

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0881.01 Conrad Imel x2313

HOUSE BILL 19-1263

HOUSE SPONSORSHIP

Herod and Sandridge,

SENATE SPONSORSHIP

Marble and Lee,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CHANGING THE PENALTY FOR CERTAIN VIOLATIONS**
102 **PURSUANT TO THE "UNIFORM CONTROLLED SUBSTANCES ACT**
103 **OF 2013".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under existing law, possession of any amount of flunitrazepam, ketamine, cathinones, or a controlled substance listed in schedule I or II is a level 4 drug felony. Possession of a controlled substance listed in schedule III, IV, or V, except flunitrazepam or ketamine, is a level 1 drug misdemeanor. The bill makes possession of flunitrazepam, ketamine,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

cathinones, or a controlled substance listed in schedule I or II a level 1 drug misdemeanor. The bill makes conforming amendments related to making the possession offense a misdemeanor.

Under existing law, possession of more than 12 ounces of marijuana or more than 3 ounces of marijuana concentrate is a level 4 drug felony, and possession of 6 to 12 ounces of marijuana or not more than 3 ounces of marijuana concentrate is a level 1 drug misdemeanor. The bill makes possession of more than 6 ounces of marijuana or more than 3 ounces of marijuana concentrate a level 1 drug misdemeanor and makes possession of 3 ounces or less of marijuana concentrate a level 2 drug misdemeanor.

Under existing law, failure to appear after being released on summons or written promise to appear following arrest or detention for the petty offense of possession of not more than 2 ounces of marijuana is a class 3 misdemeanor. The bill clarifies that a person may not be arrested for the petty offense of possession of not more than 2 ounces of marijuana and that a court may issue a warrant for arrest of a person who fails to appear in court as required by a summons for the possession offense.

Under existing law, abusing toxic vapors is a level 2 drug misdemeanor and punishable with a sentence to jail for a second offense. The bill clarifies that a person may not be sentenced to jail specifically for a second offense.

Existing law requires a person convicted of an offense pursuant to the "Uniform Controlled Substances Act of 2013" (act) to be sentenced to complete useful public service unless that person is sentenced to the department of corrections or a community corrections facility. The bill permits a court to suspend a sentence to complete useful public service when it interferes with treatment or other probation requirements imposed by the court. The bill removes the useful public service requirement for persons receiving diversion or a deferred sentence. The bill requires only those convicted of a felony drug offense to submit to the fingerprinting and photographing requirements of the act.

The bill requires persons convicted of the level 1 drug misdemeanors related to unlawful possession of a controlled substance and possession of marijuana or marijuana concentrate to be punished by a sentence of up to 2 years probation, with up to 180 days in jail as a condition of, or for a violation of, probation, and a maximum \$1,000 fine.

The bill requires persons convicted of the level 2 drug misdemeanors related to unlawful use of a controlled substance, possession of marijuana or marijuana concentrate, unlawful use or possession of certain synthetic controlled substances, or abusing toxic vapors to be punished by a sentence of up to one year probation, with up to 120 days in jail as a condition of, or for a violation of, probation, and a maximum \$500 fine.

The county court drug court grant program is established in the

judicial department to provide grants to the county court of a city and county to establish and operate a misdemeanor drug court. In order to be eligible for a grant, the city and county must not receive state funding to operate the county court.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-18-403.5, **amend**
3 (2); and **add** (4) as follows:

4 **18-18-403.5. Unlawful possession of a controlled substance.**
5 (2) A person who violates subsection (1) of this section by possessing
6 ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS
7 ANY QUANTITY OF CATHINONES OR OF A CONTROLLED SUBSTANCE LISTED
8 IN SCHEDULE I, II, III, IV, OR V OF PART 2 OF THIS ARTICLE 18 COMMITS A
9 LEVEL 1 DRUG MISDEMEANOR.

