

# Corrections And Law Enforcement

## Administration and Procedural Matters

**SB 13-226** (Enacted)  
*Create Dog Protection Act*

**HB 13-1045** (Deemed Lost)  
*Prohibit State Aid to National  
Defense Authorization Act  
Investigations*

**HB 13-1109** (Enacted)  
*Apply Protection Orders to Parolees*

**HB 13-1129** (Enacted)  
*Evidence-based Practices for  
Offender Services*

**HB 13-1251** (Postponed Indefinitely)  
*DNA Collection Misdemeanor  
Convictions*

**HB 13-1258** (Enacted)  
*Community and Law Enforcement  
Trust Act*

**HB 13-1323** (Enacted)  
*Department of Corrections Request  
Clarification of Mittimus*

## Correctional Facilities and Staff

**SB 13-210** (Enacted)  
*Corrections Officer Staffing Levels*

**SB 13-216** (Enacted)  
*Corrections Youthful Offender  
System*

**HB 13-1261** (Postponed Indefinitely)  
*Use of the Forth Lyon Correctional  
Facility Property*

## Emergency Response

**SB 13-083** (Enacted)  
*Prescribed Burn Program Division  
Fire Prevention and Control*

**SB 13-245** (Enacted)  
*Create the Colorado Firefighting Air  
Corps*

**HB 13-1031** (Enacted)  
*All-hazards Resource Mobilization  
and Reimbursement*

**HB 13-1308** (Enacted)  
*Cell Phone Information to Police in  
Emergency Situation*

## Motor Vehicles

**SB 13-035** (Postponed Indefinitely)  
*Prohibit Red Light Camera Vehicle  
Identification*

**HB 13-1022** (Enacted)  
*Proof of Motor Vehicle Insurance*

**HB 13-1077** (Enacted)  
*Illegal Traffic Stops License  
Revocation Hearings*

**HB 13-1114** (Postponed Indefinitely)  
*Inferences for Marijuana and Driving  
Offenses*

**HB 13-1214** (Postponed Indefinitely)  
*Felony for Repeat DUI Offenders*

**HB 13-1217** (Postponed Indefinitely)  
*Parole Eligibility Vehicular Homicide*

**HB 13-1240** (Enacted)  
*Penalties for Persistent Drunk  
Drivers*

**HB 13-1325** (Enacted)  
*Inferences for Marijuana and Driving  
Offenses*

## Peace Officers

**SB 13-005** (Enacted)  
*Fort Carson Police Officers Peace  
Officer Status*

**SB 13-013** (Enacted)  
*Secret Service Limited Peace Officer  
Authority*

**SB 13-059** (Enacted)  
*Peace Officers Obtain Liquor  
Licenses*

**SB 13-138** (Enacted)  
*School Resource Officer Programs in  
Public Schools*

**HB 13-1076** (Enacted)  
*No Peace Officer Standards and  
Training Board Certification for  
Colorado Bureau of Investigation  
Director*

**HB 13-1118** (Enacted)  
*Issuing IDs to Retired Peace Officers*

## Corrections And Law Enforcement (Cont.)

### Services for Victims and the Wrongly Incarcerated

**HB 13-1020** (Enacted)

*Testing Evidence of Sexual Assault*

**HB 13-1146** (Enacted)

*ID Theft Victim Colorado Bureau of Investigation Records Challenge*

**HB 13-1163** (Enacted)

*Sexual Assault Victim Emergency Payment*

**HB 13-1230** (Enacted)

*Compensation for Persons Wrongly Incarcerated*

**HB 13-1241** (Enacted)

*Statewide Victim Information and Notification System*

The General Assembly considered a wide range of legislation related to corrections and law enforcement during the 2013 legislative session. Major topics addressed included peace officers, services for victims and individuals who were wrongly incarcerated, responses to motor vehicle offenses and emergency situations, and correctional facilities.

