

# CRIMINAL JUSTICE

## Controlled Substances

**SB 11-114** (Postponed Indefinitely)  
Sunset Prescription Drug Monitoring Program

**SB 11-192** (Enacted)  
Continue Prescription Drug Monitoring Program

**SB 11-196** (Postponed Indefinitely)  
Ephedrine Pseudoephedrine Classification

**HB 11-1043** (Enacted)  
Medical Marijuana

**HB 11-1250** (Enacted)  
No Medical Marijuana Ingestible Products

## Driving Offenses

**SB 11-093** (Enacted)  
Sunset Drunk Driving Task Force

**SB 11-227** (Enacted)  
Repeal Exception to Child Restraint Law

**SB 11-246** (Postponed Indefinitely)  
No Signatures for Traffic Tickets

**HB 11-1234** (Enacted)  
Taxicab Vehicle License Plates

**HB 11-1261** (Postponed Indefinitely)  
DUI Per Se for Excess THC in Blood

**HB 11-1275** (Enacted)  
Idling Commercial Diesel Vehicles

## Expanded Definitions of Existing Crimes

**SB 11-004** (Postponed Indefinitely)  
Crimes Against the Homeless

**SB 11-034** (Enacted)  
Required Reporting of Abuse & Neglect

**SB 11-201** (Enacted)  
Elements of Criminal Impersonation

**HB 11-1016** (Enacted)  
Prohibit E-cigarette Possession by Minor

**HB 11-1039** (Postponed Indefinitely)  
Animal Cruelty Steer Tailing

**HB 11-1049** (Postponed Indefinitely)  
Use of Personal Information to Defraud

**HB 11-1105** (Enacted)  
Hospital Worker Assault Protection

**HB 11-1151** (Enacted)  
Cruelty to Service Animals

**HB 11-1225** (Postponed Indefinitely)  
Data Security Breach Prevention

## Firearms

**SB 11-053** (Postponed Indefinitely)  
Governor Disaster Authority Firearms

**HB 11-1205** (Postponed Indefinitely)  
Concealed Handgun Exception

## Increased Penalties and New Crimes

**SB 11-134** (Enacted)  
Prohibit Synthetic Cannabinoids Salvia

**SB 11-256** (Enacted)  
Penalties for Graffiti

**SB 11-260** (Enacted)  
Allen Rose Tow-truck Safety Act

**HB 11-1061** (Postponed Indefinitely)  
Graffiti Removal Defacing Property

**HB 11-1256** (Postponed Indefinitely)  
Crimes Against an Unborn Child

## Juvenile Justice

**SB 11-133** (Enacted)  
Discipline in Public Schools

**HB 11-1053** (Enacted)  
Incarceration for Truancy and Contempt

**HB 11-1193** (Enacted)  
Family Advocacy Juvenile Mental Health

**HB 11-1287** (Postponed Indefinitely)  
Colorado Juvenile Equal Protection Act

## CRIMINAL JUSTICE (Cont.)

<b>Law Enforcement Authority and Procedures</b>		
<b>SB 11-020</b> <i>(Enacted)</i> <i>Attorney General POST Certification</i>	<b>SB 11-171</b> <i>(Postponed Indefinitely)</i> <i>Caretaker Mistreatment of At-risk Adults</i>	<b>HB 11-1036</b> <i>(Enacted)</i> <i>Blue Alert for Injured Peace Officers</i>
<b>HB 11-1073</b> <i>(Enacted)</i> <i>Peace Officer Status US Marshals</i>	<b>HB 11-1169</b> <i>(Enacted)</i> <i>Higher Education Campus Safety Information Sharing</i>	<b>HB 11-1251</b> <i>(Enacted)</i> <i>Window Tinting Public Safety Vehicles</i>
<b>Miscellaneous</b>		
<b>SB 11-077</b> <i>(Postponed Indefinitely)</i> <i>Deadly Force Against a Business Intruder</i>	<b>SB 11-244</b> <i>(Postponed Indefinitely)</i> <i>Repeal Crimes Marital Status Element</i>	<b>SB 11-261</b> <i>(Enacted)</i> <i>Publication of Colorado Revised Statutes</i>
<b>Sex Offenders</b>		
<b>SB 11-007</b> <i>(Enacted)</i> <i>Place of Trial Failure to Register</i>	<b>HB 11-1138</b> <i>(Enacted)</i> <i>Sex Offender Management Board</i>	<b>HB 11-1278</b> <i>(Enacted)</i> <i>Sex Offender Registration Changes</i>

The General Assembly considered a wide range of legislation related to criminal justice during the 2011 legislative session. Major topics addressed included controlled substances, expanded definitions of existing crimes, increased penalties and new crimes, and juvenile justice.

