

CHAPTER 291

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 19-1263

BY REPRESENTATIVE(S) Herod and Sandridge, Benavidez, Bird, Caraveo, Coleman, Duran, Esgar, Exum, Galindo, Gonzales-Gutierrez, Gray, Hansen, Hooton, Jackson, Kennedy, Kipp, Lontine, Melton, Singer, Sirota, Snyder, Tipper, Valdez A., Weissman, Becker, Arndt, Buckner, Michaelson Jenet, Mullica, Titone;
also SENATOR(S) Marble and Lee, Fenberg, Fields, Foote, Gonzales, Moreno, Pettersen, Priola, Rodriguez.

AN ACT

CONCERNING CHANGING THE PENALTY FOR CERTAIN VIOLATIONS PURSUANT TO THE "UNIFORM CONTROLLED SUBSTANCES ACT OF 2013", AND, IN CONNECTION THEREWITH, MAKING AND REDUCING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-18-403.5, **amend** (2) introductory portion, (2)(a), and (2)(c); and **add** (4) and (5) as follows:

18-18-403.5. Unlawful possession of a controlled substance. (2) ON OR AFTER MARCH 1, 2020, A person who violates subsection (1) of this section by possessing:

(a) Any material, compound, mixture, or preparation that contains any quantity of flunitrazepam; ketamine; GAMMA HYDROXYBUTYRATE, INCLUDING ITS SALTS, ISOMERS, AND SALTS OF ISOMERS; cathinones; or MORE THAN FOUR GRAMS OF a controlled substance listed in schedule I or II of part 2 of this ~~article~~ ARTICLE 18 commits a level 4 drug felony.

(c) Any material, compound, mixture, or preparation that contains NOT MORE THAN FOUR GRAMS OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II OF PART 2 OF THIS ARTICLE 18 OR any quantity of a controlled substance listed in schedule III, IV, or V of part 2 of this ~~article~~ ARTICLE 18 except flunitrazepam, GAMMA HYDROXYBUTYRATE, or ketamine commits a level 1 drug misdemeanor; EXCEPT THAT A FOURTH OR SUBSEQUENT OFFENSE FOR A VIOLATION OF THIS SUBSECTION (2)(c) IS A LEVEL 4 DRUG FELONY.

(4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, ON

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

OR AFTER MARCH 1, 2020, A DISTRICT ATTORNEY SHALL NOT CHARGE OR PROSECUTE A PERSON PURSUANT TO THIS SECTION FOR ANY MINUSCULE, RESIDUAL, OR UNUSABLE AMOUNT OF A CONTROLLED SUBSTANCE THAT MAY BE PRESENT IN A USED HYPODERMIC NEEDLE OR SYRINGE, OR OTHER DRUG PARAPHERNALIA, AS DEFINED IN SECTION 18-18-426. THE CIRCUMSTANCES DESCRIBED IN THIS SUBSECTION (4) MAY BE USED AS A FACTOR IN A PROBABLE CAUSE OR REASONABLE SUSPICION DETERMINATION OF ANY CRIMINAL OFFENSE IF THE ORIGINAL STOP OR SEARCH WAS LAWFUL.

(5) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A PERSON MAY BE CHARGED WITH ANY OTHER OFFENSE IN THIS ARTICLE 18, INCLUDING UNLAWFUL DISTRIBUTION, MANUFACTURING, DISPENSING, OR SALE OF A CONTROLLED SUBSTANCE, OR POSSESSION WITH INTENT TO DO THE SAME, PURSUANT TO SECTION 18-18-405, WHEN THERE IS EVIDENCE FOR THE PERSON TO BE SO CHARGED. SUCH EVIDENCE MAY INCLUDE, BUT IS NOT LIMITED TO, THE AMOUNT OF THE CONTROLLED SUBSTANCE THAT THE PERSON POSSESSES.

SECTION 2. In Colorado Revised Statutes, 18-18-406, **amend** (4) and (5)(a)(II) as follows:

18-18-406. Offenses relating to marijuana and marijuana concentrate - definitions. (4) ON OR AFTER MARCH 1, 2020:

~~(a) A person who possesses more than twelve ounces of marijuana or more than three ounces of marijuana concentrate commits a level 4 drug felony.~~

(b) A person who possesses more than six ounces of marijuana ~~but not more than twelve ounces of marijuana~~ or not more than three ounces of marijuana concentrate commits a level 1 drug misdemeanor.

(c) A person who possesses more than two ounces of marijuana but not more than six ounces of marijuana OR NOT MORE THAN THREE OUNCES OF MARIJUANA CONCENTRATE commits a level 2 drug misdemeanor.