10 ~~(a) Any material, compound, mixture, or preparation that contains~~
11 ~~any quantity of flunitrazepam, ketamine, cathinones, or a controlled~~
12 ~~substance listed in schedule I or II of part 2 of this article commits a level~~
13 ~~4 drug felony.~~

14 ~~(b) (Deleted by amendment, L. 2013.)~~

15 ~~(c) Any material, compound, mixture, or preparation that contains~~
16 ~~any quantity of a controlled substance listed in schedule III, IV, or V of~~
17 ~~part 2 of this article except flunitrazepam or ketamine commits a level 1~~
18 ~~drug misdemeanor.~~

19 (4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF
20 THIS SECTION, A DISTRICT ATTORNEY SHALL NOT CHARGE OR PROSECUTE
21 A PERSON PURSUANT TO THIS SECTION FOR ANY MINUSCULE, RESIDUAL, OR
22 UNUSABLE AMOUNT OF A CONTROLLED SUBSTANCE THAT MAY BE PRESENT
23 IN A USED HYPODERMIC NEEDLE OR SYRINGE, OR OTHER DRUG

1 PARAPHERNALIA, AS DEFINED IN SECTION 18-18-426.

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

4 **18-18-406. Offenses relating to marijuana and marijuana**
5 **concentrate - definitions.** (4) (a) ~~A person who possesses more than~~
6 ~~twelve ounces of marijuana or more than three ounces of marijuana~~
7 ~~concentrate commits a level 4 drug felony.~~

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

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

15 (5) (a) (II) Whenever a person is ~~arrested or~~ detained for a
16 violation of ~~subparagraph (I) of this paragraph (a)~~ SUBSECTION (5)(a)(I)
17 OF THIS SECTION, the ~~arresting or~~ detaining officer shall prepare a written
18 notice or summons for the person to appear in court. The written notice
19 or summons must contain the name and address of the ~~arrested or~~
20 ~~detained~~ person, the date, time, and place where such person shall appear,
21 and a place for the signature of the person indicating the person's written
22 promise to appear on the date and at the time and place indicated on the
23 notice or summons. One copy of the notice or summons must be given to
24 the person, ~~arrested or detained~~; one copy must be sent to the court where
25 the ~~arrested or detained~~ person is to appear, and such other copies as may
26 be required by the law enforcement agency employing the ~~arresting or~~
27 ~~detaining~~ officer must be sent to the places designated by such law

1 enforcement agency. The date specified in the notice or summons to
2 appear must be at least seven days after the ~~arrest or detention unless the~~
3 ~~person arrested or detained demands an earlier hearing~~ ISSUANCE OF THE
4 NOTICE OR SUMMONS. The place specified in the notice or summons to
5 appear must be before a judge having jurisdiction of the drug petty
6 offense within the county in which the drug petty offense charged is
7 alleged to have been committed. ~~The arrested or detained person, in order~~
8 ~~to secure release from arrest or detention, must promise in writing to~~
9 ~~appear in court by signing the notice or summons prepared by the~~
10 ~~arresting or detaining officer. Any person who does not honor the written~~
11 ~~promise to appear commits a class 3 misdemeanor~~ IF THE PERSON FAILS
12 TO APPEAR IN RESPONSE TO THE NOTICE OR SUMMONS, THE COURT, IN ITS
13 DISCRETION, MAY ISSUE A WARRANT FOR THE ARREST OF THE PERSON OR
14 AN ORDER TO SHOW CAUSE REQUIRING THE PERSON'S APPEARANCE IN
15 COURT.

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

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

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

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

19 (b) ~~The provisions of this subsection (2) relating to the~~
20 ~~performance of useful public service are also applicable to any drug~~
21 ~~offender who receives a diversion in accordance with section 18-1.3-101~~
22 ~~or who receives a deferred sentence in accordance with section~~
23 ~~18-1.3-102 and the completion of any stipulated amount of useful public~~
24 ~~service hours to be completed by the drug offender shall be ordered by the~~
25 ~~court in accordance with the conditions of such deferred prosecution or~~
26 ~~deferred sentence as stipulated to by the prosecution and the drug~~
27 ~~offender.~~

