Courts

Bail Bonds

SB 14-212 *(Enacted)*
Clean-up Bail Bond Statutes

HB 14-1261 *(Deemed Lost)*
Improvements to Pre-trial Release

Civil Commitment

HB 14-1253 *(Deemed Lost)*
Recommendations Civil Commitment Review Task Force

HB 14-1386 *(Postponed Indefinitely)*
Revisions to 27-65-102, C.R.S., Statutory Language

Court Procedures and Administration

SB 14-027 *(Enacted)*
Judicial Department Background Checks

SB 14-034 *(Postponed Indefinitely)*
Strengthen Press Shield Law

SB 14-069 *(Postponed Indefinitely)*
Swift Justice Act

SB 14-174 *(Enacted)*
Prosecution Fellowship Program

SB 14-190 *(Enacted)*
Statewide Discovery Sharing System

SB 14-203 *(Enacted)*
Respondent Parents Counsel Child Abuse and Neglect

HB 14-1050 *(Enacted)*
Increase Judges in 18th Judicial District

HB 14-1069 *(Postponed Indefinitely)*
District Commissions on Judicial Performance

HB 14-1096 *(Enacted)*
Underfunded Courthouse Facilities Grant Program

HB 14-1144 *(Enacted)*
Deputy District Attorney Compensation and Training

HB 14-1220 *(Postponed Indefinitely)*
Discovery Requirements in Criminal Cases

HB 14-1347 *(Enacted)*
Seven-day Court Time Intervals

Court Records

SB 14-206 *(Enacted)*
Criminal Record Sealing Clean-up

HB 14-1047 *(Enacted)*
Remove Booking Photos From Internet

Criminal Sentencing

SB 14-163 *(Enacted)*
Clean-up SB 13-250 Drug Sentencing

HB 14-1035 *(Enacted)*
Restitution Collection Deferred Judgment

HB 14-1061 *(Enacted)*
Eliminate Prison for Inability to Pay Fines

HB 14-1260 *(Enacted)*
Penalties for Sex Offenses Against a Child Under 12

HB 14-1264 *(Postponed Indefinitely)*
Jessica's Law

HB 14-1266 *(Enacted)*
Value-based Crime Threshold Level Changes

The General Assembly considered a variety of court-related legislation during the 2014 legislative session. Major topics addressed included bail; civil commitment; court administration, procedures, and records; and criminal sentencing.

Bail Bonds

Bond conditions. **Senate Bill 14-212** clarifies that the court or a person designated by the court may set a defendant's bond and that pretrial risk assessments may only be used for assessing pretrial risk. It allows a defendant to decide the method for satisfying the financial conditions of release, unless the court makes specific and individualized findings on the record that a certain method is reasonable and necessary to ensure his or her appearance in court or public

safety. The bill adds stalking crimes to the list of cases that require that a defendant acknowledge a protection order as an additional condition of bond. Finally, a defendant may file a written motion for relief from a monetary condition of bond only once during a case, but the motion may be filed at any time while the case is pending. **House Bill 14-1261**, which was lost in the House, would have done many of the same things as SB 14-212. It also would have:

- required the court, if no bonding commissioner was available, to notify the bail bond agent of record by electronic mail within 24 hours, or by certified mail within 14 days, of issuing a warrant for a defendant;
- required that a pretrial supervision program notify the defense counsel of record, if any, of a report or request made by the program of the court or a district attorney to revoke or impose additional conditions of bond or release for a supervised defendant;
- allowed a compensated surety to file with the court, in writing, at least seven days prior to the hearing, a statement of time, exposure to risk, and expenses or other costs incurred for posting of the bond; and
- removed the ability of the court to apply a defendant's cash bond toward court costs, fees, fines, or restitution owed, unless the defendant agreed in writing to the use of the moneys for this purpose.

