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H. Patrick Furman

University of Colorado Law School

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1992 Criminal Law Legislative Update

by H. Patrick Furman

This article is a summary of the major changes enacted in the 1992-93 legislative session regarding criminal law. For more detailed and comprehensive information, counsel should consult the actual legislation.

Crimes

Stalking

The most talked-about piece of legislation this year is the stalking bill, House Bill ("H.B.") 1189, which adds a new subsection to the harassment statute, CRS § 18-9-111. H.B. 1189 creates the new crime of stalking, which it generally defines as making a credible threat against another person and thereafter either following or repeatedly communicating with that person.

Stalking is a class 1 misdemeanor. Any sentence for stalking must be imposed consecutively to any sentence imposed as the result of a related finding of contempt or conviction for violation of a restraining order. The legislation also requires peace officers to respond to reports of stalking as quickly as possible and to cooperate with the alleged victim of such conduct.

The types of restraining orders to which this legislation might apply are expanded by H.B. 1087, which amends CRS § 13-6-107 to include orders to prevent the emotional abuse of the elderly. Violation of such an order is a class 3 misdemeanor under CRS § 18-6-803.5.

Property Crimes

The dollar limits on certain property crimes were increased this year. The pre-existing \$50-\$300-\$10,000 scheme has been changed by H.B. 1297 to a \$100-\$400-\$15,000 scheme. Theft of less than \$100 is now a class 3 misdemeanor. Theft of \$100 or more but less than \$400 is now a class 2 misdemeanor. Theft of \$400

or more but less than \$15,000 is now a class 4 felony. Finally, theft of \$15,000 or more is now a class 3 felony.

The new limits apply to theft from the elderly, theft of rental property, motor vehicle theft, theft by receiving, fraud by check, defrauding a secured creditor, unauthorized use of a financial transaction device, criminal mischief and computer crime. The concurrent jurisdiction of municipalities over theft offenses was modified to reflect this change so that cities may criminalize thefts of up to \$400.

Drugs

H.B. 1015 is a comprehensive overhaul and consolidation of the drug laws. Article 18 of Title 18 was repealed and re-enacted as the Uniform Controlled Substances Act of 1992. Much of this bill is merely statutory housekeeping. Most of the definitions of terms, previously located in both Title 18 and Title 12, are consolidated here. However, some new definitions are set forth. The Act incorporates statutes relating to drug paraphernalia, imitation controlled substances and obtaining drugs by fraud and deceit, as well as the record-keeping requirements and administrative inspection and warrant procedures.

The list of Schedule I, II, III and IV drugs is expanded by the inclusion of some new drugs, the most notable of which are anabolic steroids in the list of Schedule III drugs. Criteria are set for expanding the list in the future as more "designer drugs" appear. The criteria are essentially the presence or absence of a legitimate medical use for a drug and the severity of the addiction and abuse associated with the drug.

The actual criminal offenses and penalties related to illegal drugs remain essentially the same. However, a new aggravating factor—the use, display or availability of a weapon—has been added to the special offender sentencing provi-

sion. The previous public nuisance provisions are strengthened by a provision making it a class 1 misdemeanor to open, maintain or lease property on which it is known that the manufacture of controlled substances is occurring. The statute also makes laundering drug money a class 3 felony.

This legislation attempts to make cooperation with the authorities more attractive to potential informants. It provides that a sentencing court, on the request of the prosecutor, can reduce or suspend the sentence for a person who provides "substantial cooperation" to the prosecution.

Antitrust

H.B. 1082 enacts the Colorado Antitrust Act of 1992, which contains several new criminal offenses for particular violations of certain of its terms. Persons who violate this Act can face class 5 felony charges. Other entities can be fined up to \$1 million.

Nonsupport

H.B. 1078 strengthens the criminal nonsupport statutes, CRS § 14-6-101 *et seq.*, by repealing the provisions allowing a person convicted under the statute to post a bond promising compliance with the support order in lieu of imposition of a sentence. This bill also tightens up the procedure for extraditing persons suspected of committing this offense by requiring the prosecutor to seek extradition and the county commissioners to pay for the extradition.

