COURTS

Bail and Bail Bonding Agents

HB 12-1266 (Enacted)
Sunset Continue Bail Bond Agent
HB 12-1316 (Postponed Indefinitely)
Bond Conditions When Immigration

Regulation Detainer Lodged

Court Procedures and Administration

SB 12-175 (Enacted)

Court Time Periods by Seven-day

SJR 12-040 (Adopted)

Colorado Bar Association and

HB 12-1053 (Enacted)

Victims' Rights Changes

Periods Veteran Trauma Court

HB 12-1073 (Enacted) HB 12-1085 (Enacted) HB 12-1323 (Enacted)

Number of Judges in Judicial Hearsay Exception for Montrose Associate County Judge

Districts Developmentally Disabled

Court Records

SB 12-044 (Enacted) HB 12-1036 (Enacted) HB 12-1151 (Enacted)

Failure to Provide Valid Transit Pass Open Records Act Clarification Human Trafficking and Prostitution

or Coupon

HB 12-1231 (Enacted) HB 12-1263 (Enacted)

Access to Drivers' Information Reduce Barriers to Employment

Private Investigators Criminal Records

Criminal Sentencing

SB 12-028 (Deemed Lost*)

SB 12-105 (Postponed Indefinitely)

SB 12-117 (Deemed Lost)

Aggravated Juvenile Offenders Collateral Consequences Penalties for Driving Under the Influence Offenses

SB 12-163 (Deemed Lost*) HB 12-1084 (Enacted) HB 12-1213 (Enacted)

Reduce Penalty Certain Drug Penalty for Leaving the Scene of Escape from Community Corrections

Possession Offenses Traffic Accident Program

HB 12-1271 (Enacted) HB 12-1310 (Enacted)

Juvenile Direct File Limitations Criminal Proceedings Omnibus

Changes

Guardianship and Protection of At-risk Individuals

 SB 12-056 (Enacted)
 SB 12-066 (Enacted)
 SB 12-078 (Enacted)

Court Appointments Domestic Guardianship Program Eligibility Protections for At-risk Adults

Relations Cases

HB 12-1074 (Enacted) HB 12-1226 (Enacted)

Judicial Oversight of Guardians and Surcharge on Crimes Against At-risk

Conservators Persons

*Four bills that were deemed lost at the end of the 2012 session were subsequently amended in their entirety into House Bill 12-1310. They are Senate Bill 12-028, Senate Bill 12-104, Senate Bill 12-116, and Senate Bill 12-163.

The General Assembly considered a variety of court-related legislation during the 2012 legislative session. Major topics addressed included bail, court administration, procedures, and records, criminal sentencing, and matters concerning court-appointed guardians and the protection of at-risk individuals.

Criminal omnibus. In most legislative sessions, the General Assembly passes a criminal omnibus bill that makes minor but substantive changes to several areas of Colorado statute related to criminal law. **House Bill 12-1310** addresses a variety of issues, both criminal and civil, including:

- commercial package labels;
- garnishment and restitution;
- pretrial services programs;
- bail after conviction;
- grand jury witnesses;
- alternate jurors in criminal trials;
- presentence evaluations;
- deferred sentencing and probation;
- indeterminate sentencing of sex offenders;
- obstruction of a peace officer or an emergency worker;

- underage drinking;
- surcharges on drug and sex offenders;
- sentencing of aggravated juvenile offenders;
- personal needs benefits;
- sentencing for offenses related to driving under the influence of alcohol or drugs;
- qualifications of parole release hearing officers;
- drug possession offense sentencing;
- bath salts as controlled substances; and
- drug offender treatment funding.

Bail and Bail Bonding Agents

The General Assembly considered two bills related to bail and bail bonding agents. The first, **House Bill 12-1266**, strikes all references to bail bonding agents in Title 12 of the Colorado Revised Statutes, and reestablishes regulatory oversight of the profession in the Division of Insurance via a new article in Title 10. The bill:

- continues the licensing of surety bail bond agents as insurance producers who will now be licensed as property and casualty insurance producers (there are currently 434 surety bail bond agents in Colorado);
- requires the division to create a credentialing system for surety bail bond agents;
- requires cash-bonding agents and professional cash-bail agents to *register* instead of being *licensed*;
- continues the prohibition against the registration or licensure of firms, partnerships, associations, or corporations;
- prohibits cash agents from representing their products as insurance;
- requires insurance producers and cash-bail and cash-bonding agents who write bail bonds to submit an annual report;
- places requirements on transactional documents; and
- repeals the licensure of cash agents on September 1, 2017.