(5) (a) (II) Whenever a person is ~~arrested or detained~~ for a violation of ~~subparagraph (I) of this paragraph (a)~~ SUBSECTION (5)(a)(I) OF THIS SECTION COMMITTED ON OR AFTER MARCH 1, 2020, the ~~arresting or detaining~~ officer shall prepare a written notice or summons for the person to appear in court. The written notice or summons must contain the name and address of the ~~arrested or detained~~ person, the date, time, and place where such person shall appear, and a place for the signature of the person indicating the person's written promise to appear on the date and at the time and place indicated on the notice or summons. One copy of the notice or summons must be given to the person, ~~arrested or detained~~, one copy must be sent to the court where the ~~arrested or detained~~ person is to appear, and such other copies as may be required by the law enforcement agency employing the ~~arresting or detaining~~ officer must be sent to the places designated by such law enforcement agency. The date specified in the notice or summons to appear must be at least seven days after the ~~arrest or detention unless the person arrested or detained demands an earlier hearing~~ ISSUANCE OF THE NOTICE OR SUMMONS. The place specified in the notice or summons to appear must be before a judge having jurisdiction of the drug petty offense within the county in which the drug petty

offense charged is alleged to have been committed. ~~The arrested or detained person, in order to secure release from arrest or detention, must promise in writing to appear in court by signing the notice or summons prepared by the arresting or detaining officer. Any person who does not honor the written promise to appear commits a class 3 misdemeanor.~~ IF THE PERSON FAILS TO APPEAR IN RESPONSE TO THE NOTICE OR SUMMONS, THE COURT, IN ITS DISCRETION, MAY ISSUE A WARRANT FOR THE ARREST OF THE PERSON OR AN ORDER TO SHOW CAUSE REQUIRING THE PERSON'S APPEARANCE IN COURT.

SECTION 3. In Colorado Revised Statutes, 18-18-412, **amend** (2) as follows:

18-18-412. Abusing toxic vapors - prohibited. (2) A person who knowingly violates the provisions of subsection (1) of this section commits the offense of abusing toxic vapors. Abusing toxic vapors is a level 2 drug misdemeanor. ~~except that a person shall not receive a sentence to confinement in jail for being convicted of a first offense pursuant to this subsection (2). A person convicted of a second or subsequent offense pursuant to this subsection (2) may receive a sentence to confinement in jail.~~

SECTION 4. In Colorado Revised Statutes, 18-18-432, **amend** (2)(a) and (3); and **repeal** (2)(b) as follows:

18-18-432. Drug offender public service and rehabilitation program - definitions. (2) (a) Upon conviction FOR AN OFFENSE COMMITTED ON OR AFTER MARCH 1, 2020, A COURT SHALL SENTENCE each drug offender, other than an offender sentenced to the department of corrections or an offender sentenced directly to a community corrections facility, ~~shall be sentenced by the court~~ to pay for and complete, at a minimum, forty-eight hours of useful public service for any felony, twenty-four hours of useful public service for any misdemeanor, and sixteen hours of useful public service for any petty offense. Such useful public service ~~shall be~~ IS in addition to, and not in lieu of, any other sentence received by the drug offender. The court ~~shall not~~ MAY suspend any portion of the minimum number of useful public service hours ordered WHEN COMPLETION OF THE USEFUL PUBLIC SERVICE REQUIREMENT INTERFERES WITH APPROPRIATE AND NECESSARY TREATMENT OR WITH ANY OTHER REQUIREMENTS OF PROBATION ORDERED BY THE COURT. If any drug offender is sentenced to probation, whether supervised by the court or by a probation officer, the order to pay for and complete the useful public service hours ~~shall be~~ IS made a condition of probation.

(b) ~~The provisions of this subsection (2) relating to the performance of useful public service are also applicable to any drug offender who receives a diversion in accordance with section 18-1.3-101 or who receives a deferred sentence in accordance with section 18-1.3-102 and the completion of any stipulated amount of useful public service hours to be completed by the drug offender shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the drug offender.~~

(3) Upon a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence ~~under~~ PURSUANT TO section 18-1.3-102 or a verdict of guilty by the court or a jury, to any FELONY offense ~~under~~ PURSUANT TO this article, ~~or upon entry of a diversion pursuant to section 18-1.3-101 for any offense under this article~~ ARTICLE