### Administration and Procedural Matters

**Law enforcement training and procedures.** The General Assembly discussed three bills related to law enforcement training and procedures, two of which were ultimately adopted. **House Bill 13-1258** repeals several laws concerning local law enforcement procedures related to persons that may be in the country unlawfully. The laws were enacted prior to the implementation of the federally mandated Secure Communities initiative, which puts in place slightly different procedures for law enforcement agencies to follow concerning individuals who are in the country unlawfully than those mandated under state law. Under the laws repealed by the bill, a local law enforcement officer who had probable cause to believe that a person arrested for a criminal offense other than domestic violence was not legally present in the United States was required to report the person to federal immigration officials. This requirement also applied if a person was in detention and the county sheriff reasonably believed that the person was not in the country legally. Local governments were also required to provide statistics to the General Assembly concerning these requirements. **Senate Bill 13-226** requires that local law enforcement agencies provide training to officers for dog encounters. A 23-member volunteer task force is required to develop procedures and a training video to be posted online, and local agencies must also create a training curriculum based on the task force material. In addition, local law enforcement agencies must create and adopt written policies on: canine behaviors; alternatives to the lethal use of force against dogs; and opportunities for owners to remove a dog from the immediate area of law enforcement when appropriate.

**House Bill 13-1045**, which was deemed lost, would have prohibited, with limited exceptions, state employees and state agencies from assisting any of the United States armed forces in the enforcement of the National Defense Authorization Act of 2012 (NDAA). The bill specified that state and local governments must not assist with provisions of the NDAA pertaining to the detention of members of, and those lending assistance to, certain international terrorist organizations if such assistance would violate the United States Constitution, the Colorado Constitution, or any state law.

**Offender supervision.** The General Assembly considered four bills concerning administrative practices related to the supervision of offenders. **House Bill 13-1323** sets forth new requirements concerning the transmission of sentencing information between the courts and the

Department of Corrections (DOC). Specifically, if an offender is required to serve two or more sentences and the court does not specify whether the sentences are to be served concurrently or consecutively, the DOC must seek clarification from the court in writing within two business days. In turn, a court is required to respond to a DOC request within two business days. Until the court's response is received, the DOC may not make any determination of the offender's parole eligibility date or mandatory release date. **House Bill 13-1109** clarifies that a mandatory protection order stays in effect until an offender is discharged from parole supervision. **House Bill 13-1129** codifies the existing Evidence-Based Practices Implementation for Capacity (EPIC) Resource Center in the Department of Public Safety. Under the program, staff from the Department of Public Safety, the DOC, the Department of Human Services, and the Judicial Branch collaborate to offer education, skill-building, and other resources to individuals working with adult and juvenile offenders.

Finally, **House Bill 13-1251**, which was postponed indefinitely, would have required any offender convicted of a class 1 misdemeanor offense on or after July 1, 2013, to provide a sample of his or her genetic material (DNA) for inclusion in the state's database. Currently, only offenders convicted of a misdemeanor involving unlawful sexual conduct are required to provide a sample. Current law also requires all individuals arrested for felony offenses to submit a sample.

## **Correctional Facilities and Staff**

The General Assembly considered three bills concerning correctional facilities and staff. Although one of the bills, **House Bill 13-1261**, was postponed indefinitely, its provisions were amended into **Senate Bill 13-210**. House Bill 13-1261 would have designated a portion of the Fort Lyon property as a transitional residential community for the homeless for the purpose of providing substance abuse treatment, medical care, job training, and skill development for the residents. The Fort Lyon property is a recently closed state correctional facility and former federal Veterans Affairs medical center. After the bill was postponed indefinitely, its provisions were amended into Senate Bill 13-210, which also creates several labor-related requirements for the DOC. The bill requires the DOC to:

- establish that a work period for correctional officers may be from 7 consecutive days to 14 consecutive days in length;
- require overtime pay for correctional officers when the number of hours worked exceeds the equivalent of 85 hours of work in a 14-day period;
- implement time-and-a-half pay for correctional officers who work shifts exceeding 12 hours within a 24-hour period;
- provide all DOC employees with a pay stub that includes hours worked, rate of pay, overtime, paid leave, and compensatory time balances; and
- establish regulations to create greater flexibility in staffing, such as shift substitution and voluntary overtime lists.