Civil Commitment

Two similar bills related to civil commitment were considered during the 2014 session. Civil commitment is the legal process by which an individual with severe mental illness is ordered by a court to receive inpatient treatment in a mental health facility. Both bills were ultimately lost. The first, **House Bill 14-1253**, would have implemented the recommendations of the Civil Commitment Review Task Force created under House Bill 13-1296. Among other things, the bill would have:

- consolidated statutory provisions and created a single process for emergency holds and extended-care certification for all substance abuse and misuse;
- removed the option for a jury trial for a certification of a mental health or substance misuse hold;
- modified the definition of "gravely disabled;"
- removed the requirement that danger to self or others be imminent in order to issue a mental health hold and revised the definition of "danger to self or others;"
- encouraged treatment facilities to inquire as to whether or not a patient with behavioral health illness had an advance directive at admission, and, if medically appropriate, take it into account; and
- relocated various sections of statute, made conforming amendments, removed obsolete language, and made other technical changes to state statute on substance use disorders.

The other bill, **House Bill 14-1386**, would have modified the definitions of "gravely disabled" and "danger to self or others" and removed the requirement that danger to self or others be imminent in order to issue a mental health hold on an individual.

Court Procedures and Administration

A number of bills were considered in 2014 related to court procedures and administration. The bills covered a wide range of topics such as judges, judicial staff, courthouses, district attorneys, and discovery, and procedural matters.

Judges, judicial staff, and courthouses. **House Bill 14-1050** increased the number of judges in the 18th Judicial District from 21 to 23. The 18th Judicial District includes Arapahoe, Douglas, Elbert, and Lincoln Counties.

House Bill 14-1069, which was postponed indefinitely, would have required district commissions on judicial performance to invite a representative of the district attorney, a member of the public defender's office, and a representative from the local bar association to personal interviews with judicial officers during the performance evaluation of each judge. A district commission would have been required to invite those parties at least 35 days in advance of such interviews, and the majority of the district commission members would have been required to be present at the interview. At its sole discretion, an invited party could have opted to submit a written evaluation instead of attending an interview.

Background checks for attorneys and child family investigators (CFIs) were addressed by **Senate Bill 14-027**. The bill authorizes the Colorado Supreme Court to request a criminal history background check from the Colorado Bureau of Investigation in the Department of Public Safety as part of the licensing process for attorneys. In addition, the bill requires a person who wishes to be appointed as a CFI to undergo a background check through the CBI at his or her own expense. The bill clarifies that if fingerprints are non-classifiable, the background check will be name-based.

House Bill 14-1096 creates the Underfunded Courthouse Facility Cash Fund (fund) and Commission within the Judicial Branch in order to evaluate and award grants for necessary repairs, renovations, improvements, or expansions of local district courthouse facilities. The fund and the commission sunset in September 2024.

Grants may be awarded to qualifying projects to address needs that arise from expanding caseloads, additional judges assigned to a district, aging facilities, natural disasters, or code compliance issues. Grant funds must be used for master planning, for matching or leveraging grant opportunities, or to address emergency needs due to the imminent closure of a facility. Grant recommendations must be approved by the State Court Administrator. The bill lists financial and demographic factors to be met by a county in order to be considered for funding.

Senate Bill 14-203 establishes the Office of the Respondent Parents' Counsel within the Judicial Department beginning January 1, 2016. The office is required to work with judicial districts, attorneys, and parents to ensure the provision of uniform, high-quality legal representation for parents involved in judicial dependency and neglect proceeding in Colorado and who lack the financial means to afford legal representation.

District attorneys. Two bills concerning district attorneys were passed in 2014. **House Bill 14-1144** allocates $350,000 per year for the Colorado District Attorneys' Council (CDAC) to provide prosecution training, seminars, continuing education programs, and other prosecution-related services to its members. **Senate Bill 14-174** establishes the Prosecution Fellowship Program in the Colorado Department of Higher Education to provide annual fellowship funding to the CDAC for up to six individuals who have recently graduated from law school in Colorado to allow them to pursue careers as prosecutors in rural Colorado. The fellowship program will match law school graduates for one-year fellowships with rural district attorneys' offices. The law schools will provide some funding toward the fellows' salaries in order to have their students considered for the program. No funding was appropriated for the program in FY 2014-15.