18, the court shall order the drug offender to immediately report to the sheriff's department in the county where the drug offender was charged, at which time the drug offender's fingerprints and photographs shall MUST be taken and returned to the court, which fingerprints and photographs shall become a part of the court's official documents and records pertaining to the charges against the drug offender and the drug offender's identification in association with such charges. On any trial for a violation of any criminal law of this state, a duly authenticated copy of the record of former convictions and judgments of any court of record for any of said crimes against the drug offender named in said convictions and judgments shall be IS prima facie evidence of such convictions and may be used in evidence against the drug offender. Identification photographs and fingerprints that are part of the record of such former convictions and judgments of any court of record or which are part of the record at the place of the drug offender's incarceration after sentencing for any of such former convictions and judgments shall be ARE prima facie evidence of the identity of the drug offender and may be used in evidence against such drug offender. Any drug offender who fails to immediately comply with the court's order to report to the sheriff's department, to furnish fingerprints, or to have photographs taken may be held in contempt of court.

SECTION 5. In Colorado Revised Statutes, 18-1-711, **amend** (3) introductory portion and (3)(c) as follows:

18-1-711. Immunity for persons who suffer or report an emergency drug or alcohol overdose event - definitions. (3) The immunity described in subsection (1) of this section shall apply APPLIES to the following criminal offenses:

(c) IF COMMITTED ON OR AFTER MARCH 1, 2020, unlawful possession of two ounces or less of marijuana, as described in section 18-18-406 (5)(a)(I); or more than two ounces of marijuana but ~~no~~ NOT more than six ounces of marijuana OR NOT MORE THAN THREE OUNCES OF MARIJUANA CONCENTRATE, as described in section 18-18-406 (4)(c); or more than six ounces of marijuana, ~~but no more than twelve ounces of marijuana~~ or MORE THAN three ounces ~~or less~~ of marijuana concentrate as described in section 18-18-406 (4)(b);

SECTION 6. In Colorado Revised Statutes, 18-1.3-501, **amend** (1)(d); and **add** (1)(d.5) as follows:

18-1.3-501. Misdemeanors classified - drug misdemeanors and drug petty offenses classified - penalties - legislative intent - definitions. (1) (d) EXCEPT AS PROVIDED IN SUBSECTION (1)(d.5) OF THIS SECTION, for purposes of sentencing a person convicted of a misdemeanor drug offense described in article 18 of this ~~title~~ TITLE 18, committed on or after October 1, 2013, drug misdemeanors are divided into two levels that are distinguished from one another by the following penalties that are authorized upon conviction:

Level	Minimum Sentence	Maximum Sentence
DM1	Six months imprisonment, five hundred dollars fine, or both	Eighteen months imprisonment, five thousand dollars fine, or both

DM2	No imprisonment, fifty dollars fine	Twelve months imprisonment, seven hundred fifty dollars fine, or both
-----	--	---

(d.5)(I) IT IS THE INTENTION OF THE GENERAL ASSEMBLY TO CLASSIFY MOST DRUG POSSESSION ON AND AFTER MARCH 1, 2020, AS A MISDEMEANOR OFFENSE WITH DIFFERENT SENTENCING OPTIONS AND LIMITED INCARCERATION PENALTIES. THE PURPOSE OF THIS SENTENCING SCHEME IS TO PROVIDE OFFENDERS WHO ARE ASSESSED TO BE IN NEED OF TREATMENT OR OTHER INTERVENTION WITH PROBATION SUPERVISION IN CONJUNCTION WITH EFFECTIVE MEDICAL AND BEHAVIORAL INTERVENTION AND TREATMENT. FOR THOSE DRUG POSSESSORS WHO ARE NOT IN NEED OF TREATMENT, SENTENCING BY THE COURTS SYSTEM SHOULD BE LIMITED. THIS SENTENCING SCHEME RECOGNIZES THAT DRUG USE AND POSSESSION IS PRIMARILY A HEALTH CONCERN AND SHOULD BE TREATED AS SUCH BY COLORADO COURTS.

