

COURTS

Bail and Bail Bonding Agents

SB 11-186 (Deemed Lost)
Alternative Bond Program

HB 11-1088 (Postponed Indefinitely)
Bond for Persons Illegally Present

HB 11-1135 (Postponed Indefinitely)
Reform Regulation of Bail Bonding
Agents

Court Records

HB 11-1018 (Enacted)
Electronically Transmitted Court
Docs

HB 11-1051 (Enacted)
DNA Expungement Clarification

HB 11-1167 (Enacted)
Sealing Drug Conviction Records

HB 11-1203 (Enacted)
Private Custodian Seal Criminal
Records

HB 11-1282 (Postponed Indefinitely)
Judicial Public Access System

Criminal Sentencing

SB 11-013 (Postponed Indefinitely)
Alternative Dispute Resolution
Restorative Mediation

SB 11-044 (Postponed Indefinitely)
Colorado Collateral Consequences
Conviction Act

SB 11-085 (Enacted)
Prostitution Offender Program Courts

SB 11-096 (Enacted)
Habitual Offender Drug Convictions

SB 11-254 (Enacted)
Community Corrections Release
Options

HB 11-1029 (Postponed Indefinitely)
Special Offender Drug Sales
Libraries

HB 11-1032 (Enacted)
Restorative Justice

HB 11-1180 (Enacted)
Criminal Sentencing to Reduce
Recidivism

HB 11-1189 (Enacted)
Bail Bond Conditions for 3rd DUI

HB 11-1200 (Enacted)
Substance Abuse Assessment at
Intake

HB 11-1268 (Enacted)
DUI Penalties Revisions

Foster Care and Child Support Proceedings

SB 11-120 (Enacted)
Protections for Youth in Foster Care

SB 11-123 (Enacted)
Technical Changes Child Support
Process

HB 11-1079 (Enacted)
Reduce Youth Homelessness

Judges and Judicial Administration

SB 11-007 (Enacted)
Place of Trial Failure to Register

SB 11-009 (Postponed Indefinitely)
Costs of Animal Impoundment

SB 11-028 (Enacted)
Add Judge Seventh Judicial District

SB 11-232 (Enacted)
Add to Crimes Against Children
Surcharge

HB 11-1076 (Enacted)
Time Payment Fees Judicial Matters

HB 11-1153 (Enacted)
Juror Service Courts

HB 11-1267 (Enacted)
Expand Cases Protection Orders

HB 11-1276 (Deemed Lost)
Judicial Criteria Redistricting
Congressional

HB 11-1278 (Enacted)
Sex Offender Registration Changes

HB 11-1302 (Postponed Indefinitely)
Business Training for Judges

The General Assembly considered a variety of court-related legislation during the 2011 legislative session. Major topics addressed included bail, court records, alternative sentencing, sentencing procedures for drug and alcohol offenders, and matters concerning youth in the foster care and child support systems.

Bail and Bail Bonding Agents

The legislature considered but ultimately postponed indefinitely three bills concerning the administration of bail and the regulation of bail bonding agents. **Senate Bill 11-186** would have permitted chief judges in those judicial districts with pretrial services programs to create and administer alternative bond programs. In those districts, an alternative bond program would have joined unsecured and secured bonds as options available to judges when authorizing the pretrial release of a defendant. **House Bill 11-1088** would have eliminated the exemption in current law that permits a bail bonding agent to recover a bond if the defendant released on that bond is illegally present in the country and is subsequently removed. **House Bill 11-1135** would have transferred the regulation of bail bonding agents within the Department of Regulatory Agencies from the Division of Insurance to a newly created State Bail Bonding Agent Board within the Division of Registrations. In addition, the bill would have increased education requirements for initial licensure and license renewals and would have changed the fees charged and paid by bail bonding agents.

Court Records

Sealing or expunging criminal records. During the 2011 session, the General Assembly enacted two bills that expand the group of offenders who are able to seal or expunge certain criminal records. A third bill expands the group of custodians required to seal criminal records. **House Bill 11-1051** clarifies that DNA records are expunged if a person is convicted of any non-felony offense. Previously, state law provided that DNA records would be expunged only if a person was convicted of an offense that was not a felony under the Criminal Code (Title 18) of the Colorado Revised Statutes.