Finally, **Senate Bill 13-216** addresses the sentencing of young adults to the Youthful Offender System (YOS) within the DOC. The YOS is a sentencing option for certain juveniles who are charged as adults that exists between the traditional adult prison system and the Division of Youth Corrections within the Department of Human Services. The section of law concerning the eligibility of young adult offenders (those who are 18 or 19 at the time the offense is committed, but less than 21 years old at the time of sentencing) for sentencing to the YOS was repealed as of October 1, 2012. This bill recreates and reenacts that section of law. The bill also requires the DOC to implement policies pursuant to the federal Prison Rape Elimination Act.

## Emergency Response

The General Assembly passed four bills related to emergency response, three of which were related to wildfires. **House Bill 13-1031**, which was recommended by the Lower North Fork Wildfire Commission, requires the director of the Office of Emergency Management in the Department of Public Safety (DPS) to develop and maintain specific procedures for mobilization, allocation, tracking, demobilization, reimbursement, and other functions within its statewide system for mobilizing emergency response resources from multiple jurisdictions in anticipation of large-scale emergencies. **Senate Bill 13-083**, which was also recommended by the Lower North Fork Wildfire Commission, defines the role and duties of the Division of Fire Prevention and Control (DFPC) within the DPS. The DFPC is charged with implementing a prescribed burning program, including setting fees, developing appropriate rules and standards, and enforcing and directing government efforts to address catastrophic and escaped fire. A third wildfire-related bill, **Senate Bill 13-245**, establishes the Colorado Firefighting Air Corps within the DFPC. The corps consists of aircraft, personnel, facilities, and equipment necessary to conduct aerial firefighting.

A fourth bill concerns law enforcement procedures related to call location information during an emergency. **House Bill 13-1308** allows a supervising representative of a law enforcement agency to direct a previously identified employee of a wireless telecommunications provider to provide location information of a person with a telecommunications device without a court order. The law enforcement agent must have probable cause to believe that an emergency situation exists and that the time required to obtain a search warrant or other court order would exacerbate the risk of death or serious bodily injury.

## Motor Vehicles

***Driving under the influence.*** The legislature considered four bills related to driving under the influence (DUI). Two of the bills addressed driving while under the influence of marijuana, and the other two bills concerned repeat offenders. DUI is a misdemeanor that may be charged whenever a person drives after consuming alcohol or one or more drugs, or a combination of both alcohol and drugs, and as a result is substantially incapable of exercising clear judgment, sufficient physical control, or due care in the safe operation of the vehicle. DUI per se is a misdemeanor that may be charged whenever the results of a breath or blood test administered to a driver within two hours after driving exceed a blood alcohol content (BAC) of 0.08. Current law also specifies that in any prosecution for DUI, driving while ability impaired (DWAI), vehicular homicide, or vehicular assault, if a driver's BAC was 0.08 or greater at the time of the offense or within a reasonable time thereafter, this fact gives rise to a permissible inference that the defendant was under the influence of alcohol. Under current law, there is no corresponding DUI per se charge or permissible inference for drivers accused of driving while under the influence of drugs.

**House Bill 13-1325**, which was adopted by the General Assembly, states that if a driver's blood contains five nanograms or more of delta 9-tetrahydrocannabinol (THC) per milliliter in whole blood at the time of the offense or within a reasonable time thereafter, this fact gives rise to a permissible inference that the defendant was under the influence of one or more drugs. THC is the primary psychoactive component of marijuana. Prior to the passage of House Bill 13-1325, the legislature postponed indefinitely **House Bill 13-1114**, which was identical to House Bill 13-1325.