(II) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1)(d) OF THIS SECTION, FOR THE PURPOSE OF SENTENCING A PERSON CONVICTED OF A LEVEL 1 DRUG MISDEMEANOR COMMITTED ON OR AFTER MARCH 1, 2020, IN VIOLATION OF SECTION 18-18-403.5 OR 18-18-406 (4)(b), A COURT MAY SENTENCE AN OFFENDER TO PROBATION FOR UP TO TWO YEARS, WITH THE POSSIBILITY OF A TOTAL OF ONE HUNDRED EIGHTY DAYS IN COUNTY JAIL OR, FOR A THIRD OR SUBSEQUENT OFFENSE, A TOTAL OF UP TO THREE HUNDRED SIXTY-FOUR DAYS IN COUNTY JAIL, WHICH MAY BE IMPOSED IN WHOLE OR IN PART DURING THE TIME PERIOD OF PROBATION AS A CONDITION OF PROBATION OR AS A SANCTION FOR A VIOLATION OF PROBATION; OR THE COURT MAY SENTENCE AN OFFENDER TO UP TO ONE HUNDRED EIGHTY DAYS IN THE COUNTY JAIL, EXCEPT THAT FOR A THIRD OR SUBSEQUENT OFFENSE, THE COURT MAY SENTENCE AN OFFENDER TO UP TO THREE HUNDRED SIXTY-FOUR DAYS IN THE COUNTY JAIL. IN ADDITION TO THE SENTENCE TO PROBATION OR TO THE COUNTY JAIL, THE OFFENDER MAY BE PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS.

(III) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1)(d) OF THIS SECTION, FOR THE PURPOSE OF SENTENCING A PERSON CONVICTED OF A LEVEL 2 DRUG MISDEMEANOR COMMITTED ON OR AFTER MARCH 1, 2020, IN VIOLATION OF SECTION 18-18-404, 18-18-406 (4)(c), 18-18-406.1, OR 18-18-412, A COURT MAY SENTENCE AN OFFENDER TO PROBATION FOR UP TO ONE YEAR, WITH THE POSSIBILITY OF A TOTAL OF ONE HUNDRED TWENTY DAYS IN COUNTY JAIL OR, FOR A THIRD OR SUBSEQUENT OFFENSE, A TOTAL OF UP TO ONE HUNDRED EIGHTY DAYS IN COUNTY JAIL, WHICH MAY BE IMPOSED IN WHOLE OR IN PART DURING THE TIME PERIOD OF PROBATION AS A CONDITION OF PROBATION OR AS A SANCTION FOR A VIOLATION OF PROBATION; OR THE COURT MAY SENTENCE AN OFFENDER TO UP TO ONE HUNDRED TWENTY DAYS IN THE COUNTY JAIL, EXCEPT THAT FOR A THIRD OR SUBSEQUENT OFFENSE, THE COURT MAY SENTENCE AN OFFENDER TO UP TO ONE HUNDRED EIGHTY DAYS IN THE COUNTY JAIL. IN ADDITION TO THE SENTENCE TO PROBATION OR TO THE COUNTY JAIL, THE OFFENDER MAY BE PUNISHED BY A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS.

(IV) NOTHING IN THIS SUBSECTION (1)(d.5) INFRINGES UPON THE AUTHORITY AND DISCRETION VESTED WITH A DISTRICT ATTORNEY TO FILE MISDEMEANOR CHARGES IN EITHER DISTRICT COURT OR COUNTY COURT, WHICH COURTS, PURSUANT TO

SECTION 13-6-106, HAVE CONCURRENT ORIGINAL JURISDICTION OVER VIOLATIONS OF STATE LAW THAT CONSTITUTE MISDEMEANORS. DISTRICT ATTORNEYS ARE ENCOURAGED TO FILE MISDEMEANOR OR DRUG CHARGES IN THE COURT WHERE, IF THERE IS A CONVICTION, TREATMENT AND SUPERVISION CAN MOST EFFECTIVELY BE MATCHED TO THE DEFENDANT'S ASSESSED RISK AND TREATMENT NEED LEVELS.

SECTION 7. In Colorado Revised Statutes, 18-1.3-103.5, **amend** (3)(a) as follows:

18-1.3-103.5. Felony convictions - vacate and enter conviction on misdemeanor after successful completion. (3) This section applies to convictions for the following offenses:

(a) ON OR AFTER MARCH 1, 2020, possession of a controlled substance; but only when the quantity of the controlled substance is not more than four grams of a ~~schedule I or schedule II controlled substance~~; ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION CONTAINING ANY QUANTITY OF GAMMA HYDROXYBUTYRATE, INCLUDING ITS SALTS, ISOMERS, AND SALTS OF ISOMERS; not more than two grams of ~~methamphetamine, heroin,~~ ketamine or cathinones; or not more than four milligrams of flunitrazepam. The district attorney and defendant may stipulate to the amount of the controlled substance possessed by the defendant at the time of sentencing, or the court shall determine the amount at the time of sentencing.