### Controlled Substances

***Electronic Prescription Drug Monitoring Program.*** The General Assembly considered two bills concerning the Electronic Prescription Drug Monitoring Program (PDMP). The PDMP is an online database that collects designated data on controlled substances dispensed or prescribed within Colorado. The program was subject to a sunset review in 2010. **Senate Bill 11-192** continues the program until July 1, 2021, clarifies that only prescriptions that have actually been dispensed to a patient, and not just prescribed, are to be tracked, repeals the Prescription Controlled Substance Abuse Monitoring Advisory Committee, and makes changes to the administration of the program. **Senate Bill 11-114**, which was postponed indefinitely, was similar to Senate Bill 11-192, but it would have continued the PDMP until September 1, 2016.

***Medical marijuana.*** The legislature considered two bills addressing medical marijuana. **House Bill 11-1043** amended several sections of the Colorado Medical Marijuana Code that was enacted last year by House Bill 10-1284. The bill's provisions address licensure, licensee operations, sales and use taxes, access to records, patients, physicians, and caregivers, research and development, and the disposition of marijuana. Among other changes, the bill extends the moratorium on the issuance of new medical marijuana licenses to July 1, 2012. The bill also relaxes residency requirements for the employees of medical marijuana dispensaries and requires primary caregivers to register the location of their cultivation operation with the state licensing authority and to provide the registration identification number of each of their patients; this information will not be released to the public. **House Bill 11-1250** focused particularly on ingestible medical marijuana products. The bill directs the Department of Revenue to include requirements for special packaging and labeling for medical marijuana-infused products in its rulemaking for the regulation of medical marijuana.

*Other.* The legislature postponed indefinitely **Senate Bill 11-196**, which would have removed ephedrine from the statutory list of schedule II controlled substances and added it, along with pseudoephedrine and phenylpropanolamine (methamphetamine precursor drugs), to the statutory list of schedule III controlled substances. The bill also would have repealed statutory provisions concerning the retail sale of methamphetamine precursor drugs. Substances on the list of schedule II controlled substances have a high potential for abuse, have currently accepted medical use in the United States (possibly with restrictions), and, if abused, may lead to severe psychological or physical dependence. Substances on the list of schedule III controlled substances also have currently accepted medical use in the United States, but have a potential for abuse that is less than the substances included in schedules I and II, and, if abused, may lead to moderate or low physical dependence or high psychological dependence.

## Driving Offenses

*Interagency Task Force on Drunk Driving.* The Interagency Task Force on Drunk Driving (ITFDD) was established by the General Assembly to increase collaboration for solutions to the offenses of driving while ability impaired (DWAI) or driving under the influence of alcohol (DUI). **Senate Bill 11-093** implements the recommendations of the Department of Regulatory Agencies in its 2010 sunset review of the ITFDD. It continues the functions and removes the repeal of the ITFDD, and also increases its membership from 17 to 21 members. **House Bill 11-1261**, which was lost in the Senate, was amended from its introduced version to direct the task force to consider the amendment of statutory provisions related to the offenses of DUI and DWAI when the offender has apparently taken drugs. Additionally, the task force would have been directed to study issues surrounding the establishment of a statutory threshold for tetrahydrocannabinol (THC) blood content.

*New traffic infractions.* Two bills enacted by the legislature create new traffic infractions. **House Bill 11-1234** creates the taxicab license plate and requires that persons or businesses authorized to provide taxicab services, or both luxury limousine and taxicab services, are required to register their motor vehicles with the Department of Revenue and have the license plates affixed. Under the bill, only persons who are verified by the Public Utilities Commission as authorized to provide taxicab services may be issued a plate. Violations of the bill's provisions are a Class B traffic infraction, punishable by a \$75 fine, a \$15 penalty, and a \$4 surcharge. **House Bill 11-1275** sets a statewide idling standard for commercial diesel vehicles with a gross vehicle weight rating greater than 14,000 pounds. The standard prohibits engine idling in excess of 5 minutes within a 60-minute period, with certain exceptions (*e.g.*, due to traffic stalls or during an emergency). Violations are a Class B traffic infraction, punishable by a fine of up to \$150 for the first offense and \$500 for a second or subsequent offense, and a surcharge of \$20.