Discovery. Two bills related to discovery were considered. **Senate Bill 14-190** establishes the Discovery Process Steering Committee to assist in developing a request for proposal application and selection process to choose a vendor to develop a statewide discovery sharing system. The bill requires the CDAC to enter into a contract with a vendor to complete the new system by October 31, 2016. The CDAC and the steering committee will be responsible for

maintaining and operating the system. The bill requires every person who is represented by private counsel or appears *pro se* and is convicted of a felony, drug felony, misdemeanor, or drug misdemeanor to pay a $5 to $10 surcharge. The surcharge will be deposited into the newly created Statewide Discovery Sharing Surcharge Fund for expenses related to developing, maintaining, and operating the system.

Another bill, **House Bill 14-1220**, which was postponed indefinitely, would have made adjustments to procedures for discovery in criminal cases. The defense would have been required to do the following no later than 35 days before the start of a trial:

- provide all specified discovery materials, except when good cause could be shown;
- disclose the nature of the defense strategy for a felony trial (this requirement is seven days for non-felony cases); and
- notify the prosecution if the defense intended to introduce evidence that the defendant was intoxicated or at a place other than the location of the offense.

No later than 45 days before the trial, except for good cause, the prosecutor and defense would have been required to confer and attempt to reach agreement on discovery issues. Unless the moving party could certify that the prosecutor and defense counsel satisfied this requirement, no motions concerning discovery issues would have been permitted to be filed.

Procedural matters. Three other bills related to procedural matters in court were considered. **House Bill 14-1347** modifies current law to establish time intervals based on a "rule of seven" for various legal processes. Seven-day intervals are used to compute filing deadlines and other significant dates following the commencement of an action.

In addition to increasing the legal standard of proof from a preponderance of the evidence to clear and convincing evidence, **Senate Bill 14-034**, which was postponed indefinitely, would have expanded the criteria required for enforcing a subpoena against a member of the press. The party seeking to enforce the subpoena would have been required to show the following four things about the information:

- it was not obtained in confidence;
- it is highly material and relevant;
- it is critical to a material issue; and
- it is not obtainable from another source.

Senate Bill 14-069, which was also postponed indefinitely, would have required the Colorado Supreme Court to rule on a death penalty appeal within three years of the filing of the notice of appeal unless extraordinary circumstances prevented compliance.

Court Records

The General Assembly enacted two bills related to court records. **Senate Bill 14-206** reorganizes and relocates the statutes concerning sealing of criminal records to another section of statute. It allows a person to petition a district court to seal an arrest record if he or she is not charged with a crime and is no longer being investigated by law enforcement if the statute of limitations has not expired.

House Bill 14-1047 clarifies that it is unlawful for a person to obtain a copy of a booking photograph knowing that it will be placed in a publication or posted to a website that charges a fee for removal of the photograph. Upon requesting a copy of a booking photograph from an official

custodian, a person is required to provide a signed statement affirming that the photograph will not be placed in a publication or posted on a website that requires payment of a fee in order to remove or delete the photograph. A person who violates this law or provides a false statement commits an unclassified misdemeanor punishable by a fine of up to $1,000.

Criminal Sentencing

Six bills related to criminal sentencing were considered by the General Assembly, and five were enacted.

Drug offenses. In 2013, Senate Bill 13-250 enacted comprehensive changes to the classification and penalties for drug-related offenses. **Senate Bill 14-163** makes various modifications to clarify and harmonize statutes for drug offenses enacted under Senate Bill 13-250. Among its many provisions, the bill:

- specifies that if a person has been twice convicted of a felony in any state within the United States, he or she is not eligible to receive a fine in lieu of any sentence and the court must sentence the person to at least the minimum of the presumptive sentencing range for the drug felony offense in addition to any fines;
- requires that if a person is convicted of a level 1 drug felony (DF1), he or she be sentenced for a period of at least 8 years but no more than 32 years;
- increases the minimum sentence for an aggravated DF1 from 8 years to 12 years and specifies the maximum sentence as no more than 32 years;
- adds the status of being on appeal bond following his or her conviction for a previous felony as an aggravating factor for all drug felony offenses except for a DF1;
- adds the status of being under a deferred judgment and sentence for another felony to the list of sentence-enhancing circumstances for all drug felony offenses except for a DF1;
- increases the penalty for criminal attempt or criminal conspiracy to commit a level 4 drug felony (DF4) from a level 1 drug misdemeanor (DM1) to a DF4;
- clarifies that drug misdemeanor 2 (DM2) offenses are eligible for both a period of incarceration, a fine, or both; and
- allows moneys from the Correctional Treatment Cash Fund to be used to serve offenders on bond or on summons with a pending criminal case in a pre-trial treatment program.

Fines and restitution. Prior to the passage of **House Bill 14-1061**, the law provided that part of a criminal sentence must include a sentence to prison if an individual criminal defendant failed to pay a fine. This bill clarifies procedures related to monetary payments imposed as part of a sentence. It clarifies that the court's designated official may direct how a defendant satisfies the obligation and requires that the designated official report to the court on any failure to pay. When the court imposes a monetary payment as part of a sentence, it must notify the defendant that if he or she is unable to make the payment, he or she must contact the court's designated official or appear before the court to explain why he or she is unable to pay. If the defendant has the ability to pay but willfully chooses not to, the defendant may be imprisoned for failure to comply with the court's order.

The bill also clarifies that inability to pay without experiencing undue hardship is not grounds for imprisonment for failure to pay. Except in the case of a corporation, if the defendant fails to pay, the court may consider a motion to impose part or all of a suspended sentence, revoke probation, or may institute proceedings for contempt of court. The court may not take any of these actions unless it has made findings on the record, after providing notice to the defendant and a hearing,

that the defendant has not made a good faith effort to comply with the order. If the defendant fails to appear at the hearing after receiving notice, the court may issue a warrant for his or her arrest for failure to appear, but not for failure to pay money.

If the court finds a defendant in contempt of court for willful failure to pay, the court may direct that the defendant be imprisoned until payment is made and must specify a maximum period of imprisonment. The bill removes language that allows a defendant to apply to the court for resentencing and clarifies that collection of a monetary amount may proceed in the same manner as collection for a judgment in a civil action.

House Bill 14-1035 clarifies that an order of restitution is in effect until the restitution is paid in full. It also clarifies that all of the provisions under current law for restitution in criminal actions apply, notwithstanding the termination of a deferred judgment and sentence or a deferred adjudication.

Sex offenses. Two bills concerning penalties for sex offenses when the victim is under the age of 12 were considered. **House Bill 14-1260** requires an indeterminate sentence for a class 2, class 3, or class 4 felony sex offense when the act includes sexual intrusion or sexual penetration against a child under the age of 12 when the offender was an adult and at least ten years older than the child. Under the bill, sentencing for these sex offenses varies by felony class level, as follows:

- at least 10 to 16 years and up to a maximum of natural life for a class 4 felony;
- at least 18 to 32 years and up to a maximum of natural life for a class 3 felony; and
- at least 24 to 48 years and up to a maximum of natural life for a class 2 felony.

If the defendant is placed on parole, the Parole Board is required to order that the offender wear an electronic monitoring device for the duration of his or her parole.

House Bill 14-1264, which was postponed indefinitely, would have created the new crime of lewd molestation when a person over the age of 18 touches a child under the age of 12 to obtain sexual gratification. Any offender convicted of this unclassified felony crime would have been given a mandatory, indeterminate sentence of 25 years to natural life in prison. If the offender was paroled, the Department of Corrections (DOC) would not have been permitted to discharge the person's sentence of incarceration and would have been required to supervise the offender for the rest of his or her natural life.