1 (3) Upon a plea of guilty, including a plea of guilty entered
2 pursuant to a deferred sentence ~~under~~ PURSUANT TO section 18-1.3-102
3 or a verdict of guilty by the court or a jury, to any FELONY offense ~~under~~
4 PURSUANT TO this ~~article, or upon entry of a diversion pursuant to section~~
5 ~~18-1.3-101 for any offense under this article~~ ARTICLE 18, the court shall
6 order the drug offender to immediately report to the sheriff's department
7 in the county where the drug offender was charged, at which time the
8 drug offender's fingerprints and photographs ~~shall~~ MUST be taken and
9 returned to the court, which fingerprints and photographs ~~shall~~ become
10 a part of the court's official documents and records pertaining to the
11 charges against the drug offender and the drug offender's identification
12 in association with such charges. On any trial for a violation of any
13 criminal law of this state, a duly authenticated copy of the record of
14 former convictions and judgments of any court of record for any of said
15 crimes against the drug offender named in said convictions and judgments
16 ~~shall be~~ IS prima facie evidence of such convictions and may be used in
17 evidence against the drug offender. Identification photographs and
18 fingerprints that are part of the record of such former convictions and
19 judgments of any court of record or which are part of the record at the
20 place of the drug offender's incarceration after sentencing for any of such
21 former convictions and judgments ~~shall be~~ ARE prima facie evidence of
22 the identity of the drug offender and may be used in evidence against such
23 drug offender. Any drug offender who fails to immediately comply with
24 the court's order to report to the sheriff's department, to furnish
25 fingerprints, or to have photographs taken may be held in contempt of
26 court.

27 **SECTION 5.** In Colorado Revised Statutes, 18-1-711, **amend** (3)

1 introductory portion and (3)(c) as follows:

2 **18-1-711. Immunity for persons who suffer or report an**
3 **emergency drug or alcohol overdose event - definitions.** (3) The
4 immunity described in subsection (1) of this section ~~shall apply~~ APPLIES
5 to the following criminal offenses:

6 (c) Unlawful possession of two ounces or less of marijuana, as
7 described in section 18-18-406 (5)(a)(I); or more than two ounces of
8 marijuana but ~~no~~ NOT more than six ounces of marijuana OR NOT MORE
9 THAN THREE OUNCES OF MARIJUANA CONCENTRATE, as described in
10 section 18-18-406 (4)(c); or more than six ounces of marijuana, ~~but no~~
11 ~~more than twelve ounces of marijuana~~ or MORE THAN three ounces or less
12 of marijuana concentrate as described in section 18-18-406 (4)(b);

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

15 **18-1.3-501. Misdemeanors classified - drug misdemeanors and**
16 **drug petty offenses classified - penalties - legislative intent -**
17 **definitions.** (1) (d) EXCEPT AS PROVIDED IN SUBSECTION (1)(d.5) OF THIS
18 SECTION, for purposes of sentencing a person convicted of a misdemeanor
19 drug offense described in article 18 of this ~~title~~ TITLE 18, committed on
20 or after October 1, 2013, drug misdemeanors are divided into two levels
21 that are distinguished from one another by the following penalties that are
22 authorized upon conviction:

23	Level	Minimum Sentence	Maximum Sentence
24	DM1	Six months imprisonment,	Eighteen months imprisonment,
25		five hundred dollars fine,	five thousand dollars fine,
26		or both	or both
27	DM2	No imprisonment,	Twelve months imprisonment,

1 18-18-406 (4)(c), 18-18-406.1, OR 18-18-412, A COURT SHALL SENTENCE
2 AN OFFENDER TO PROBATION FOR UP TO ONE YEAR, WITH THE POSSIBILITY
3 OF A TOTAL OF ONE HUNDRED TWENTY DAYS IN COUNTY JAIL, WHICH MAY
4 BE IMPOSED IN WHOLE OR IN PART DURING THE TIME PERIOD OF PROBATION
5 AS A CONDITION OF PROBATION OR AS A SANCTION FOR A VIOLATION OF
6 PROBATION. IN ADDITION TO THE SENTENCE TO PROBATION, THE OFFENDER
7 MAY BE PUNISHED BY A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS.

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

10 **18-1.3-103.5. Felony convictions - vacate and enter conviction**
11 **on misdemeanor after successful completion.** (3) This section applies
12 to convictions for the following offenses:

13 (a) ~~Possession of a controlled substance; but only when the~~
14 ~~quantity of the controlled substance is not more than four grams of a~~
15 ~~schedule I or schedule II controlled substance, not more than two grams~~
16 ~~of methamphetamine, heroin, ketamine, or cathinones, or not more than~~
17 ~~four milligrams of flunitrazepam. The district attorney and defendant may~~
18 ~~stipulate to the amount of the controlled substance possessed by the~~
19 ~~defendant at the time of sentencing, or the court shall determine the~~
20 ~~amount at the time of sentencing.~~

