

# COURTS

<b>Criminal Justice Records</b>		
<b>HB 09-1044</b> (Enacted) <i>Sealing of Direct File Records</i>	<b>HB 09-1075</b> (Postponed Indefinitely) <i>Department of Human Services Prohibitions to Employment</i>	<b>HB 09-1251</b> (Postponed Indefinitely) <i>Disclosure of Criminal Justice Records</i>
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<b>HB 09-1037</b> (Enacted) <i>Montrose County Reclassification</i>	<b>HB 09-1316</b> (Enacted) <i>Judge and Law Enforcement Information Private</i>	<b>SB 09-038</b> (Enacted) <i>Clarification of Judicial Fees</i>
<b>SB 09-047</b> (Enacted) <i>Crime Victim Services Advisory Board</i>	<b>SB 09-048</b> (Enacted) <i>Audit Office of the Child's Representative</i>	

## Criminal Justice Records

Colorado law allows certain juvenile offenders to petition the court to have their juvenile criminal records permanently removed or expunged, provided they meet certain criteria (i.e., a mandatory waiting period, no new offenses or pending charges, and the expungement is in the best interests of the community). Some offenders are not eligible to file such a petition. These include individuals who have been:

- designated by the court as aggravated or violent juvenile offenders;
- convicted of an offense involving unlawful sexual behavior;
- convicted of an offense that is considered a crime of violence under Colorado law; and
- charged as an adult for a crime committed as a juvenile, a process known as "direct file."

**House Bill 09-1044** allows a juvenile who was charged as an adult, but ultimately sentenced as a juvenile, to later petition the court to have his or her record expunged. All of the other conditions for expungement still apply.

Two other bills concerning criminal justice records were postponed indefinitely by House committees.

Under current law, new employees and contractors in the Department of Human Services who have direct contact with vulnerable persons are required to pass fingerprint-based criminal history checks. **House Bill 09-1075** would have expanded this requirement to all new employees in the department. In addition, the bill required the department to perform a name-based criminal history check for potential employees and contractors, prior to their employment, who have no direct contact with vulnerable people. The bill would have eliminated the requirement that the department contact previous employers of the top three candidates for positions that have direct contact with vulnerable people. The bill was postponed indefinitely by the House Committee on Appropriations.

**House Bill 09-1251** would have created a presumption that criminal justice records should be available to the public unless the custodian of such records determines that such disclosure is contrary to public interest. The bill required the custodian to consider the following factors in making a determination:

- the purpose of releasing the records and whether the release violates local, state, or federal law;
- the nature of the public interest involved;
- whether the records contain the identity (that cannot be redacted) of previously unknown informants;
- whether the release would hamper a law enforcement action or ongoing criminal investigation; and
- whether the release would expose previously unknown investigatory techniques.

If the custodian refused to release criminal justice records to the public and the requestor applies for a court order, the bill required a judge to make a finding as to whether the refusal was proper. The House Judiciary Committee postponed the bill indefinitely.

## **Criminal Sentencing**

The General Assembly considered two major bills regarding criminal sentencing. The first was significantly amended and ultimately adopted. The second received considerable debate and ultimately lost. A third bill of more limited scope was also adopted.

**Senate Bill 09-286** began as an effort to enact major sentencing reform in Colorado. It was eventually amended to direct the Colorado Commission on Criminal and Juvenile Justice to use empirical analysis and evidence-based data to study sentencing practices in Colorado. The bill lists areas related to sentencing the commission may study, including but not limited to the following:

- a statewide Department of Corrections (DOC) correctional facility management plan and potential DOC correctional facility bed limitations;
- sentences related to the offense of driving under restraint and drug crimes and whether to change those sentences;
- whether parole should be included in an offender's sentence;
- alternatives to incarceration for nonviolent first-time offenders; and
- the consequences and efficacy of mandatory minimum sentences and other provisions that limit judicial discretion in the sentencing process.

The bill also permits the commission to study the impact of incarceration on crime rates. The commission is required to update the Governor, the Attorney General, the Chief Justice of the Colorado Supreme Court, and the Executive Committee of the Legislative Council by November 30, 2009, as to its findings, recommendations, and proposed plan for the ongoing study of sentencing reform. The commission is also required, by February 1, 2010, to provide the Executive Committee of the Legislative Council with specific recommendations regarding sentencing practices.

**House Bill 09-1274** was lost when the Senate voted not to repass the bill after it was sent to a conference committee. The bill repealed the death penalty and used any savings resulting from the abolition of the death penalty to increase funding for the Cold Case Homicide Team of the Colorado Bureau of Investigation, created in 2007.

**House Bill 09-1334** clarifies existing law concerning aggregating multiple charges of theft. Current law requires that multiple acts of theft be aggregated into a single offense if the acts occurred within a six-month period. Under this bill, multiple acts of theft may be aggregated if they occur during a six-month period or if multiple thefts are committed against the same person over any time period. Sentences for theft offenses are based upon the total value of the property stolen.

## **Judges and Judicial Administration**

**House Bill 09-1316** extends the existing crime of posting personal information about a peace officer on the Internet to include law enforcement officials. The law previously only applied to peace officers, which does not include judges or prosecutors. The new definition of a "law enforcement official" includes a peace officer, a judge, or a prosecutor. The definition of "personal information" is expanded by the bill to include a personal mobile telephone number and personal e-mail address. A violation of this crime is a class 1 misdemeanor.

Each county in Colorado is classified for organizational and administrative purposes with regard to county courts. **House Bill 09-1037** reclassifies Montrose County from a Class C to a Class B county. The change in status will allow the county court to qualify for additional judicial resources.

Current statute provides for an increase in county court civil filing fees on July 1, 2010, while also repealing the same fee increase language on July 1, 2010. **Senate Bill 09-038** removes the repeal of the docket fees for county court civil actions. It also clarifies that assessments made to the Displaced Homemakers Fund apply to a declaration of invalidity of marriage, legal separation, or declaratory judgment concerning the status of marriage. This bill ensures that all statutory references to the fund are identical. The Colorado Legislature created The Colorado Displaced Homemaker Program in 1980. Through fees from divorce filings, this program assists divorced homemakers to enter or reenter the workforce with the goal of becoming economically self-sufficient.

**Senate Bill 09-047** creates the Crime Victim Services Advisory Board in the Division of Criminal Justice (DCJ), Department of Public Safety. The bill specifies criteria for each of 17 members of the board, as well as their terms of service. The board's powers and duties include, but are not limited to:

- developing and revising standards for the administration of the Crime Victim Compensation Fund and the Victims and Witnesses Assistance and Law Enforcement Funds in each judicial district, along with sanctions for violating the standards;
- reviewing reports of noncompliance with the Colorado Crime Victim Compensation Act;
- distributing profits from crime according to statute;
- advising and making recommendations to the DCJ concerning the award of grants from the state Victims Assistance and Law Enforcement Fund; and
- the creation of subcommittees to accomplish the duties of the board.

All records submitted to or generated by the board are confidential and any victim-identifying information must be redacted from documents released to the public (i.e., noncompliance reports).

The bill repeals certain crime-victim-related boards and committees, and it removes specifications in existing law regarding which entities may apply for grants to provide services to crime victims.

The Office of the Child's Representative was implemented, through legislation, with a requirement for an annual independent audit because the office had not established internal fiscal policies and procedures. Each year, the Office of the State Auditor has contracted with an external auditing agency to perform the audit. The State Auditor has recommended, based on the lack of audit findings in recent years, that the independent audit provision be eliminated from the requirements for the Office of the Child's Representative. **Senate Bill 09-048** removes the provision.