**House Bill 13-1240** modifies the definition and penalties for persistent drunk drivers. In particular, the bill:

- lowers the BAC threshold for a person to be considered a persistent drunk driver from 0.17 to 0.15;
- adds a person whose license is revoked for refusing a BAC test to the list of persons who may be defined as a persistent drunk driver;
- requires that a persistent drunk driver use an interlock device on his or her vehicle for one year after his or her driver's license has been reinstated;
- allows a person who has had their license revoked for one year for DUI, DUI per se, or DWAI to apply for early reinstatement one month after a revocation, provided that he or she has an interlock device and is over 21 years old;
- requires the Department of Revenue to assist in the cost of the interlock device for indigent persons in certain circumstances; and
- allows most revocation penalties for offenses that occur on or after January 1, 2014, to be administered concurrently instead of consecutively.

**House Bill 13-1214**, which was postponed indefinitely, would have increased the penalty for repeated offenses of DUI, DUI per se, DWAI, vehicular homicide, and vehicular assault. Under the bill, the penalty would have been increased from an unclassified misdemeanor to a class 5 felony if the violation occurred not more than seven years after the first of two prior convictions or the violation occurred after three prior convictions. The bill also would have established requirements for offenders to participate in substance abuse driving safety programs, submit to continuous alcohol monitoring, and use interlock devices.

**Law enforcement procedures concerning motor vehicle offenses.** The legislature considered three bills related to law enforcement procedures concerning motor vehicle offenses; two bills were adopted, while the third was postponed indefinitely. **House Bill 13-1022** allows a court to dismiss a charge of non-compliance with compulsory auto insurance if it verifies the driver had a valid policy in effect at the time of the alleged violation by using the uninsured motorist insurance identification database. The bill also establishes a new class B traffic infraction for offering fraudulent evidence of valid vehicle insurance to officials. **House Bill 13-1077** clarifies that drivers are allowed to challenge the validity of a law enforcement officer's initial contact in any Department of Revenue administrative proceeding for a driver's license revocation. It requires the hearing officer to consider these challenges if raised by a driver. Finally, **Senate Bill 13-035**, which was postponed indefinitely, would have prohibited the use of automated vehicle identification systems, including photo radar and "red light cameras" for traffic enforcement. Under the bill, an automated vehicle identification system would only be permitted for use on a toll road or highway to assess charges and issue citations for related violations.

**Other.** The legislature postponed indefinitely **House Bill 13-1217**, which would have modified the amount of time that a person convicted of vehicular homicide must serve in prison prior to becoming eligible for parole. Under current law, a person who commits vehicular homicide must serve at least 50 percent of his or her sentence before becoming eligible for parole. The bill would have increased the time requirement to 75 percent of the sentence, less any earned time credits, if the offender had a previous serious driving offense conviction for an offense committed in Colorado.

## Peace Officers

Colorado law imposes standards on and grants certain responsibilities to persons considered peace officers. At a minimum, a peace officer has the authority to enforce all state laws while acting within the scope of his or her authority and the performance of his or her duties. During the 2013 legislative session, the General Assembly adopted six bills related to peace officers.

**Granting peace officer status.** The General Assembly adopted two bills granting peace officer status to additional groups. **Senate Bill 13-005** designates Fort Carson police officers as peace officers of the state. Under the bill, Fort Carson police officers are allowed to obtain certification from the Peace Officers Standards and Training (P.O.S.T.) Board. The Fort Carson police are a federal civilian law enforcement agency whose jurisdiction includes Fort Carson and the Pinyon Canyon Maneuver Site. **Senate Bill 13-013** gives certain agents and officers of the United States Secret Service limited peace officer authority while working in Colorado. The bill limits the circumstances under which a Secret Service agent may act as a peace officer.

