



Commission on Criminal and Juvenile Justice

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2011 Legislation April 8 Update

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

SB 96: Concerning Excluding a Class 6 Felony Drug Possession Conviction as a Qualifying Offense under the Habitual Offender Statute

Sponsors: *Senators Steadman and Representative McCann*

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

Status: Signed by the Governor on March 25. No amendments.

HB 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, 2011. 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 11-0 on February 8 (technical amendment only); scheduled for House Appropriations on April 8.

HB 1167: Concerning the Petition Process for the Sealing of Certain Drug Offense Records

Sponsors: *Representative Ferrandino and Senator Nicholson*

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: Signed by Governor on March 29. No amendments.

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

Sponsors: *Representative Fields and Senator Keith King*

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: Amended and passed in House and Senate (see below). Chambers have concurred on final version. Sent to the Governor on March 30. Awaiting signature.

Amendments: Final version of bill is amended to state that the bond condition for one more previous DUI or DWAI convictions shall be monitored abstention from alcohol or the illegal use of drugs, and that the court shall consider whether the defendant is voluntarily enrolled in treatment when determining whether to grant relief from bond conditions.

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: Signed by the Governor on March 29. No amendments.

HB 1268: DUI Penalties Revisions

Sponsors: *Representative Levy and Senator Nicholson*

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

Status: Passed Senate Judiciary 8-0 with one excused on March 29. Amended (see below). Awaiting second reading in the Senate.

Amendments: House amendment clarifies that probation is mandatory for second and subsequent offenses and discretionary for first time offenders, and that courts have the discretion to suspend fines for first, second, third and subsequent offenses.

HB 1261: DUI Per Se for Excess THC in Blood

Sponsors: *Representatives Waller and Levy, Senators Steve King and Boyd*

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.

Status: Amended and passed by the House March 23 on a vote of 51-14. Scheduled for Senate Judiciary on April 18.

Amendments: House amendments exclude administrative revocation processes and sanctions.

HB 1278: Sex Offender Registration

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.

Status: Passed House Judiciary 11-0 on March 22, and House Appropriations 13-0 on April 6. Amended (see below). Passed on second reading in the House April 8 on a COW vote of 62-0.

Amendments: House amendments include: defining transient; making the petition process within DHS for juveniles permissible; requiring notice to the Juvenile Parole Board regarding juvenile deregistration; and clarifying the affirmative defense process for uncontrollable circumstances as permitted by the Adam Walsh Act.

SB 186 Alternative Bond Program

Sponsors: *Senator Morse and Representative Waller*

Summary: The bill permits an alternative bond program to be established in any judicial district. A court is allowed to provide the option of the alternative bond program to a defendant if there is such a program in that judicial district. A law enforcement agency may work with an alternative bond program to secure the appearance of defendants in the program. A pretrial services program with an alternative bond program is permitted to expend a portion of the moneys collected for pretrial services.

Status: Passed Senate Judiciary 6-3 with one excused on March 9. No amendments. Awaiting hearing in Senate Appropriations.

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.