*Other.* The General Assembly passed **Senate Bill 11-227**, which modifies child restraint requirements for children up to age 8. Under Colorado law and with some exceptions, children under the age of 8 must be restrained in an age- and size-appropriate child seat in the rear seat of a vehicle. Senate Bill 10-110, which was passed in 2010, excepted children weighing more than 40 pounds from this requirement if the vehicle's rear seat was not equipped by the manufacturer with combination lap and shoulder seat belts. Senate Bill 11-227 repeals that exception in order to ensure the state's ability to receive certain federal funds.

**Senate Bill 11-246**, which was postponed indefinitely, would have eliminated the option of certain traffic offenders to execute a promise to appear in court, including out-of-state drivers. It would have also eliminated the requirement for peace officers to sign a complaint.

## **Expanded Definitions of Existing Crimes**

***Criminal impersonation.*** The General Assembly considered two bills concerning the offense of criminal impersonation. **Senate Bill 11-201** clarifies that falsely using personal information, as that information is defined in identity theft statutes, constitutes the assumption of a false or fictitious identity. **House Bill 11-1049**, which was postponed indefinitely, also addressed the offense of criminal impersonation, but included additional amendments to the statutory language describing the criminal offense of identity theft. Under the bill, to commit identity theft, an individual would not need to be aware that the personal identifying information, financial identifying information, or financial device he or she used belonged to another person.

***Cruelty to animals.*** The legislature considered two bills addressing the definition of cruelty to animals; one bill passed, while the other was postponed indefinitely. **House Bill 11-1151** clarifies that a person commits cruelty to a service animal if he or she commits any of the acts currently defined as cruelty to animals with respect to an animal that is used in the performance of official duties by law enforcement agencies, fire departments, or other governmental agencies. Examples of acts that constitute cruelty to animals include unnecessarily or cruelly beating an animal, failing to provide an animal with food or drink, and intentionally abandoning a dog or cat. **House Bill 11-1039**, which was postponed indefinitely, would have expanded the existing crime of cruelty to animals to include the intentional dragging of a bovine (cow, steer, bull, heifer, ox, or bison) by its tail or the intentional lassoing or roping of the legs of an equine (horse, pony, donkey, mule, or hinny), for the purpose of entertainment, sport, or contest.

***Expansion of possible offenders.*** The General Assembly enacted one bill, **Senate Bill 11-034**, that expands the group of possible offenders for an existing crime. The bill adds educators providing services through the federal Women, Infants, and Children (WIC) Supplemental Nutrition Program to the list of mandatory reporters of child abuse and neglect. Mandatory reporters are required to report child abuse or neglect if they have a reasonable cause to know or to suspect that a child has been or is being subjected to abuse or neglect. Under current law, a mandatory reporter who willfully fails to report abuse or neglect is guilty of a class 3 misdemeanor.

***Expansion of possible victims.*** The legislature considered two bills that expand the group of possible victims for an existing crime; one bill passed, while the other was postponed indefinitely. Under current law, if a person is convicted of third degree assault against a peace officer, firefighter, or emergency medical technician, the court is required to impose a jail term that exceeds, by up to double, the maximum term of imprisonment for a class 1 misdemeanor. In addition, this penalty qualifies as an extraordinary risk crime, for which the total enhanced penalty is 24 to 48 months imprisonment, a fine of \$500 to \$5,000, or both. **House Bill 11-1105** increases the penalty for third degree assaults against emergency medical care providers by adding them to the list of victims that trigger enhanced sentencing. Emergency medical care providers are defined to include doctors, nurses, and air ambulance pilots, among others. **Senate Bill 11-004**, which was postponed indefinitely, would have added a victim's homeless status as one possible basis for committing a bias-motivated crime.

*Other.* Two other bills that clarified or expanded existing crimes were **House Bill 11-1016**, which passed, and **House Bill 11-1225**, which was postponed indefinitely. House Bill 11-1016 expands the definition of "tobacco product" to mean any product that contains nicotine or tobacco, including any cartridge that is designed to deliver inhaled doses of a substance containing any amount of nicotine. This definition applies to all statutes affecting the furnishing of cigarettes or tobacco products to minors. The bill also extends the repeal date of statutes regulating tobacco sales to minors until July 1, 2016.

House Bill 11-1225 would have established policies and procedures relating to liability for computer crime and data security. Among other provisions, the bill would have expanded the existing class 1 misdemeanor offense of computer crime to prohibit receiving property, including electronic data, stolen using a computer and depriving the owner of its use; using the property to commit another crime; or using the property to damage the reputation of its owner.