**Peace officer responsibilities and prohibitions.** The General Assembly passed three bills related to peace officer responsibilities and prohibitions. Under current law, a peace officer is prohibited from holding a Colorado liquor license. **Senate Bill 13-059** removes that prohibition, provided that the officer does not operate a licensed premise within the same jurisdiction that employs him or her. **House Bill 13-1076** removes the requirement that the director of the Colorado Bureau of Investigation be certified by the P.O.S.T. Board. Finally, **Senate Bill 13-138** defines several responsibilities related to School Resource Officers (SROs). Specifically, the bill:

- requires that SROs be familiar with their assignment's School Response Framework, All-Hazard Exercise program, and interoperable communications;
- requires that each school's School Response Framework include the responsibilities of the SRO;
- directs the School Safety Resource Center within the DPS to contract or hire an emergency response consultant to provide guidance to schools, SROs, and community partners to perform several SRO-related duties; and
- adds one new member to the School Safety Resource Center advisory board.

**Other.** **House Bill 13-1118** allows various law enforcement agencies to establish a program to issue photo identification to peace officers who have retired from that agency.

## Services for Victims and the Wrongly Incarcerated

The legislature adopted five bills related to the provision of services for crime victims or individuals who were wrongly incarcerated. Two of the bills concerned victims of sexual assault. **House Bill 13-1163** creates an emergency payment program in the DPS for victims of sexual assault who need additional time to determine if they wish to pursue legal action. The program is intended to serve as a payor of last resort for victims who require financial assistance to pay the costs of a medical forensic exam, which would not otherwise be covered under existing victim compensation programs. **House Bill 13-1020** sets forth new requirements concerning the collection and treatment of forensic medical evidence of alleged sexual assaults. The bill requires the DPS to convene a group of stakeholders to develop rules on the standards and timing for submitting, analyzing, and comparing such evidence going forward. The bill also lays out a plan

to eliminate a backlog for testing evidence of alleged sexual assault. Once the backlog is resolved, all evidence that meets the criteria for mandatory submission under the bill must be submitted within 21 days.

**House Bill 13-1241** allows a General Fund appropriation to operate the Statewide Automated Victim Information Notification Everyday (VINE) system. Under the bill, the system will be operated by the County Sheriffs of Colorado, under the supervision of the DPS. The VINE system allows crime victims to obtain free information on the custody status of inmates under supervision in county jails.

**House Bill 13-1146** creates an additional method for victims of identity theft to challenge relevant public records concerning an arrestee who has stolen a victim's identity. Under current law, such challenges may be addressed through the courts. The bill allows a person to pursue a records challenge directly with the Colorado Bureau of Investigation within the DPS, provided that fingerprint evidence is submitted with the request. The Colorado Bureau of Investigation is required to review and analyze fingerprint data and, if the fingerprint evidence verifies that the person challenging the records is not the same as the person arrested, issue a letter of misidentification and update its records accordingly. A sentencing court is also required to include any costs incurred by a victim to challenge his or her records in the restitution order, and, if applicable, provide the Colorado Bureau of Investigation with an order stating the victim's factual innocence.

**House Bill 13-1230** creates a state compensation program for persons who are found factually innocent of felony crimes after serving time in jail, prison, or juvenile placement. The bill establishes the procedure required for an exonerated person to apply for funds. If found factually innocent, the exonerated person is eligible to receive the following benefits:

- monetary compensation in the amount of \$70,000 for each year incarcerated, plus an additional \$25,000 for each year he or she served on parole, and \$50,000 for each year he or she was incarcerated and awaited execution;
- tuition waivers at state institutions of higher education, if the exonerated person was incarcerated for at least three years;
- compensation for child support payments and associated interest owed by the exonerated person that were incurred during incarceration;
- reasonable attorney fees; and
- the amount of any fine, penalty, court costs, or restitution imposed as a result of the wrongful conviction.