House Bill 11-1167 amends the process for sealing the record of a conviction under Colorado's Uniform Controlled Substances Act by reducing a waiting period for certain classes of convictions and by authorizing the process for additional classes of convictions. Under current law, a defendant may petition the court to seal certain conviction records 10 or more years after the completion of the sentence in a case, provided that the defendant has not been charged for any criminal offense in the intervening 10 years. Records of convictions for most controlled substance-related misdemeanor offenses, petty offenses, offenses against municipal ordinances, and class 5 and class 6 felonies may be sealed. However, records of convictions of specific misdemeanor offenses, such as sexual offenses and child abuse, may not be sealed. House Bill 11-1167 varies the waiting period and certain procedures for conviction records entered on or after July 1, 2011, depending on the severity of the offense. For example, the waiting period to file a petition to seal the record of a conviction of a petty drug offense is 3 years, whereas the waiting period to file a petition to seal the record of a conviction of class 5 and 6 felony drug offense is 7 years. The waiting period for defendants convicted of other drug felonies and offenses is 10 years.

Finally, **House Bill 11-1203** includes specified private entities in the group of custodians that are required to seal criminal records upon the receipt of a court order. Under the bill, any private entity that has custody of criminal justice records and is in the business of providing that information to others, such as a company that conducts background checks for employee screening, is required to remove records from its database upon receiving a court order indicating that the records have been sealed.

Administration of court records. The General Assembly considered two bills concerning the administration of court records. The legislature adopted **House Bill 11-1018**, which specifies that electronic seals are acceptable on electronic records and documents. It also requires affidavits that are received by electronic transfer, and that include an electronic signature, to be marked as original. The legislature postponed indefinitely **House Bill 11-1282**, which would have established a governance structure for the Judicial Department's public access system. Currently, the State Court Administrator's Office organizes a public access committee composed of Judicial Department staff. The committee meets internally and with vendors to determine appropriate rates to charge for vendors to search judicial records. Under House Bill 11-1282, the public access system would have been required to make court records electronically available to private vendors and governmental agencies for subsequent electronic access by the public.

Criminal Sentencing

Alternative sentencing. The legislature considered several bills addressing alternatives to jail or prison sentences. **Senate Bill 11-085** requires courts to impose a fine of between \$5,000 and \$10,000 on any individual convicted of pandering, and a fine of no more than \$5,000 on any individual convicted of soliciting for prostitution or patronizing a prostitute, in addition to any other penalty. The bill also creates the Prostitution Enforcement Resources Grant Program, which will provide grants to fund efforts to combat prostitution-related offenses. Under the bill, municipal and county courts are authorized to create and administer diversion programs for specific individuals charged with prostitution-related offenses.

The General Assembly considered two bills related to restorative justice. Restorative justice practices focus on repairing the harm caused to victims and to the community by offenses. **House Bill 11-1032** authorizes the establishment of pilot programs to allow courts to sentence suitable juvenile and adult criminal defendants to participation in restorative justice victim-offender conferences as an alternative sentencing option or as a condition of probation. According to the bill, the conferences are intended to encourage offenders to accept responsibility and accountability for their crimes and to provide restoration and healing for victims and for the community. The conferences are also an attempt to reduce recidivism. **Senate Bill 11-013**, which was postponed indefinitely, would have defined restorative mediation and listed it as an option for court referrals to mediation services.