SECTION 8. In Colorado Revised Statutes, 18-1.3-801, **amend** (2)(b) as follows:

18-1.3-801. Punishment for habitual criminals. (2) (b) ~~paragraph (a) of this subsection (2) shall not~~ SUBSECTION (2)(a) OF THIS SECTION DO NOT apply to a conviction for a level 4 drug felony COMMITTED ON OR AFTER MARCH 1, 2020, pursuant to section 18-18-403.5 (2), or a conviction for a level 4 drug felony COMMITTED ON OR AFTER MARCH 1, 2020, for attempt or conspiracy to commit unlawful possession of a controlled substance, as described in section 18-18-403.5 (2), if the amount of the ~~schedule I or schedule II~~ controlled substance possessed is not more than four grams OF ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION CONTAINING ANY QUANTITY OF GAMMA HYDROXYBUTYRATE, INCLUDING ITS SALTS, ISOMERS, AND SALTS OF ISOMERS, or not more than two grams of ~~methamphetamine, heroin,~~ cathinones or ketamine, or not more than four milligrams of flunitrazepam, even if the person has been previously convicted of three or more qualifying felony convictions.

SECTION 9. In Colorado Revised Statutes, **add** 24-32-127 as follows:

24-32-127. Community substance use and mental health services grant program - creation. (1) THERE IS CREATED IN THE DEPARTMENT OF LOCAL AFFAIRS THE COMMUNITY SUBSTANCE USE AND MENTAL HEALTH SERVICES GRANT PROGRAM, REFERRED TO IN THIS SECTION AS THE "GRANT PROGRAM", TO PROVIDE GRANTS TO COUNTIES THAT PROVIDE SUBSTANCE USE OR MENTAL HEALTH TREATMENT SERVICES TO, FACILITATE DIVERSION PROGRAMS FOR, OR DEVELOP OTHER STRATEGIES TO REDUCE JAIL AND PRISON BED USE BY, PERSONS WHO COME INTO CONTACT WITH THE CRIMINAL JUSTICE SYSTEM. A COUNTY THAT PROVIDES SUCH TREATMENT SERVICES

AND PROGRAMS IN COLLABORATION WITH PUBLIC HEALTH AGENCIES, LAW ENFORCEMENT AGENCIES, AND COMMUNITY-BASED ORGANIZATIONS, IS ELIGIBLE FOR A GRANT PURSUANT TO THE GRANT PROGRAM.

(2) THE DEPARTMENT SHALL ISSUE A GRANT TO ANY ELIGIBLE COUNTY. THE AMOUNT OF A GRANT AWARDED PURSUANT TO THIS SECTION MUST BE BASED ON THE COST OF THE SERVICES PROVIDED AND THE NUMBER OF PERSONS THAT RECEIVE SERVICES.

(3) THE DEPARTMENT MAY DEVELOP POLICIES AND PROCEDURES NECESSARY FOR THE OPERATION OF THE GRANT PROGRAM, INCLUDING THE APPLICATION PROCESS; THE FORMULA FOR DETERMINING THE AMOUNT AWARDED TO EACH ELIGIBLE COUNTY; A PROCESS FOR VERIFYING THAT THE COUNTY IS PROVIDING SERVICES DESCRIBED IN THIS SECTION IN COLLABORATION WITH PUBLIC HEALTH AGENCIES, LAW ENFORCEMENT AGENCIES, AND COMMUNITY-BASED ORGANIZATIONS; AND A REQUIREMENT THAT EACH GRANT RECIPIENT PROVIDES A REPORT TO THE DEPARTMENT DESCRIBING HOW THE GRANT FUNDS WERE UTILIZED.

(4) BEGINNING FOR FISCAL YEAR 2020-21, AND FOR EACH YEAR THEREAFTER, THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE DEPARTMENT, FOR THE PURPOSE OF PROVIDING GRANTS PURSUANT TO THE GRANT PROGRAM, AT LEAST ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS FROM THE GENERAL FUND GENERATED FROM ESTIMATED SAVINGS FROM HOUSE BILL 19-1263, ENACTED IN 2019.

SECTION 10. Appropriation - adjustments to 2019 long bill. (1) To implement this act, the general fund appropriation made in the annual general appropriation act for the 2019-20 state fiscal year to the judicial department for trial court programs is decreased by \$48,730, and the related FTE is decreased by 0.4 FTE.

(2) For the 2019-20 state fiscal year, \$123,139 is appropriated to the judicial department. This appropriation is from the general fund. To implement this act, the department may use this appropriation for probation programs, which amount is based on an assumption that the program will require an additional 0.8 FTE.

SECTION 11. Act subject to petition - effective date - applicability. (1) Except as provided in subsection (2) of this section, this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) Sections 1 to 8 of this act take effect March 1, 2020, and apply to offenses committed on or after said date.

Approved: May 28, 2019