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Philip A. Cherner

H. Patrick Furman

University of Colorado Law School

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Criminal Law 1991 Legislative Update

by Philip A. Cherner and H. Patrick Furman

The Colorado legislature tinkers with criminal law and procedure each year, and 1991 was no exception. However, the number of additions, deletions and modifications was lower than usual. The following is a summary of the major changes enacted in the 1991 legislative session. It is not intended to be either detailed or comprehensive, and counsel should consult the legislation itself for the actual language and effective dates.

Offenses Added And Broadened

Two brand new offenses were created by legislation in 1991. First, the inhalation of toxic vapors, previously banned by many municipalities, is now a violation of state law, as well. This new petty offense, codified at CRS § 18-18-111, was created by House Bill ("H.B.") 91-1057.

The second new offense, codified at CRS § 18-6-803.5, is the crime of violating a restraining order. This Class 3 misdemeanor was created by H.B. 91-1177.

Several existing offenses were broadened by the addition of new variations on existing crimes or by new definitions of existing terms. H.B. 91-1177 broadened the bond jumping statute, CRS § 18-8-212, to include cases filed as juvenile delinquency petitions. H.B. 91-1177 expanded the reach of the Colorado Victim and Witness Protection Act, CRS § 18-8-701 *et seq.*, by broadening the definitions of "victim" and "witness." The new definitions eliminate the requirement of an ongoing official proceeding. H.B. 91-1229 broadened the definition of child abuse in CRS § 18-6-401 to include a

continued pattern of conduct which results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries which ultimately results in the death of a child or serious bodily injury to a child.

H.B. 91-1076 broadened the definition of "peace officer" in CRS § 21-33.5-303(6) to include Colorado Bureau of Investigation investigators. The definition of "serious bodily injury" under CRS § 18-1-901(3)(p) now includes the risk of future injury occasioned at the time of the actual injury, as well as breaks, fractures and burns of the second and third degree. The definition of a "bomb" in CRS § 18-12-101(1)(b) also was broadened to include chemical explosives.

Sex Offense Statutes

Sex offenses, which have received a great deal of attention from the legislature in recent years, were again the subject of several changes. The rape shield statute, CRS § 18-3-407, was amended to include incest, aggravated incest, exploitation of children and the procurement of children for sexual exploitation within its purview. CRS § 18-3-413, which governs videotaped testimony of children, was amended to ensure that it does not preclude the admission of such testimony when the testimony is admissible through other evidentiary rules or statutes.

Persons convicted of or given deferred sentences to certain sex offenses must begin paying a \$1,000 surcharge under CRS § 24-42-104. The money is to be used to fund court services to victims of such offenses. Additionally, Senate Bill ("S.B.") 91-96 created in CRS § 18-3-412.5 a requirement that various sex offenders register with the local law enforcement agency and made the failure to do so a Class 2 misdemeanor for a first offense and a Class 6 felony for a subsequent offense.

Drug Offense Statutes

Drug offenses, second only to sex crimes in the public and legislative eye, also were addressed during 1991. H.B. 91-1173 created a new scheme to deal with the problem of substance abuse in the criminal justice system. Many more

people—including misdemeanants and petty offenders—are now subject to substance abuse evaluations and drug screening tests both at the time of the preparation of the pre-sentence report and during probation and parole.

Assessments against offenders, including those who receive deferred sentences, were created to bear the added costs of the above provisions. For example, the assessment for a Class 3 felony is \$2,000.

H.B. 91-1076 clarifies the language in CRS §§ 18-18-105(3.5)(a) and 1071(1.5)(a) regarding those who sell drugs within 1,000 feet of a school.

Sentencing Provisions

Several sentencing provisions also were modified. In some areas, the legislature toughened sentences. H.B. 91-1076 amends CRS § 18-3-203(2)(a) to raise second degree assault committed in the heat of passion from a Class 1 misdemeanor to a Class 6 felony. The same bill amended CRS § 18-8-115(5) to make accessory to the commission of a Class 6 felony a Class 6 felony itself.

At the same time, the legislature backed off the tougher "natural life" sentence it recently created and amended CRS § 17-22.5-104 to provide for parole eligibility after forty years to persons convicted of habitual criminality. A natural life sentence still is required for Class 1 felonies. The legislature also barred suspended sentences for defendants who are ineligible for probation, unless the agreement of the prosecution is obtained.

Trying to fit their sentencing desires into a fiscally responsible framework has long been a problem for the legislators. In S.B. 91-76, the legislature attempted to discipline itself by providing that all new legislation that increases sentences must be reviewed by the Criminal Justice Commission and must contain funding for that increase. In adopting H.B. 91-1235, the legislature

also began a pilot program to explore the possibility of combining probation and parole services.

Procedural Changes

Criminal Procedure

Criminal procedure was not immune from legislative interest in 1991. The statute of limitations for the offense of sexual assault on a child by one in a position of trust, CRS § 18-3-405.3 (created in 1990), now comports with the statute of limitations set forth in CRS § 18-3-411 for other sex offenses. The statute of limitations for the crimes of attempt, conspiracy or solicitation to commit the crimes of murder, kidnapping, treason and forgery is eliminated by H.B. 91-1086. The statute of limitations for crimes arising under Articles 5 and 5.5 of Title 18 (U.C.C. and computer crimes) now begins to run only on the discovery of the criminal act.

Juvenile Procedure

Juvenile procedure was affected by two pieces of legislation. S.B. 91-91 created CRS § 19-2-203(4), which allows the police to serve written promises to appear (in lieu of arrest) to juveniles charged with misdemeanors and petty offenses. S.B. 91-104 extends the jurisdiction of the juvenile court until all of its orders in the case have been complied with; provides for the detention in county jail of persons over age eighteen who are being detained by the juvenile court; allows sentencing to the Department of Institutions, county jail or community corrections for certain classes of offenders; and limits the plea agreements available to certain repeat offenders.

Trial Procedure

Several modifications were made to trial procedure in 1991. H.B. 91-1076 provides that alternate jurors are to be

discharged when deliberations begin, ending a brief experiment with keeping alternate jurors available until the verdict is rendered. H.B. 91-1086 amends CRS § 18-1-406 to require that a defendant who requests a felony trial to less than twelve jurors obtain the approval of both the court and the prosecution.

Conclusion

Compared to other recent years, the legislature was relatively quiet on the criminal legislation front in 1991. Basically, the overall effect is consolidation and clarification. As this is being written, the legislature is considering how to respond to the Colorado Supreme Court's recent death penalty ruling and undoubtedly will turn its attention to other criminal law matters in the next session as well.



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**Thursday, October 10
The Brown Palace Hotel
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**Cost: \$37.50 members
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The panel of activists includes:

**Brenda Lyle, Cece Ortiz, Clara Villarosa, Wilma Webb
Moderator: Carolyn Smiley-Marquez**

The 1991 Athena Award also will be presented. The Athena Award honors a professional woman who has attained and embodies the goals of professional excellence, power and a willingness to use those traits to further the advancement of women in the professions.

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