Value-based crimes. **House Bill 14-1266** makes adjustments to the crimes of criminal mischief, fraud by check, defrauding a secured creditor or debtor, unauthorized use of a financial transaction device, computer crime, and aggravated motor vehicle theft. The bill adjusts the penalties for these crimes based on the value of the goods or property stolen, classifying some current felonies as misdemeanors and some current misdemeanors as lower level offenses, including petty offenses.

Table 1 shows the offense levels for the different value thresholds, as well as the standard sentencing range for each level of offense prior to and after the passage of the bill.

Table 1
Penalty Levels for Theft Crimes Under House Bill 14-1266

Offense Level	Sentencing Range	Value Thresholds Prior to HB 14-1266	HB 14-1266 Value Thresholds
Class 2 felony	8 to 24 years in prison, $5,000 to $1 million fine, or both	CM: not applicable D: not applicable U: not applicable CC: not applicable	CM: more than $1 million D: more than $1 million U: more than $1 million CC: more than $1 million
Class 3 felony	4 to 12 years in prison, $3,000 to $750,000 fine, or both	CM: more than $20,000 D: $20,000 or more U: $20,000 or more CC: $20,000 or more AMV: $20,000 or more, or with two prior convictions	CM: $100,000 to $999,999 D: $100,000 to $999,999 U: $100,000 to $999,999 CC: $100,000 to $999,999 AMV: $100,000 or more, or with two prior convictions
Class 4 felony	2 to 6 years in prison, $2,000 to $500,000 fine, or both	CM: $1,000 to $19,999 D: not applicable U: not applicable CC: $1,000 to $19,999 AMV: $20,000 or less	CM: $20,000 to $99,999 D: $20,000 to $99,999 U: $20,000 to $99,999 CC: $20,000 to $99,999 AMV: $20,000 to $99,999
Class 5 felony	1 to 3 years in prison, $1,000 to $100,000 fine, or both	CM: not applicable D: $1,000 to $19,999 U: $1,000 to $19,999 CC: not applicable AMV: not applicable	CM: $5,000 to $19,999 D: $5,000 to $19,999 U: $5,000 to $19,999 CC: $5,000 to $19,999 AMV: less than $20,000
Class 6 felony	1 year to 18 months in prison, $1,000 to $100,000 fine, or both	CM: not applicable F*: more than $1,000 or two prior convictions D: not applicable U: not applicable CC: not applicable	CM: $1,000 to $4,999 F*: $2,000 or more D: $2,000 to $4,999 U: $2,000 to $4,999 CC: $2,000 to $4,999
Class 1 misdemeanor	6 to 18 months in county jail, $500 to $5,000 fine, or both	CM: $500 to $999 F*: $500 to $999 D: $500 to $999 U: less than $1,000 CC: $500 to $999	CM: $750 to $999 F*: $750 to $1,999 D: $750 to $1,999 U: $750 to $1,999 CC: $750 to $1,999
Class 2 misdemeanor	3 to 12 months in county jail, $250 to $1,000 fine, or both	CM: less than $500 F*: less than $500 D: less than $500 U: not applicable CC: less than $500	CM: $300 to $749 F*: $300 to $749 D: $300 to $749 U: $300 to $749 CC: $300 to $749
Class 3 misdemeanor	Up to 6 months in county jail, $50 to $750 fine, or both	CM: not applicable F: not applicable D: not applicable U: not applicable CC: not applicable	CM: less than $300 F*: $50 to $299 D: $50 to $299 U: $50 to $299 CC: $50 to $299
Class 1 petty offense	Up to 6 months in county jail, up to $500 fine, or both	F: not applicable D: not applicable U: not applicable CC: not applicable	F*: less than $50 D: less than $50 U: less than $50 CC: less than $50

CM: criminal mischief. **F**: fraud by check, **F*** means that it also applies when two or more checks are written in the aggregate of the amount within 60 days. **D**: defrauding a secured creditor / debtor. **U**: unauthorized use of a financial transaction device. **CC**: computer crime. **AMV**: aggravated motor vehicle theft.