House Bill 12-1316, which was postponed indefinitely, would have modified bond recovery conditions for a defendant charged with a felony, class 1 misdemeanor, or a class 2 misdemeanor who had an active detainer from U.S. Immigration and Customs Enforcement.

Court Procedures and Administration

A number of bills were considered in 2012 related to court procedures and administration. The bills covered a wide range of topics such as filing deadlines for court actions, judges, rules of procedure, specialty courts, and victims' rights.

Filing deadlines. Under current law, time intervals between the initiation of a legal procedure and subsequent events, such as the deadline for filing responsive pleadings, are frequently set as a multiple of ten days, or may be set as a number of months, a multiple of five days, or some other number of days specific to the procedure. Exceptions for weekends and holidays do not apply uniformly. Therefore, filing deadlines and other crucial dates are commonly calculated to fall on weekends. Senate Bill 12-175 modifies current law to establish time intervals based on a "rule of seven" for various statutory legal processes. Seven-day intervals are used to compute filing deadlines and other significant dates following an initial act. The bill affects statutes relating to Colorado civil actions, criminal procedure, juvenile cases, appellate cases, municipal courts, probate, water court, adoption petitions, and other miscellaneous statutory time intervals.

Judges. Two bills concerning judges were enacted in 2012. **House Bill 12-1073** modifies the number of judges allocated to the First and Sixth Judicial Districts. The number of judges allocated to the First Judicial District, which includes Gilpin and Jefferson Counties, is reduced from 14 to 13. The number allocated to the Sixth Judicial District, which includes Archuleta, La Plata, and San Juan Counties, is increased from three to four.

Under current law, the associate judge for Montrose County must reside within the boundaries of the Southwestern Water Conservation District. **House Bill 12-1323** alters the residency requirement to allow the associate judge to maintain his or her official residence anywhere in Montrose County. The associate judge must maintain court chambers within the boundaries of the Southwestern Water Conservation District, which includes the cities of Naturita and Nucla.

Rules of procedure. House Bill 12-1085 creates an exception to the hearsay rule, which is an existing rule of evidence rendering out-of-court statements inadmissible in a trial, hearing, or other court proceeding. Such a statement made by an individual who is developmentally disabled, in any criminal or delinquency proceeding in which the declarant is alleged to have been a victim, is admissible in such a proceeding.

Further, a statement is admissible in any criminal, delinquency, or civil proceeding when it describes:

- an unlawful sexual offense performed with, by, on, or in the presence of the declarant;
- child abuse the declarant witnessed or to which he or she was subjected;
- a homicide; or
- an act of domestic violence.

The statement may only be admitted into evidence after the court holds a hearing outside the presence of the jury to rule on the reliability of the statement and either the declarant testifies at the hearing (if the declarant is unavailable, the defendant must have had an opportunity to cross-examine the declarant in a previous proceeding and corroborative evidence must exist concerning the act that is the subject of the statement) or the statement is a nontestimonial statement. If the statement is admitted, the court is required to instruct the jury as to how to consider such hearsay evidence.

Specialty courts. Specialty courts or problem-solving courts target a specific population and use a collaborative, multi-disciplinary approach to addressing the needs of that population. Some specialty courts in Colorado include drug courts, mental health courts, truancy courts, and veteran courts. **Senate Joint Resolution 12-040** expresses the ongoing support of the General Assembly and the Colorado Bar Association for the work accomplished by the existing Veteran Trauma Court in El Paso County.

