



Commission on Criminal and Juvenile Justice

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2011 Legislative Recommendations

February 11, 2011

The following bills are based on recommendations from the Commission on Criminal & Juvenile Justice.

SB 11-96: Concerning Excluding A Class 6 Felony Drug Possession Conviction As A Qualifying Offense Under The Habitual Offender Statute

Sponsors: *Senators Steadman, Bacon, Carroll, Giron, Guzman, Hodge, Hudak, Jahn, King K., King S., Mitchell, Morse, Newell, Nicholson, Roberts and Representatives McCann, DelGrosso, Ferrandino, Levy, Nikkel*

Summary: A person convicted of a class 6 felony for drug possession will not be sentenced under the habitual offender statute.

Status: Scheduled to be heard in the Senate Judiciary Committee on 2/14/11.

HB 11-1064: Concerning A Parole Presumption Pilot Program for Certain Drug Offenders

Sponsors: *Representative Waller and Senator Steadman*

Summary: The bill creates a pilot program establishing a presumption in favor of granting parole for an inmate who is parole-eligible and serving a sentence for a drug use or drug possession crime that was committed prior to August 11, 2010. The inmate must meet other criteria related to previous criminal behavior and institutional behavior to be eligible for the presumption. Once the inmate is eligible for the presumption, he or she must have a parole hearing within 90 days. The chair of the parole board shall provide an annual report to the judiciary committees regarding the presumption.

Status: Passed House Judiciary Committee unanimously on 2/8/11.

HB 11-1167: Concerning The Petition Process For The Sealing of Certain Drug Offense Records

Sponsors: *Representatives Ferrandino, Levy and Lee and Senators Nicholson and Steadman*

Summary: Under current law, a person convicted of drug use or possession has to wait 10 years after completion of any sentence (including parole) and meet other eligibility criteria in order to petition the court to seal the criminal record. Under this bill, the time-line would be staggered based on the seriousness of offense: 3 years on a petty offense or class 2 or 3 misdemeanor; 5 years on a class 1 misdemeanor; 7 years on a class 5 or 6 felony; and 10 years on any other drug crime. The district attorney has the right to object to the petition or veto the request for all offenses except petty offenses. Other provisions in current law remain, including that:

- the defendant must show the court that he or she has not been convicted of another offense or been charged with another offense since the discharge of the offense for which the defendant is seeking to have sealed.
- conviction records cannot be sealed if the defendant still owes court-ordered restitution, fines, or fees.
- the office of the state court administrator must post on its web site a list of all petitions to seal conviction records that are filed with a district court. The bill prohibits a district court from granting a petition to seal conviction records until at least 30 days following the posting.

The provisions of the bill apply to convictions entered on and after July 1, 2011. For convictions prior to July 1, 2011, the time frames of the bill are applicable but sealing of the criminal records is available only with the consent of the district attorney and subsequent court review and approval.

Status: Scheduled to be heard in the House Judiciary Committee on 2/24/11.

HB 1189: Concerning Bail Bond Conditions For Those Arrested For Subsequent Substance Abuse Driving Offenses

Sponsors: *Representatives Fields, Schafer S., Todd, Vigil*

Summary: For people who have two prior DUI or DWAI convictions and are arrested for a third DUI or DWAI, the bill requires the court to establish the following conditions of bond:

- participation in a substance abuse treatment program,
- electronic monitoring
- drug or alcohol testing and
- use of interlock device

A defendant may file a motion with the court for relief from any of the above conditions.

Status: Assigned to the House Judiciary Committee.

HB 1239: Concerning A Requirement to Include Additional Information in Fiscal Notes For Certain Bills Related to Criminal Offenses (not yet introduced)

Sponsors: *Representative Nikkel and Senator Roberts*

Summary: Would require that additional information be included in the fiscal note on any bill that creates a new crime or makes changes to the penalty or elements of an offense. This additional information includes:

- a description of the new, amended, or additional elements of an existing crime;
- a statement as to whether the offense proposed can already be charged under current law
- a comparison of the crime classification and associated penalties to similar types of offenses; and
- a summary of the current and anticipated future prevalence of the behavior that the proposed new crime, or changes to an existing crime, intends to address.

Status: Scheduled to be heard in the House Judiciary Committee on 2/24/11.

HB ____: DUI Clean Up (Technical corrections to HB 10-1347) (not yet introduced)

Sponsors: *Representative Levy*

Summary: Addresses the unintended consequences created by HB 10-1347 for first time DUI violations.

HB ____: DUI-D Per Se (not yet introduced)

Sponsors: *Representatives Waller and Levy*

Summary: Establishes a “per se” violation for driving under the influence of marijuana with a level of 5 nanograms of THC/mL of whole blood or more at the time of driving or within two hours after driving as an unclassified misdemeanor traffic offense; amends the express consent statute to require a blood test if an officer establishes probable cause; amends administrative laws regarding drivers license revocations and reinstatements to mirror the impacts of a per se DUI violation; and clarifies that DUI-D per se is a qualifying offense for multiple driving offenses.

HB ____: Sex Offender Registration (not yet introduced)

Sponsors: *Representative Gardner and Senator Morse*

Summary: Creates a simultaneous termination hearing/de-registration process for juveniles and adults with a deferred judgment who are currently eligible for de-registration; establishes a consistent fee of up to \$25 for each registration event; allows annual registration to occur within 5 business days of the offender’s birthday; allows for 5 business days to re-register due to changes in life circumstances as specified in statute; adds the county where an offender completed his/her last registration as a place of

trial venue; eliminates mandatory intensive supervision for failure to register offenses; adds second degree kidnapping as a sex offenses when the underlying offenses is sexual assault; makes changes regarding failure to register and tribal and territorial offenders pursuant to the Adam Walsh Act.

HB/SB ____: Sex Offender Sentencing (not yet introduced)

Sponsors: TBD

Summary: Repeals the mandatory prison sentence for Unlawful Sexual Conduct by Force, Threat or Intimidation because this penalty is greater than the penalty for Sexual Assault by Force, Threat, or Intimidation which is a more serious offense; extends the amount of time available on a deferred judgment and sentence for a sex offense requiring treatment; fixes an unconstitutional provision regarding judicial fact finding about likelihood to re-offend unless such a finding is agreed to by the defendant.

HB/SB ____: Creating a Standardized Mental Illness Screening Instrument (not yet introduced)

Sponsors: TBD

Summary: Develop and implement a standardized mental illness screening instrument as part of the presentence investigation or, if none was completed, at the post-sentence probation intake.