

It's a Wrap Under the Gold Dome: 2008 Legislative Session

This legislative session was surprisingly active around criminal justice issues. The two biggest victories for CCJRC was the passage of HB 1082, the record sealing bill that Governor Ritter vetoed in 2007. The second was the passage of HB 1382, which will restore the possibility for all people paroled on or after 1/1/09 to be awarded earned time. Both bills are further described below.

The biggest disappointment was the veto by Governor Ritter of HB 1208, which would have made important changes to the process by which juveniles can be charged as adults. Under current Colorado law, a district attorney has the power to charge a juvenile as young as 14 years old as an adult for certain crimes. This is known as "direct file." HB 1208 would have raised the minimum age to 16 and would have permitted a "reverse transfer hearing" to allow the adult criminal court to consider whether the case should be transferred back to juvenile court. In his veto, Governor Ritter said he did not think the current process was being abused by district attorneys.

The Department of Corrections received a \$759.5 million budget, an increase of \$55.5 million (8%) over last year's budget of \$704 million. There was also significant discussion about Director Zavaras' projections that the state will need to invest over \$800 million over the next five years to build more prisons.

The pressure is on the legislature, the governor, and the Commission on Criminal & Juvenile Justice to enact reforms that will eliminate or greatly reduce the need for prison construction. CCJRC believes that reducing the need for more prisons does not always call for dramatic reform. For example, the restoration of earned time in HB 1082 is estimated to reduce the need for 1700 prison beds and could save over \$26 million in the next 5 years.

The Senate confirmed David Michaud as the new chairman of the parole board and two new parole board members, Celeste C de Baca and Rebecca Oakes. In mid-June 2008, the Legislative Audit Committee requested the State Auditor to conduct a limited audit of release decisions by the parole board. According to the State Auditor's office, the audit will be limited in scope and the specifics will not be released to the public. The audit won't likely be completed until the end of the year.

Bills Passed and Signed into Law

HB 1082 Record sealing (CCJRC priority/support): Allows people convicted of certain drug crimes to petition the court to seal the criminal record after 10 years from successfully completing any sentence, including any term of parole. (See article in this issue for more detail)

HB 1382 Criminal procedure omnibus (CCJRC priority/support): Restores earned time to everyone paroled or re-paroled on or after January 1, 2009. Right now, for people convicted after 1993, only people convicted of a nonviolent offense are eligible for earned time on parole. With the passage of HB 1382, people paroled after 1/1/09 who were convicted of a violent offense and people re-paroled following a parole revocation will also be eligible for earned time. Unfortunately, this change will not apply to people currently on parole or people who will be paroled between now and 1/1/09.

HB 1382 also made some important procedural changes to better provide due process when the DOC wants to classify someone as a sex offender if the court makes a specific finding that there is no factual basis of a sex offense in the case. In the past, DOC overrode these findings by the court. HB 1382 allows the DOC to classify someone as a sex offender if there is concern about sexual misconduct (either historically or while incarcerated), but if there is no criminal conviction or if the court has not made a specific finding of a sex offense, this designation can only happen following an administrative hearing where the person is given notice and the hearing is conducted by a licensed attorney.

HB 1119 Reducing racial disparity in criminal justice system (CCJRC priority/support): Requires the Colorado Commission on Criminal and Juvenile Justice to study and make recommendations for the reduction of racial and ethnic disparity in the criminal and juvenile justice systems.

HB 1046 Applying for benefits while in Division of Youth Corrections (CCJRC support): Would require the Division of Youth Corrections to submit applications for public benefits for eligible juveniles at least 120 days prior to release from custody.

SB 07 Applying for benefits while in jail (CCJRC support): Requires county jails to submit applications for public benefits for those eligible at least 120 days prior to release from custody.

SB 06 Allows Medicaid benefits to be suspended, rather than terminated, if someone is incarcerated (CCJRC support): Allows for Medicaid benefits to be suspended while someone is incarcerated, rather than terminated.

HB 1363 Cap on private prison provider rate (CCJRC support): Allows the DOC to negotiate a contract rate for private prisons but prohibits a contract rate from exceeding the maximum rate provided in the annual general appropriations bill.

Bills passed but vetoed by Governor Ritter

HB 1208 Changes to juvenile criminal law regarding direct file (CCJRC support): Would have raised the minimum age from 14 to 16 for direct filing on a juvenile in adult court. It would allow the adult court to conduct a “reverse transfer hearing” to determine whether the case should be transferred back to juvenile court.

Bills that did not pass either the House or Senate

HB 1004 Truancy (CCJRC priority/oppose): Would have allowed police to take kids into “temporary custody” if they think they are truant. HB 1004 died in the House Judiciary Committee in February. Many thanks to Padres Unidos, Colorado Progressive Coalition, the Colorado Criminal Defense Bar, and La Academia/Denver Inner City Parish for working with CCJRC to defeat this bill.

HB 1022 Change to the escape law (CCJRC priority/support): Would have repealed the mandatory consecutive sentence for escape convictions unless the escape is from a level III, IV or V security prison.

Representative Terrance Carroll, the bill's sponsor, pulled this bill before it went to committee so it did not proceed. It is our understanding that he wanted to give the Commission on Criminal & Juvenile Justice the opportunity to weigh in on changes to the escape bill but that he is interested in running similar legislation in 2009.

Other bills of interest signed into law

SB 171 Parolees - biological substance testing: Expands the kind of biological substance tests that can be required of people on parole. DOC would not be limited to just urine tests. For example, there is new technology that can drug-test using perspiration.

HB 1067 Parole hearing officers – immunity: Grants a parole administrative hearing officer protection by governmental immunity so long as he/she is acting within the scope of his or her duties as a public employee.

HB 1192 Inmate co-pay: Requires the DOC to establish written procedures outlining when inmates are required to pay a co-payment, not to exceed five dollars, for inmate-initiated medical, mental health, dental and optometric visits. Allows the DOC to specify services for which a co-payment will not be assessed and when a co-payment may be reduced or waived including, but not limited to, the inmate's ability to pay, the health needs of the inmate, and the public health and safety needs of the institution.

HB 1352 Parole revocation placement - return to custody facility - technical parole revocation: Makes a parolee with an active felony warrant, felony detainer, or new felony charges ineligible for placement in a community return-to-custody facility after revocation based on a technical violation.