Victims' rights. The Colorado Constitution and state law specify the rights and notifications that are due to victims of certain crimes. **House Bill 12-1053** makes the following changes to state law concerning victims' rights:

- adds trafficking in adults, trafficking in children, first degree burglary, retaliation against a judge, and retaliation against a juror to the list of 44 crimes currently covered by the Colorado Victims' Rights Act (VRA);
- expands the definition of "victim" to include a grandchild;
- requires agencies responsible for criminal justice records to use reasonable efforts to redact the social security numbers of victims and witnesses;
- adds electronic communication as a method of notifying a victim;
- clarifies which public records a victim has the right to be informed about; and
- clarifies when a victim must be notified of sentence modification matters, including probation modifications or the modification of a protection order.

In addition, the bill specifies that a victim has the right to:

- have his or her social security number redacted;
- be notified of how to request protection of his or her address;
- be informed about protection services;
- be informed of the existence of a criminal protection order and receive information about the modification of such orders;
- know when the defendant is permanently transferred from county jail;
- know if a subpoena is requested for his or her records and to be heard before the ruling is made on the subpoena;
- be informed when the offender is transferred to a nonresidential setting;
- request that the court, within its resources, arrange and provide for the victim and the victim's designee to provide input beyond a victim impact statement in the event that the victim or his or her designee is unable to attend a critical stage of the criminal justice process;
- be notified of a decision to conduct and the results of postconviction DNA testing for the purposes of establishing the innocence of the offender; and
- request, upon turning 18 years of age, to be the point of contact for victim notification.

A victim of a crime that was committed prior to 1993 whose offender is arrested for the crime or is still serving a sentence for the crime may request notification at future critical stages. In addition, the bill removes the victim's option of providing an oral victim impact statement when the offender is referred to community corrections; under the bill, the victim may continue to provide a written victim impact statement. In situations in which an offender is being considered for a direct sentence to community corrections, the victim has a right to make an oral statement to the community corrections board.

Finally, under the current Crime Victim Compensation Act, an application for an award of victim compensation must be filed with a crime victim compensation board within one year of the date of injury to the victim, although the deadline may be extended for good cause. This bill specifies that if a crime has remained unsolved for more than one year, this fact qualifies as "good cause" for a deadline extension.

Court Records

The General Assembly enacted five bills concerning records created or maintained by the courts. Under current law, the crime of theft of transit for failure to pay the applicable fare or to present a valid pass or coupon is a class 2 petty offense punishable by a fine of up to \$100. The legislature passed **Senate Bill 12-044**, which changes the offense to a class B traffic infraction punishable by a fine of \$75. A person with an outstanding judgment for the new infraction is prohibited from obtaining or renewing a driver's license. The bill also creates a process for sealing existing criminal convictions for theft of transit by fare evasion.

House Bill 12-1036 clarifies the circumstances under which requests made pursuant to the Colorado Open Records Act (CORA) may be denied for records that are associated with investigative files. The bill provides additional circumstances under which a custodian of records may withhold certain investigative files, or related information, on the grounds that disclosure would be contrary to the public interest.

Under current law, individuals who have been adjudicated for an offense involving unlawful sexual behavior are ineligible to petition for expungement of a juvenile record or sealing of an adult criminal record. **House Bill 12-1151**, in addition to other provisions, creates an exception for an individual who demonstrates that, at the time the offense was committed, he or she had been sold, exchanged, bartered, or leased by another person for the purpose of performing the offense or was coerced by another person to perform the offense. All of the current rules pertaining to the expungement or sealing of records apply.

Current law allows individuals who are not licensed by the state to inspect driver's license and motor vehicle registration information, but only for specific purposes. **House Bill 12-1231** streamlines access to driver's license and motor vehicle registration information for licensed private investigators, licensed private investigative agencies, and licensed security services.

