

# COURTS

<b>Criminal Justice Records</b>		
<b>HB 10-1218</b> (Enacted) <i>Protection Order Registry Information</i>	<b>HB 10-1237</b> (Postponed Indefinitely) <i>Crime Information Enforcement Database</i>	<b>HB 10-1251</b> (Postponed Indefinitely) <i>Criminal Attorney File Retention Periods</i>
<b>Criminal Sentencing</b>		
<b>HB 10-1090</b> (Enacted) <i>Jail Sentence Driving Under Restraint</i>	<b>HB 10-1184</b> (Postponed Indefinitely) <i>Felony for Multiple DUI Offenders</i>	<b>HB 10-1338</b> (Enacted) <i>Probation Eligible Two Prior Felony</i>
<b>HB 10-1347</b> (Enacted) <i>DUI Penalties</i>	<b>HB 10-1352</b> (Enacted) <i>Controlled Substance Crime Changes</i>	<b>HB 10-1373</b> (Enacted) <i>Sentencing Changes for Escape Crimes</i>
<b>Judges and Judicial Administration</b>		
<b>SB 10-043</b> (Enacted) <i>Extend Repeal Office of the Child's Representative</i>	<b>SB 10-063</b> (Enacted) <i>Alternate Defense Contract Attorney Immunity</i>	<b>HB 10-1104</b> (Enacted) <i>Veterans Treatment Court</i>
<b>HB 10-1215</b> (Enacted) <i>Use of Cash Bonds to Satisfy Court Debts</i>	<b>HB 10-1265</b> (Enacted) <i>Waive Surcharges Indigent Defendants</i>	<b>HB 10-1291</b> (Enacted) <i>Eliminate Witness Fees Court Attendance</i>
<b>HB 10-1404</b> (Enacted) <i>Independent Ethics Commission</i>		

During the 2010 legislative session, the General Assembly considered and passed a wide variety of bills related to courts. These bills covered issues ranging from the retention of criminal files, to court costs, to sentencing reform for crimes related to controlled substances.

## Criminal Justice Records

During the 2010 session, the General Assembly considered three bills related to criminal justice records. The legislature adopted **House Bill 10-1218**, which specifies that the central registry of protection orders maintained by the Colorado Bureau of Investigation must contain an indication of whether the conditions of the protection order are also conditions of a bail bond for a felony charge.

Two other bills concerning criminal justice records were postponed indefinitely. **House Bill 10-1237**, which was recommended by the Legislative Audit Committee, would have required each district attorney to establish an electronic network interface with the Colorado Integrated Criminal Justice Information System (CICJIS) and to transmit certain criminal information in accordance with the rules of the CICJIS. The bill also would have created the Interagency Task Force on Problem Driver Information Sharing.

**House Bill 10-1251**, which concerned file retention by attorneys of record in felony criminal cases, would have specified the following required time periods for an attorney to retain files in a criminal case:

- the life of the defendant for class 1 felonies;
- the life of the defendant for a felony sex offense; and
- five years for all other felonies.

## **Criminal Sentencing**

The General Assembly discussed a variety of bills on the topic of criminal sentencing. Several of the bills were recommended by the Colorado Commission on Criminal and Juvenile Justice (CCJJ). One such bill, **House Bill 10-1338**, concerns whether a person who has two or more felony convictions is eligible for probation. Under current law, a defendant is prohibited from applying to the court for probation if he or she has two or more prior felony convictions. However, the sentencing court is permitted to waive the prohibition and to grant probation on a case-by-case basis upon the recommendation of the district attorney. Under House Bill 10-1338, that provision remains the same. In addition, individuals with two or more felony convictions that occur after the effective date of the bill will be allowed to apply for probation, with certain exceptions. A defendant may not apply for probation if the current or a prior conviction is for one of the following offenses:

- first or second degree murder;
- manslaughter;
- first or second degree assault;
- first or second degree kidnapping;
- a sex offense;
- first degree arson;
- first or second degree burglary;
- robbery or aggravated robbery;
- theft from the person of another;
- any felony offense committed against a child; or
- criminal attempt or conspiracy to commit any of the offenses listed above.

The CCJJ also recommended **House Bill 10-1352**, which adjusts the penalties for several offenses related to controlled substances and also provides new sentencing guidelines for offenders convicted of such offenses. In particular, the bill:

- adds the sale of a controlled substance to a minor (under the age of 18) to the definition of unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance. Sale of a controlled substance to a minor is a class 3 felony and carries a mandatory prison sentence;
- requires the court, in any case in which an individual who is 18 or older is convicted of transferring or dispensing any amount of marijuana to a person under the age of 15, to sentence the defendant to a mandatory period of incarceration;

- increases the amount of a schedule I or II controlled substance necessary for a defendant, who is convicted of unlawfully introducing, distributing, or importing such a substance into Colorado, to be designated as a special offender for sentencing purposes; and
- clarifies the conditions under which possession of a firearm in the commission of a drug offense designates a defendant as a special offender.