## **Firearms**

The General Assembly considered but ultimately postponed indefinitely two firearms-related bills. **Senate Bill 11-053** would have removed the authority of the governor to restrict firearms during a state of disaster or emergency. **House Bill 11-1205** would have specified that anyone who was at least 21 years old, was in legal possession of a handgun, and carried a concealed handgun had the same rights and was subject to the same limitations as a concealed handgun permit holder.

## **Increased Penalties and New Crimes**

*Graffiti offenses.* As it has in recent years, the General Assembly debated the issue of graffiti-related offenses during the 2011 legislative session. Ultimately, one bill was enacted and another was postponed indefinitely. Under current law, defacing property is a class 2 misdemeanor. A second or subsequent offense is a class 1 misdemeanor. **Senate Bill 11-256** changes the manner in which multiple offenses for defacing property and causing more than \$500 in damage may be treated. Specifically, the bill allows damages from two or more offenses committed within six months to be aggregated and charged as a single class 1 misdemeanor. Offenses charged in this manner will continue to be subject to a mandatory minimum fine of \$750 upon conviction, although the bill also contains language granting the court discretion to impose sentencing alternatives. **House Bill 11-1061**, which was postponed indefinitely, would have made more extensive changes to the sentencing scheme for the offense of defacing property. For example, the bill would have permitted the damage from two or more offenses within 18 months to be aggregated and charged into a single count. In addition, the bill would have created two new felonies when the aggregated damage amount from two or more offenses of defacing property exceeded certain levels.

*Other new crimes.* The legislature considered three other bills that increase penalties or create new crimes; two bills were enacted, while a third was postponed indefinitely. **Senate Bill 11-134** defines the terms "salvia divinorum" and "synthetic cannabinoids" and specifies that synthetic cannabinoids are not to be considered medical marijuana under Colorado law. The bill creates the following new criminal offenses:

- class 2 misdemeanor of unlawfully using or possessing synthetic cannabinoids or salvia divinorum;

- class 5 felony of knowingly distributing, manufacturing, dispensing, selling, or cultivating synthetic cannabinoids or salvia divinorum; and
- class 4 felony of knowingly distributing, dispensing, or selling synthetic cannabinoids or salvia divinorum when the person distributes, dispenses, or sells to a minor under the age of 18 and the person is at least 18 years of age and at least two years older than the minor.

**Senate Bill 11-260** requires that drivers yield the right-of-way to stationary tow trucks and also creates the following two class 3 misdemeanor offenses concerning tow trucks:

- unlawful removal of a tow truck warning sign when the tow truck is within 50 feet of a carrier vehicle; and
- unlawful placement of a tow truck warning sign when the vehicle is not being towed or occupied.

**House Bill 11-1256**, which was postponed indefinitely, would have created a new article in the criminal code for offenses against pregnant women and their unborn children. The new offenses would have included: unlawful termination of pregnancy in the first, second, third, and fourth degrees; vehicular unlawful termination of pregnancy; and aggravated vehicular unlawful termination of pregnancy. The bill would have exempted from prosecution termination of a pregnancy resulting from medical care consented to by the mother.

## Juvenile Justice

***Juvenile justice and the educational system.*** The General Assembly enacted two bills related to the intersection of juvenile justice and the public school system. One bill, **House Bill 11-1053**, focused specifically on truancy issues. The bill modifies current law to require school districts to initiate court proceedings against truant minors or against the parents of such minors in order to compel the attendance of the minors in school only as a last resort. The bill also authorizes the court to order, as a sanction after finding a minor in contempt, participation in services for at-risk students. **Senate Bill 11-133** takes a broader look by creating a legislative task force to study and assess the interaction of school discipline practices with the juvenile justice system. Included in the task force's charge is a requirement that it review any available, non-identifying state data collected by the Colorado Department of Education, school districts, or law enforcement agencies relating to zero-tolerance policies and the use of juvenile justice sanctions for school-based behaviors.

***Other issues.*** In 2007, the legislature enacted a bill to create three demonstration programs to provide family advocacy services to youth with mental health needs in the juvenile justice system. Demonstration programs were established in Denver, Montrose, and Jefferson Counties, and contracted organizations were selected to provide services, with the state paying for 80 percent of such services. In 2011, the legislature enacted **House Bill 11-1193** to continue the family advocacy demonstration programs as an ongoing initiative within the Department of Human Services.

**House Bill 11-1287**, which was postponed indefinitely, would have required the Department of Corrections (DOC) to consider for community placement any individual who:

- was charged as an adult, but who was a juvenile at the time the offense was committed (a process known as direct filing);

- was currently serving a sentence in the DOC;
- was convicted of a felony offense; and
- remained in the custody of the DOC on the felony conviction for at least 20 years.