House Bill 12-1263 prohibits state agencies that solicit job applications to advertise or state on the application that a person with a criminal background may not apply, unless a specific crime statutorily prevents the applicant from having that job. In addition, the bill prevents agencies from

performing background checks until a conditional offer has been made, and defines areas where discretion may be used when considering an applicant's criminal history. Finally, the bill specifies similar considerations for applicants under review by the Division of Registrations in the Department of Regulatory Agencies

Criminal Sentencing

Eight bills were considered in 2012 concerning criminal penalties and sentencing. Two of those bills (Senate Bill 12-028 and Senate Bill 12-163) were deemed lost in the House. They were both subsequently amended in their entirety into a third bill, House Bill 12-1310, which is a criminal omnibus bill. Senate Bill 12-028 establishes a ten-year mandatory period of parole for juvenile offenders who are adjudicated as a delinquent and sentenced for murder in the first degree. It allows a court to sentence a juvenile adjudicated as a delinquent for murder in the first degree or murder in the second degree either consecutively or concurrently for any crime of violence or aggravated juvenile offender petition arising from the same incident.

Currently, when an aggravated juvenile offender in the custody of the Department of Human Services reaches the age of 20 years and 6 months, the court is required to hold a hearing to determine the continuing jurisdiction of the juvenile. This bill requires a mental health evaluation of the juvenile by a state-employed appropriate mental health professional at the Colorado Mental Health Institute at Pueblo (CMHIP). The court is required to consider a number of specified factors, at a minimum, when determining whether to transfer custody of a juvenile to the Department of Corrections. Transfer of custody may include placement in a correctional facility, the Youthful Offender System (YOS), a community corrections facility, or the adult parole system.

Senate Bill 12-163 creates a new priority for the work of the Colorado Commission on Criminal and Juvenile Justice (CCJJ). The CCJJ is required to consider, using empirical analysis and evidence-based data and research, the development of a comprehensive drug sentencing scheme for all drug crimes. The bill outlines a number of factors to consider when developing the sentencing scheme. The CCJJ is required to report to the House and Senate Judiciary Committees by December 15, 2012, detailing the commission's recommendations, or if there are no recommendations, the reasons and areas of disagreement behind the lack of recommendations.

Collateral consequences. Collateral consequences of a criminal conviction may include a penalty, prohibition, bar, or disadvantage imposed on an individual as a result of the criminal conviction. Such a consequence may be imposed by an administrative agency, governmental official, or court in a civil proceeding. Collateral consequences do not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, costs of prosecution, or a restraint or sanction on an individual's driving privileges. Senate Bill 12-105, which was postponed indefinitely, would have established a system for relieving individuals of collateral consequences. Additionally, it would have permitted the sealing of conviction records related to municipal and petty offenses.

Escape crimes. Under current law, persons who are convicted of a certain number of felonies over a designated time period are judged as habitual criminals and face enhanced sentencing penalties. **House Bill 12-1213** exempts charges of felony escape or attempt to escape from a place

other than a county jail or a correctional facility from the criteria used to designate a person as a habitual criminal. Examples of places other than a county jail or a correctional facility include community corrections and the Division of Youth Corrections.

Juvenile offenders. Under current law, juveniles who are at least 14 years old and who are charged with certain serious crimes may be prosecuted in adult court, a process known as direct filing. **House Bill 12-1271** raises the minimum age for direct filing to 16. Additionally, it limits the offenses for which a juvenile can be direct filed to class 1 or class 2 felonies; violent sex offenses; and crimes of violence and certain sex offenses committed by prior felony offenders.

If, after a preliminary hearing, a district (adult) court does not find probable cause for a direct-file-eligible offense, or if such an offense is dismissed at a later date, the court is required to remand the case to the juvenile court. For cases that are direct filed, the juvenile is permitted to file a motion with the district court to transfer his or her case to juvenile court. The district court must hold the reverse-transfer hearing at the same time as the preliminary hearing, at which the district attorney is permitted to respond. The bill provides a list of factors the court must consider when deciding whether to transfer a case to juvenile court.

Finally, convictions for misdemeanor offenses and on charges that are not direct-file-eligible must be remanded to the juvenile court. If a juvenile is sentenced by the juvenile court, his or her conviction will be converted to a juvenile delinquency adjudication, making it subject to the current process for expunging juvenile records.