Hazardous Waste

The types of conduct which constitute crimes in connection with the use, transport and disposal of hazardous wastes

This article was written by column editor H. Patrick Furman.

were expanded by Senate Bill ("S.B.") 116. This amendment of CRS § 25-15-301 deals mostly with record-keeping requirements.

Victims, Witnesses and Concerned Citizens

A desire for additional protections for victims, witnesses and interested citizens resulted in several other pieces of legislation. First, S.B. 60 allows trial judges to exclude the public, except victim's advocates, from preliminary hearings in felony sexual assault cases. This legislation also attempts to define consent under CRS § 18-3-401(1.5) to deal with the date rape problem. The definition is

cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent. . . . Submission under the influence of fear shall not constitute consent.

The jury is to be given this definition at the request of either party.

Second, H.B. 1059 expands the use of videotaped depositions in criminal cases. CRS § 13-25-132 is created and allows for the videotaped deposition of a witness in a criminal case if the trial court finds, on the application of the prosecution, that there is a substantial risk of physical harm or continuing intimidation of that witness. Intimidation is defined broadly. The prosecution must apply for the order at least three days before taking the deposition. The "defendant shall receive reasonable notice" and the right to appear in person and through counsel.

Third, the legislature responded to certain citizens who wrote letters to judges relating to a case. These citizens complained that the subjects of the case had obtained the citizens' names and addresses. S.B. 165 allows judges to seal such identifying information. A judge still may authorize the release of such information to the defendant or defense counsel.

Fourth, H.B. 1075 expands the crime of violating a restraining order to bring within the reach of CRS § 18-6-803.5 those orders issued in connection with domestic abuse cases pursuant to CRS § 14-10-108. A violation of this statute is increased to a class 1 misdemeanor if the perpetrator has been convicted of the same offense within the past seven years. Police who have probable cause to believe that a violation of such an order

has occurred are directed to arrest the alleged violator, rather than simply enforcing the order. The requirement that the alleged violator be on notice of the order is loosened by allowing actual notice, in addition to proper service of the order, to serve as legal notice.

Fifth, CRS § 18-8-706, which bars retaliation against a witness or victim, has been expanded by H.B. 1078 to include within its protection not only witnesses and victims but also family members, significant others and household members of the victim or witness.

Finally, victims of sexual assaults are less likely to have their names made public under H.B. 1195, which amends CRS § 24-72-304 to require the deletion of the victim's name from any criminal justice record which is being released.

Sentencing Alcohol-Related Traffic Offenses

Persons convicted of alcohol-related traffic offenses pursuant to CRS § 42-1202 face a new sentencing provision. H.B. 1078 authorizes a judge, in addition to the other penalties prescribed by law, to require a defendant—as a condition of probation—to attend a victim-impact panel approved by the court and to pay a fee (not exceeding \$25) for attendance.

Sex Offenses

Presentence reports will take on a new look in sex offense cases. H.B. 1021 creates a board, under the auspices of the Department of Public Safety, to review and evaluate procedures and programs for treating sex offenders. Beginning January 1, 1994, presentence reports on sex offenders will include a treatment recommendation based on the evaluations prepared by the new board. Parolees, too, will be subject to treatment. Partial funding for the program will come from a sex offender surcharge, ranging from \$150 to \$3,000, levied against the offenders.

Restitution

H.B. 1226, which amends CRS § 16-11-101, expands community corrections-style sentencing alternatives by providing for restitution and community service programs. The legislation establishes a preference for sentencing nonviolent offenders to these new programs when there is a need for restitution to be paid.

Miscellaneous

Persons placed on probation or parole now may be ordered to pay their child-

support obligations under the terms of H.B. 1232.

H.B. 1029 raises the age limit for the regimented inmate discipline program (boot camp). Any otherwise eligible inmate who is age thirty or younger now may be placed in the program.