Drug offenders. The General Assembly relaxed sentencing requirements for individuals convicted of certain controlled substance-related offenses, while it added additional requirements for offenders who have been repeatedly convicted of an alcohol or drug driving offense. Some of these requirements are addressed in the "presentence evaluations" section below. **Senate Bill 11-096** removes the option of sentencing an individual convicted of the class 6 felony of unlawful possession of a controlled substance as a habitual offender. Under Colorado's current habitual offender law, the court is required to sentence an individual with three prior felony

convictions to incarceration for a period that is four times the maximum sentence for the current felony conviction. **House Bill 11-1189** requires that a court set specific bond conditions when an individual is arrested for an alcohol or drug driving offense (*e.g.* DUI or DWAI) and has one or more prior convictions for an alcohol or drug driving offense. The bail bond conditions include a requirement that the defendant abstain from the use of alcohol or the illegal use of drugs and specify that the defendant's abstinence must be monitored.

House Bill 11-1029, which was postponed indefinitely, would have added community corrections programs and public libraries to the list of locations that require the court to designate as a special offender any individual convicted of selling, distributing, possessing with the intent to distribute, manufacturing, or attempting to manufacture any controlled substance in certain locations.

Presentence evaluations. The General Assembly passed three bills related to presentence evaluations. Two bills concern the administration of drug and alcohol evaluations, while a third bill addresses recidivism risks. Current law requires all adults convicted of a felony, misdemeanor, or petty offense to submit to an assessment for the use of controlled substances or alcohol as part of the presentence investigation. This requirement only applies to offenders under consideration for a sentence that includes supervision by the Division of Probation Services. The court is granted the authority to waive the presentence investigation. **House Bill 11-1200** expands the assessment requirement to include cases in which an individual is sentenced to be supervised by probation services and the presentence investigation had previously been waived. In this instance, the assessment would then happen as part of the offender's probation intake. **House Bill 11-1268** clarifies that upon conviction of a traffic offense involving drugs or alcohol where the offender has one or more prior convictions, the court may proceed directly to sentencing without first considering the statutorily required alcohol and drug evaluation. The court may only waive the evaluation with permission from the prosecuting attorney and from the defendant. In addition, for first-time convictions for DUI, DUI per se, DWAI, or habitual user, the court may suspend the mandatory minimum period of imprisonment if the offender undergoes a presentence or postsentence alcohol and drug evaluation. Such offenders must also meet all financial obligations of any alcohol and drug driving safety program determined to be appropriate.

House Bill 11-1180 expands the existing statutory requirements for presentence investigation reports that are completed by probation departments. Under the bill, the reports must include an assessment of the offender's criminological risks and needs, an analysis of which sentencing option is most likely to reduce recidivism by the offender, data concerning whether the offender is suitable for probation or other sentencing options that do not include incarceration, and a description of the rates of recidivism and projected costs of each sentencing option available to the court.

Sentencing procedures. The General Assembly considered two bills concerning sentencing procedures. **Senate Bill 11-254** requires that an individual sentenced directly to a community corrections program be eligible for a deduction of up to 10 days per month from his or her sentence. Current law allows such deductions, but does not require eligibility. The bill also sets criteria for when an individual sentenced to a community corrections program may be considered for early termination of his or her sentence. The legislature postponed indefinitely **Senate Bill 11-044**, which would have required the court, at a criminal defendant's first appearance and at sentencing, to inform the defendant in writing about the possible collateral consequences of a criminal conviction.

Foster Care and Child Support Proceedings

The General Assembly passed two bills that increase court protections for children involved in foster care and child support proceedings, and one bill that made technical changes to the child support process. Among other protections, **Senate Bill 11-120** requires the court to ensure that each youth in foster care between the ages of 16 and 18 years old obtains a free credit report. The bill also requires the Department of Human Services to establish references for youth who may be victims of identity theft, and to develop rules ensuring that youth have access to extracurricular activities. **House Bill 11-1079** makes several amendments to make state statute compliant with the federal Runaway and Homeless Youth Act. Among other provisions, the bill expands the age range in the definition of "homeless youth" to include any youth or child between the ages of 11 and 21 years of age from the current range of between 15 and 18 years of age. In addition, the bill increases the number of days that a runaway and homeless youth can stay in a licensed child care facility or homeless shelter to 21 days from the current limit of 14 days. The bill also requires the court to assess each youth in an out-of-home placement who is between the ages of 17 and 18 years old to determine whether the youth is ready for independent living upon aging out of the child welfare system at age 18 or if the youth should remain in the custody of the county until age 21.