Penalties related to driving. Current law specifies that a driver whose blood alcohol content (BAC) is 0.08 or greater while driving or within two hours of driving can be charged with DUI per se in addition to driving under the influence (DUI). There is no corresponding DUI per se charge for drivers accused of driving while under the influence of drugs. **Senate Bill 12-117**, which was deemed lost in the Senate, would have expanded the definition of DUI per se to apply to drivers whose blood contains five nanograms or more of delta 9-tetrahydrocannabinol (THC) per milliliter in whole blood while driving or within two hours of driving. DUI per se offenses may be charged whenever the results of a breath or blood test administered to a driver exceed the legal limits for alcohol or some other substance.

The bill also would have repealed the law specifying that it is a misdemeanor for a habitual user of any controlled substance to drive a motor vehicle or low-power scooter. Other references to charges of "habitual user" were also repealed.

House Bill 12-1084 increases the penalty for the driver of a vehicle who leaves the scene of an accident resulting in serious bodily injury from a class 5 felony to a class 4 felony.

Guardianship and Protection of At-risk Individuals

Five bills were passed by the General Assembly concerning court-appointed guardians and the protection of at-risk individuals.

Guardianship. Current law allows a court to appoint a legal representative, a child and family investigator, a parental responsibilities evaluator, a parenting coordinator, or a parental

decision-maker in a domestic relations matter. **Senate Bill 12-056** requires such individuals to disclose, within seven days of being appointed, any familial, financial, or social relationship the appointed person has or has had with the child, either party, the attorneys of record, or the judicial officer. The appointed party is required to disclose the nature of such a relationship if it exists.

Senate Bill 12-066 allows persons with a family-like relationship to a child to receive guardianship assistance if they are committed to the child's permanency; have assumed guardianship of the child; and were foster parents of the child when they assumed guardianship. The Department of Human Services is required to promulgate rules to implement this change. Under current law, only relatives are eligible for guardianship assistance.

Under **House Bill 12-1074,** a court may access data maintained by state agencies that includes contact information for guardians and conservators acting on behalf of incapacitated or protected persons when the guardian or conservator has failed to file a required report or respond to a court order. A court conducting an investigation may access contact information for the guardian, conservator, incapacitated person, or the protected person, provided that the court preserves the confidentiality of any information it receives. The bill obliges all state government agencies with records containing personal contact information to respond to an investigation of a guardian or conservator by a Colorado court. All nominees for a guardianship position are to be notified of the fact that personal contact information may be shared with the court if the guardian fails to file required reports or to respond to a court order.

Protection of at-risk individuals. Senate Bill 12-078 clarifies definitions and modifies requirements concerning the mistreatment, self-neglect, and exploitation of at-risk adults. Among other things, the bill:

- makes changes to definitions concerning exploitation, mistreatment, and self-neglect of at-risk adults;
- expands the list of professions that are urged to make a report within 24 hours after observing or suspecting the exploitation, mistreatment, and self-neglect of an at-risk adult;
- clarifies that no discriminatory, disciplinary, or retaliatory action may be taken against any person who, in good faith, makes a report or fails to make a report;
- permits the disclosure of information contained in such a report only with a court order or under specified circumstances involving a criminal indictment, the death of an at-risk adult, or when disclosure is necessary to coordinate a multi-agency investigation into the allegations;
- clarifies the response procedures and the confidentiality measures to be undertaken by the agency receiving the report;
- requires county departments of protective services to complete background checks on protective services employees at the employees' expense; and
- creates an elder abuse task force that is intended to lead to the implementation of a complete system of reporting of mistreatment and exploitation of at-risk elderly abuse by September 1, 2013.

House Bill 12-1226 requires the payment of a new surcharge for persons who are convicted of a crime against an at-risk adult or at-risk juvenile (including neglect, assault, robbery, serious bodily injury or death, among others) or identity theft when the victim is an at-risk adult or at-risk

juvenile. The surcharges vary and range from \$75 for a class 3 misdemeanor to \$1,500 for a class 2 felony and may be waived by the court.

Surcharge revenue from the bill will be appropriated each year to the Department of Human Services (DHS), the bulk of which is to be distributed to programs that provide respite services to caregivers. A program that receives funds must agree to complete a signed agreement and protocol with fiscal agent assigned by the DHS, conduct a fingerprint-based criminal history check of staff and providers, and satisfy the performance standards identified by the DHS.