations.

Current law permits a victim to submit a written victim impact statement to a community corrections board that is considering an offender's referral to a community corrections facility. Victims are also allowed to make a separate oral statement to the board. **Senate Bill 10-159** addresses statements from the offender. Community corrections boards are required to allow offenders, who are under consideration for transitional placement into a community corrections facility, to submit a written statement concerning the offender's transition plan, community support, and the appropriateness of placement in a community corrections program. A board may also choose to allow an offender to designate a person to submit a written statement or give an oral statement on the offender's behalf at a hearing concerning the placement of the offender.

If an offender chooses to submit a written statement, he or she must do so within the time frame and procedures established by the DOC. The DOC will then include such a statement with the offender's referral packet to the relevant community corrections board. The DOC is not required to provide notice of a community corrections board hearing to anyone except a registered victim.

Community corrections boards are required to develop written policies and procedures that will be made available to the public concerning the parameters for written and oral statements by victims, as well as the permissibility and parameters for a written or oral statement by a person designated by an offender. Neither the community corrections boards nor the DOC is required to provide transportation or make arrangements for the appearance of an offender (or person designated by the offender to speak on his or behalf) at a community corrections hearing.