Senate Bill 11-123 makes technical changes to child support procedures. It clarifies that a court and county child support enforcement unit cannot order genetic testing for a father whose paternity has been established in another state. It also requires that the social security numbers of parents and children be provided to the court when certain types of petitions are filed, such as divorce or allocation of parenting responsibilities.

Judges and Judicial Administration

Court fees and costs. During the 2011 legislative session, the General Assembly considered three bills concerning court fees and costs. Under current law, the Judicial Branch imposes and collects a time payment fee, credited to the Judicial Collection Enhancement Fund, when fees, costs, and fines assessed in the judicial process are not paid in full on the date of assessment. **House Bill 11-1076** clarifies the applicability of the time payment fees to all criminal cases, including traffic infractions, petty offenses, and cases involving the payment of restitution. **Senate Bill 11-232** adds the offenses of sexual assault on a client by a psychotherapist, invasion of privacy for sexual gratification, and coercion of involuntary servitude to the list of crimes against children for which a convicted person must pay a child abuse investigation surcharge.

Current law requires the owner of an animal impounded because of alleged neglect or abuse or other illegal acts involving the animal to post a bond with the court to cover the costs associated with the animal's impoundment. The owner may request a hearing to determine whether the amount of the bond is fair and reasonable. **Senate Bill 11-009**, which was postponed indefinitely, would have expanded the grounds for which an owner could request a hearing.

Judicial discretion. Two bills considered by the General Assembly addressed judicial discretion in specific types of cases. **House Bill 11-1267** expands to most crimes subject to the Victims' Rights Act the court's discretion to add restrictions to mandatory protection orders issued to defendants at the time of arraignment or first court appearance. Currently, this court discretion is only available in domestic violence cases. The expansion does not pertain to careless driving that results in death or to failure to stop at the scene of an accident when the accident results in death.

The restrictions that the court may add are:

- to stay away from the victim's or a witness' home and other locations where the victim or witness may be found;
- to not have contact or direct or indirect communication with the victim or witness;
- to not possess or control firearms or other weapons;
- to not possess or consume alcohol or controlled substances; and
- other orders deemed appropriate to protect the victim's or witness' safety.

House Bill 11-1276, which was deemed lost, would have repealed House Bill 10-1408, which changed the statutory direction to the courts that must be used when determining the lawfulness of congressional districts or when adopting or enforcing changes to congressional districts. Specifically, the bill would have put back the prioritization list of criteria that may be used and would have restricted the use of "non-neutral" factors such as political party registration and electoral outcomes when evaluating congressional districts.

Matters pertaining to judges and juries. The General Assembly considered three bills addressing matters pertaining to judges and juries. **Senate Bill 11-028** reduces the number of judges allocated to the First Judicial District (Gilpin and Jefferson Counties) from 15 to 14, while increasing the number of judges allocated to the Seventh Judicial District (Delta, Gunnison, Hinsdale, Montrose, Ouray, and San Miguel Counties) from 4 to 5. **House Bill 11-1153** modifies current law regarding processes and procedures for juror service. For example, the bill defines juror service and requires the state to process payments for trial juror service by check or electronic funds transfer within ten days after juror service. **House Bill 11-1302**, which was postponed indefinitely, would have required the Secretary of State to create a training program for judges on effectively maintaining business litigation.

Venue of trial for failure to register as a sex offender. Current law provides the option to try an offender charged with the crime of failure to register as a sex offender in the county in which he or she was released from incarceration for the offense requiring registration. **Senate Bill 11-007** eliminates that option, requiring that the offender be tried in the county in which he or she resides, completed his or her last registration, or was apprehended. However, a provision of **House Bill 11-1278** that is set to go into effect after Senate Bill 11-007 takes effect reinstates the option of trying an offender in the county in which he or she was released from incarceration for the offense requiring registration. The other three possible trial venues proposed by Senate Bill 11-007 are reiterated in House Bill 11-1278.