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

23 **18-1.3-801. Punishment for habitual criminals.** (2) (b) ~~The~~
24 ~~provisions of paragraph (a) of this subsection (2) shall not apply to a~~
25 ~~conviction for a level 4 drug felony pursuant to section 18-18-403.5 (2),~~
26 ~~or a conviction for a level 4 drug felony for attempt or conspiracy to~~
27 ~~commit unlawful possession of a controlled substance, as described in~~

1 ~~section 18-18-403.5 (2), if the amount of the schedule I or schedule II~~
2 ~~controlled substance possessed is not more than four grams or not more~~
3 ~~than two grams of methamphetamine, heroin, cathinones, or ketamine or~~
4 ~~not more than four milligrams of flunitrazepam, even if the person has~~
5 ~~been previously convicted of three or more qualifying felony convictions.~~

6 **SECTION 9.** In Colorado Revised Statutes, 24-72-705, **amend**
7 (1)(e)(III) as follows:

8 **24-72-705. Sealing of criminal conviction records information**
9 **for offenses involving controlled substances for convictions entered**
10 **on or after July 1, 2011. (1) Sealing of conviction records. (e) (III)** If
11 a petition is filed for the sealing of a level 4 drug felony possession
12 offense described in section 18-18-403.5, ~~C.R.S.~~, AS IT EXISTED PRIOR TO
13 JANUARY 1, 2020, the defendant shall pay the filing fee and provide
14 notice of the petition to the district attorney. The district attorney may
15 object to the petition after considering the factors in section 24-72-704
16 (1)(c). If the district attorney does not object, the court may decide the
17 petition with or without the benefit of a hearing. If the district attorney
18 objects to the petition, the court shall set the matter for hearing. To order
19 the record sealed, the criminal history filed with the petition as required
20 by section 24-72-703 (9) must document to the court that the defendant
21 has not been charged or convicted for a criminal offense since the date of
22 the final disposition of all criminal proceedings against him or her or
23 since the date of the defendant's release from supervision, whichever is
24 later. The court shall decide the petition after considering the factors in
25 section 24-72-704 (1)(c).

26 **SECTION 10.** In Colorado Revised Statutes, **add** 13-3-117 as
27 follows:

1 **13-3-117. County court drug court grant program - eligibility.**

2 (1) THERE IS CREATED IN THE JUDICIAL DEPARTMENT THE COUNTY COURT
3 DRUG COURT GRANT PROGRAM, REFERRED TO IN THIS SECTION AS THE
4 "GRANT PROGRAM", FOR THE PURPOSE OF PROVIDING TO AN ELIGIBLE CITY
5 AND COUNTY THE MONEY TO OPERATE AN EVIDENCE-BASED
6 MISDEMEANOR DRUG COURT IN ITS COUNTY COURT. THE STATE COURT
7 ADMINISTRATOR SHALL ADMINISTER THE GRANT PROGRAM AND DEVELOP
8 POLICIES AND PROCEDURES FOR THE OPERATION OF THE GRANT PROGRAM.

9 (2) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
10 ASSEMBLY, THE STATE COURT ADMINISTRATOR SHALL AWARD A GRANT TO
11 EACH ELIGIBLE CITY AND COUNTY. A CITY AND COUNTY IS ELIGIBLE TO
12 RECEIVE A GRANT IF THE COUNTY COURT OF THE CITY AND COUNTY DOES
13 NOT RECEIVE FUNDING FOR THE OPERATION OF ITS COUNTY COURT
14 PURSUANT TO SECTION 13-3-104.

15 (3) THE PURPOSE OF A MISDEMEANOR DRUG COURT IS TO PROVIDE
16 THE NECESSARY INTERVENTION TO SUPPORT MISDEMEANOR DRUG
17 OFFENDERS BUT THE MISDEMEANOR COURT DRUG COURT MAY ALSO
18 PROVIDE SERVICES TO FELONY OFFENDERS UPON AGREEMENT OF THE
19 DISTRICT COURT AND COUNTY COURT.

20 **SECTION 11. Effective date - applicability.** This act takes
21 effect upon passage; except that sections 1 to 9 of this act take effect
22 January 1, 2020, and apply to offenses committed on or after said date.

23 **SECTION 12. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.