By law, any individual who is convicted or who receives a deferred sentence for a drug-related crime is required to pay a surcharge. The amount of the surcharge paid by each offender is based on the class of the offense. This bill raises the surcharge for class 4, 5, and 6 felonies, class 1, 2, and 3 misdemeanors, and class 2 petty offenses related to the possession of marijuana.

**House Bill 10-1373**, which was also recommended by the CCJJ, concerns changes to sentencing provisions for escape crimes. Under current law, if an offender knowingly escapes, attempts to escape, or aids the escape of another while in custody or confinement following a felony conviction, the court is required to impose a sentence for the escape crime that runs consecutively with any other sentences being served by the offender. This bill addresses individuals who escape, attempt to escape, or aid the escape of another while serving a direct sentence to community corrections or after being placed in an intensive supervision parole program. The bill stipulates that the mandatory sentence for the escape crime may run either consecutively or concurrently with any other sentence being served by the offender, at the discretion of the court.

The General Assembly considered two bills related to traffic offenses involving alcohol or drugs. **House Bill 10-1347**, which was recommended by the CCJJ, was ultimately adopted. The bill concerns misdemeanor penalties for individuals who are convicted of multiple traffic offenses involving alcohol or drugs. Current law provides one set of penalties for a first offense of driving under the influence (DUI), DUI per se, driving while ability impaired (DWAI), and driving as a habitual user of a controlled substance. A second, more restrictive set of penalties exists for any subsequent convictions of those offenses. House Bill 10-1347 adjusts the penalties for a second offense and creates a new set of penalties for a third or subsequent offense. The bill also restricts an individual's participation in certain county jail sentencing alternatives (i.e. work, educational, and medical release), except under certain circumstances. In addition, repeat offenders are not eligible for earned time, good time, or trusty prisoner status while serving their mandatory jail sentences, and must complete a period of probation of at least two years. The bill provides guidelines for the conditions of probation and raises the minimum persistent drunk driver surcharge from \$50 to \$100.

A separate bill related to sentencing for DUI offenses was postponed indefinitely by the House Judiciary Committee. **House Bill 10-1184** would have created a class 6 felony offense for individuals convicted of a third or subsequent DUI or DUI per se. It would have required the court to order the offender to complete an alcohol treatment program at his or her own expense and to attend at least one meeting of an advocacy group for victims and family members of victims of drunk drivers.

Finally, the General Assembly adopted **House Bill 10-1090**, which concerns the punishment for a person convicted of driving while under restraint. A person's license is considered under restraint if the license was denied, revoked, or suspended in either Colorado or in another state. Currently, a person convicted of driving while under restraint is subject to a mandatory five-day jail

sentence. This bill removes the mandatory sentence requirement, but still allows a judge to sentence an offender to jail time. It does not change sentencing requirements for persons whose license restraint is due to an alcohol-related offense, such as driving under the influence (DUI).

## **Judges and Judicial Administration**

During the 2010 session, the General Assembly adopted three bills related to court costs. **House Bill 10-1215** concerns the use of cash bond deposits after the discharge of the bond. Under current law, when a defendant's case is complete, the court clerk is required to return any bond that has been paid to secure the defendant's release. This bill allows the court to use the bond to pay for any court costs that the defendant may owe, including fines, fees, and restitution. If the person who paid the bond is not the defendant, the court may still use the bond to pay for any court costs owed by the defendant provided that the person who paid the bond agrees in writing to its use. **House Bill 10-1265** clarifies that if a defendant is indigent, the court is authorized to waive any costs or surcharges related to costs for victims and witness services that are levied on criminal actions and traffic offenses. The bill is a clarification of current practice. Finally, **House Bill 10-1291** eliminates the daily fee that witnesses receive for attending court. The current fees range from \$0.50 to \$2.50, depending upon the type of court.

The General Assembly passed three bills concerning offices within the administration of the Judicial Department. **House Bill 10-1404** moves the Independent Ethics Commission from the Office of Administrative Courts in the Department of Personnel and Administration to the Judicial Department. Among other things, the bill also changes the response time for advisory opinions requested of the IEC from within 20 business days to as soon as practicable. **Senate Bill 10-043** eliminates the repeal date of the Office of the Child's Representative Act. The current repeal date is July 1, 2010. Finally, **Senate Bill 10-063** concerns attorneys who contract with the Office of Alternate Defense Counsel (OADC). In cases where a person files a claim for damages arising from professional negligence as a result of an act or omission committed by an attorney during the performance of the attorney's duties pursuant to a contract with the OADC, the bill:

- requires the person to file a certificate of review with the court;
- provides that the attorney will not be required to file an answer to the complaint until 20 days after the person files the accompanying certificate of review; and
- requires the Office of the Attorney General to represent the attorney unless the OADC determines that the act or omission that gave rise to the claim against the attorney was not performed during the course of his or her contractual duties.

The bill makes some procedural clarifications about notice to a contract attorney's malpractice carrier.

Lastly, the legislature considered and passed **House Bill 10-1104**, which allows a judicial district to establish a veterans treatment court. A veterans treatment court is to hear cases where the defendant is a veteran who also has mental health or substance abuse problems. The Office of the State Court Administrator is authorized to seek federal funding for the establishment, maintenance, or expansion of veterans treatment courts.