Current law requires that all offenders who were charged by direct file and who were sentenced to a term of imprisonment greater than 40 years are eligible for parole after 40 years (unless otherwise eligible prior to that time). This provision currently applies to offenses committed on or after July 1, 2006. The bill would have extended this eligibility to all covered offenders, regardless of when the offense was committed.

## **Law Enforcement Authority and Procedures**

**Information sharing.** The legislature considered two bills related to the information-sharing practices of law enforcement agencies. **House Bill 11-1169** allows police departments at state institutions of higher education to share information concerning individuals who demonstrate behavior that may pose a risk to the campus community. **Senate Bill 11-171**, which was postponed indefinitely, would have created a centralized database in the Department of Human Services (DHS) to track caretakers found to have mistreated at-risk adults. Law enforcement agencies and county departments of human services would have been required to forward information on substantiated allegations of abuse to the DHS so that the caretaker's name could be included in the database.

**Peace officer status.** The General Assembly enacted two bills related to peace officer status. The designation of peace officer status provides the authority to enforce all Colorado laws and to be certified by the Peace Officer Standards and Training Board. **Senate Bill 11-020** authorizes the Attorney General to designate certain other assistant attorneys general and employees of the Department of Law as peace officers. **House Bill 11-1073** adds deputy and special deputy United States marshals to the list of federal agents who can act as peace officers in Colorado under certain situations, such as when a federal agent is responding to a nonfederal crime committed in his or her presence.

**Other procedures to increase public safety.** Two additional bills enacted by the legislature to increase public safety include **House Bill 11-1036**, which creates the "Blue Alert" program to broadcast when a peace officer has been killed or seriously wounded in the line of duty and the subject has fled the scene, and **House Bill 11-1251**, which provides that public safety vehicles are exempt from state law restrictions on vehicle window tinting. However, the bill prohibits vehicles with window tinting from being used in traffic law enforcement operations.

## **Miscellaneous**

**Repeal of crimes or penalties.** The General Assembly considered two bills to repeal certain crimes; one bill was enacted, while the other was postponed indefinitely. **Senate Bill 11-261** repeals the requirement in current law that directs the Committee on Legal Services to copyright the Colorado Revised Statutes. Under the bill, other publishers of the statutes who use the official text from the statutory database may state that their publications are officially sanctioned. The bill also repeals the statutory penalties for the unauthorized publication of copyrighted materials. **Senate Bill 11-244**, which was postponed indefinitely, would have repealed the crimes of adultery and promoting sexual immorality. Although adultery is illegal in statute, it does not have a criminal

penalty. The bill would have also removed the prohibition on the Peace Officers Standards and Training Board against certifying a person who has been convicted for promoting sexual immorality.

***Use of deadly physical force.*** Current law permits the occupant of a dwelling to use deadly physical force against another person who has unlawfully entered the dwelling if the occupant reasonably believes that the intruder is committing, has committed, or intends to commit a crime other than unlawful entry. **Senate Bill 11-077**, which was postponed indefinitely, would have added a place of business to the places that may be defended with deadly physical force.

## **Sex Offenders**

***Sex Offender Management Board.*** The Sex Offender Management Board (SOMB) was officially repealed on July 1, 2010, when Governor Ritter vetoed House Bill 10-1364, which would have continued the board past that date. **House Bill 11-1138** extends the SOMB from July 1, 2010, to September 1, 2016, and makes numerous revisions to the sections of law concerning the board. Changes made by the bill include:

- definitions of "adult sex offender" and "juvenile who has committed a sex offense" are added to statutory language concerning the SOMB, and "juveniles who have committed a sexual offense" replaces "juvenile sex offender" in multiple sections;
- the SOMB is required to prescribe a standardized procedure for the evaluation and identification of adult sex offenders based upon existing research demonstrating that sexually offending behavior is often repetitive and that there is currently no way to ensure that adult sex offenders with the propensity to commit sex offenses will not re-offend; and
- the establishment of a formal process for the Department of Regulatory Agencies to review complaints against individuals who provide services to sex offenders.

***Registration as a sex offender.*** The General Assembly enacted two bills addressing sex offender registration. **House Bill 11-1278** makes a number of modifications to the requirements for registering as a sex offender. The bill allows the court and the parole board discretion as to the use of intensive supervision programs, which are currently required for offenders convicted of failure to register as a sex offender. The bill adds second degree kidnapping (when the person kidnapped is the victim of a sexual offense) to the definition of unlawful behavior. Finally, the bill requires that an individual designated as a sexually violent predator be given notice of his or her designation and have the right to appeal.

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.