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## Courts & Judicial

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During the 2017 legislative session, the General Assembly considered measures related to judicial performance, state and local court administration, court proceedings involving juveniles, evidence and court procedures, and records sealing.

### Judicial Performance Commissions

The General Assembly repealed and reenacted, with amendments, the law related to state and district commissions on judicial performance. *House Bill 17-1303* combines some common duties of commissions, but also changes the composition of commissions, effective in 2019; requires retired judges who have returned to temporary judicial services to be evaluated; and changes the language of commission evaluation conclusions and the frequency of evaluations. The bill also makes information about the performance evaluations available to the public, and requires the state commission to report to the General Assembly.

### Court Administration and Programs

Two bills addressed programs administered by the Judicial Branch. *House Bill 17-1087* creates an Office of Public Guardianship pilot program to provide services to indigent and incapacitated adults, contingent on the receipt of sufficient gifts, grants, or donations. Adults eligible for receiving services from the office include those who have no responsible family members or friends to act as guardian, do not have resources to compensate a private

guardian, and are not subject to a petition for appointment of guardian. *Senate Bill 17-220* indefinitely continues the Restorative Justice Coordinating Council, which had been scheduled to repeal on July 1, 2017.

### Municipal Courts

In 2016, the General Assembly adopted House Bill 16-1309, which required judges to inform a defendant of certain rights at the defendant's first appearance for a prosecution in municipal court. *House Bill 17-1083* excludes from the requirement cases involving traffic offenses and those in which the only punishment is a fine and *House Bill 17-1316* delays the effective date of that requirement to July 1, 2018.

*House Bill 17-1338* sets time frames for notifying a municipal court of a municipal hold when the defendant is held in jail and does not immediately receive a personal recognizance bond. Jails must promptly notify the court of such detention, and must notify it within four hours if the municipal hold is the sole basis for the detention. The bill sets time frames for courts to hold hearings for any detainees, usually within two days of receiving the notice.

### Proceedings Involving Juveniles

Under current law, when several incidents of sexual assault against a child by a single offender occur in different jurisdictions, they must each be prosecuted in the jurisdiction in which the individual assaults occurred. *House*

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*Bill 17-1109* allows a prosecutor to bring a pattern-offense case against an offender for all such assaults in any jurisdiction where an assault, or act in furtherance of an assault, occurred.

The General Assembly enacted two bills that affect the jurisdiction of juvenile courts. *House Bill 17-1110* allows a juvenile court to enter orders involving allocation of parental responsibilities, parenting time, and child support as part of a juvenile delinquency case when certain conditions are met. *House Bill 17-1111* clarifies that a juvenile court has jurisdiction to enter civil protection orders in dependency and neglect actions, following the same standards and procedures as district and county courts.

In dependency or neglect proceedings, a person who is not a parent, guardian, or legal custodian may be involuntarily joined to the case as a special respondent. *Senate Bill 17-177* allows a special respondent to voluntarily join the proceeding.

### Evidence

In 2009, Colorado adopted the Uniform Unsworn Foreign Declarations Act, which permits the use in state legal proceedings of unsworn declarations made by declarants who are physically outside U.S. boundaries. *Senate Bill 17-154* modifies the act to permit the use of *domestic* unsworn declarations, and clarifies that the act applies to using unsworn declarations only in state court.

Generally, hearsay is not admitted as evidence in court proceedings; however there are exceptions to that rule. *Senate Bill 17-024* clarifies that the hearsay exception for statements made by a person with an intellectual or developmental disability applies to cases where the defendant is charged with a crime against an at-risk person.

First responder peer support team members are not required to testify in court about communications that occur during the peer support process without the consent of the person who received support. This privilege does not apply when the communication is indicative of child abuse or neglect. *House Bill 17-1032* clarifies that the privilege extends to statements made outside of an individual peer support meeting. The bill also adds crimes against at-risk persons to the list of offenses to which the privilege does not apply.

Certain disputes concerning water may be heard by the Ground Water Commission or state engineer. The commission's or engineer's decision may be appealed to a state district court. Under *Senate Bill 17-036*, a district court hearing such an appeal may only hear evidence that was presented before the commission or engineer in the original proceeding, unless that evidence was wrongly excluded from the original proceeding, or in other limited circumstances.

Colorado law permits a judge to issue an *ex parte* order authorizing the interception of certain communications if there is probable cause to believe that evidence of certain crimes, which are listed in statute, will be obtained. *House Bill 17-1040* adds human trafficking to the list of crimes where such an order is permitted.

### Court Procedures

*Senate Bill 17-051* made a number of changes to the existing victims' rights laws. Among other changes, the bill creates a victim's right to be informed or notified of certain stages in an offender's case or sentencing, including progression from a state mental health hospital, various stages of parole hearings, other sentencing modifications, changes to terms and conditions of probation, and executions. The bill also permits victims to provide testimony in certain situations by phone or other similar technology.

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Courts are required to provide notice for certain proceedings, and are required to serve notice to parties in a proceeding. *House Bill 17-1142* permits courts to provide notice to certain parties by using the Judicial Branch's e-filing system. The bill also permits the court to post service by publication in domestic relations cases on the court's website instead of on a bulletin board in the clerk's office.

*Senate Bill 17-277* would have made any court, arbitration, tribunal, or administrative agency ruling void and unenforceable if the ruling was based on a law, legal code, or system that does not provide the same fundamental liberties that are granted in the constitutions of the United States and Colorado. The bill was postponed indefinitely by the Senate Judiciary Committee.

### Records Sealing

The General Assembly adopted four bills concerning records sealing during the 2017 session. *House Bill 17-1204* makes a number of changes relating to access to juvenile delinquency records and the eligibility and process for expunging those records. It makes juvenile delinquency records available to the juvenile and his or her attorney, and in some cases to parents and guardians, and to other agencies for research purposes. In cases where information remains open to the public, the bill adds protections to prevent the release of certain identifying criteria, such as the juvenile's name or birth date.

In 2016, the General Assembly created a simplified process for sealing criminal justice records other than convictions. *House Bill 17-1208* prohibits such records from being sealed in cases where a conviction has been entered but a dismissal occurs as part of a plea agreement in a separate case. The bill allows police reports or protection orders to be released to victims in certain circumstances, and if a hearing is required by victims' rights law before records can be sealed, the court must allow for notice to the victim, and a hearing on the sealing motion. The bill clarifies: the parties' responsibilities for

identifying and notifying record custodians of the sealing; that many of the provisions related to criminal record sealing, such as exceptions, also apply to the simplified process; and the distribution of filing fees collected for record sealing by state and municipal courts.

Under existing law, generally, an individual may file a petition with a state district court to seal a municipal record for a petty offense if the individual has not been charged or convicted of a felony, misdemeanor, or misdemeanor traffic offense since the final disposition in the case. *House Bill 17-1360* allows such records to be sealed if:

- the original offense does not involve domestic violence;
- the subsequent offense is not a felony and does not involve domestic violence, unlawful sexual behavior, or child abuse;
- the subsequent offense occurred within three years of the final disposition of the case or sentence for the original offense; and
- the individual has not been convicted of a felony, misdemeanor, or misdemeanor traffic offense in the ten or more years since the final disposition of the subsequent case.

*House Bill 17-1266* allows defendants convicted of a misdemeanor offense for the use or possession of marijuana to petition to seal their criminal records if their offense would not have been a crime if committed on or after December 10, 2012. The defendant must show by a preponderance of the evidence that the act would not have been a criminal offense, and he or she must pay a filing fee. The petition must be posted on the State Court Administrator's website for 30 days before the record may be sealed.