H.B. 1209 establishes a Department of Corrections program to help offenders who have substance abuse problems prepare for their re-integration into society. The freedom of inmates to worship in prison is protected more completely under S.B. 197.

H.B. 1078 provides that persons convicted of driving without proof of proper insurance (CRS § 42-4-1213) may have the previously mandatory fine suspended by providing proof that they have obtained a complying insurance policy.

Finally, the pilot program combining probation and parole services is continued by H.B. 1124. A report on the results of the program is to be submitted to the General Assembly by January 1, 1993.

Criminal Procedure

H.B. 1078 changes the statute of limitations for a number of offenses. The period within which a prosecution must commence now begins to run from the time of the discovery of the crimes of theft, criminal impersonation, bribery, perjury and a number of other offenses. Previously, the statute of limitations, CRS § 16-5-401, began to run at the time the offenses were committed.

H.B. 1078 also expands the prosecution's right to take an interlocutory appeal by including among the appealable issues a challenge to the trial court's decision on a request for a change of venue.

H.B. 1078 further addresses venue in murder cases. CRS § 18-1-202 is amended to provide that venue in such cases is now proper in the county in which the cause of death was inflicted, where the death occurred or where the body (or any part thereof) was found. A defendant wishing to challenge venue under this act must do so within twenty days of arraignment. The delay attributable to the resolution of such a motion now is excluded from the calculation of the statutory right to a speedy trial under CRS § 18-1-405.

New technology enters another aspect of criminal investigations with S.B. 134. Applications and affidavits for search warrants, and the warrants themselves, now may be transmitted by electronic or electromagnetic facsimile ("fax") transmission. This legislation is to take effect

as soon as the Colorado Supreme Court adopts rules relating to implementation.

H.B. 1060 attempts to deal with the high volume of cases facing the Office of Public Defender. It amends CRS §§ 16-7-207 and 16-7-301 by restricting the right to court-appointed counsel for misdemeanor, petty and traffic offenses when the prosecutor elects not to seek incarceration and files written notice to that effect. Prosecutors are authorized to engage in plea negotiations directly with the defendants in these cases. Certain offenses explicitly are excluded, including, most importantly, driving under the influence, driving with ability impaired and driving under suspension. If the plea negotiations are successful and the resulting agreement includes jail time, the trial court must advise the defendant of the right to counsel. If the plea negotiations are not successful, the defendant still may apply for representation by the Office of Public Defender. That application will now cost \$25, rather than \$10. Therefore, public defender offices will not enter cases until after a *pro se* pretrial conference.

Concerns that law enforcement officers and prosecutors may have gotten carried away with forfeiture proceedings prompted S.B. 204, which puts some limits on the benefits they can receive from forfeitures. CRS § 16-13-302 is amended to make sure the disposal of seized property does not result in inappropriate personal or office gain.

Finally, pursuant to H.B. 1353, CRS § 16-3-109 is amended so that off-duty officers who are working in private security under approved agreements have the same power to arrest as if they were on duty.

Miscellaneous Changes

On a lighter note—or, at least, what passes for a lighter note among criminal law attorneys—the following legislation should be noted.

Persons who own cats and dogs may want to consider trading them in for pot-bellied pigs. H.B. 1155 adds a new section to the cruelty to animals statute, CRS § 18-9-202, making it an offense to knowingly abandon a dog or cat. Anyone considering releasing cats or dogs (or

other animals) which are confined for scientific or other legal purposes should be aware that such a release now is punishable as a class 2 misdemeanor. Those convicted will have to pay restitution under a broad definition of that term.

Part-time surveyors will be glad to know that H.B. 1251 now exempts them from the operation of the trespass law, CRS § 18-4-515, as long as they give proper notice to the landowner. Those who end up buying the property they survey should be careful about property insurance: H.B. 1086 adds CRS § 18-13-119.5, making it criminal to abuse property insurance.

Speeders should be aware that H.B. 1078 gives municipalities the authority to set absolute speed limits without regard to the old limitation that exceeding a speed limit constituted only *prima facie* evidence that the speed was unreasonable.



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