

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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
Finance

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)(a) and (2)(c); 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 **(a) Any material, compound, mixture, or preparation that contains**
7 **any quantity of flunitrazepam; ketamine; GAMMA HYDROXYBUTYRATE,**
8 **INCLUDING ITS SALTS, ISOMERS, AND SALTS OF ISOMERS; OR cathinones or**
9 **a controlled substance listed in schedule I or II of part 2 of this article**
10 **commits a level 4 drug felony.**

11 **(c) Any material, compound, mixture, or preparation that contains**
12 **any quantity of a controlled substance listed in schedule III, IV, or V**
13 **SCHEDULE I, II, III, IV, OR V of part 2 of this article ARTICLE 18 except**
14 **flunitrazepam, GAMMA HYDROXYBUTYRATE, or ketamine commits a level**
15 **1 drug misdemeanor.**

16 **(4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF**
17 **THIS SECTION, A DISTRICT ATTORNEY SHALL NOT CHARGE OR PROSECUTE**
18 **A PERSON PURSUANT TO THIS SECTION FOR ANY MINUSCULE, RESIDUAL, OR**
19 **UNUSABLE AMOUNT OF A CONTROLLED SUBSTANCE THAT MAY BE PRESENT**
20 **IN A USED HYPODERMIC NEEDLE OR SYRINGE, OR OTHER DRUG**
21 **PARAPHERNALIA, AS DEFINED IN SECTION 18-18-426.**

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

1 **18-18-406. Offenses relating to marijuana and marijuana**

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

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

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

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

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

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

15 **18-18-412. Abusing toxic vapors - prohibited.** (2) A person
16 who knowingly violates the provisions of subsection (1) of this section
17 commits the offense of abusing toxic vapors. Abusing toxic vapors is a
18 level 2 drug misdemeanor. ~~except that a person shall not receive a~~
19 ~~sentence to confinement in jail for being convicted of a first offense~~
20 ~~pursuant to this subsection (2). A person convicted of a second or~~
21 ~~subsequent offense pursuant to this subsection (2) may receive a sentence~~
22 ~~to confinement in jail.~~

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

25 **18-18-432. Drug offender public service and rehabilitation**
26 **program - definitions.** (2) (a) Upon conviction, A COURT SHALL
27 SENTENCE each drug offender, other than an offender sentenced to the

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

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

25 (3) Upon a plea of guilty, including a plea of guilty entered
26 pursuant to a deferred sentence ~~under~~ PURSUANT TO section 18-1.3-102
27 or a verdict of guilty by the court or a jury, to any FELONY offense ~~under~~

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

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

26 **18-1-711. Immunity for persons who suffer or report an**
27 **emergency drug or alcohol overdose event - definitions.** (3) The

1 immunity described in subsection (1) of this section ~~shall apply~~ APPLIES
2 to the following criminal offenses:

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

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

12 **18-1.3-501. Misdemeanors classified - drug misdemeanors and**
13 **drug petty offenses classified - penalties - legislative intent -**
14 **definitions.** (1) (d) EXCEPT AS PROVIDED IN SUBSECTION (1)(d.5) OF THIS
15 SECTION, for purposes of sentencing a person convicted of a misdemeanor
16 drug offense described in article 18 of this ~~title~~ TITLE 18, committed on
17 or after October 1, 2013, drug misdemeanors are divided into two levels
18 that are distinguished from one another by the following penalties that are
19 authorized upon conviction:

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

27 (d.5) (I) IT IS INTENTION OF THE GENERAL ASSEMBLY TO CLASSIFY

1 MOST DRUG POSSESSION AS A MISDEMEANOR OFFENSE WITH DIFFERENT
2 SENTENCING OPTIONS AND LIMITED INCARCERATION PENALTIES. THE
3 PURPOSE OF THIS SENTENCING SCHEME IS TO PROVIDE OFFENDERS WHO
4 ARE ASSESSED TO BE IN NEED OF TREATMENT OR OTHER INTERVENTION
5 WITH PROBATION SUPERVISION IN CONJUNCTION WITH EFFECTIVE MEDICAL
6 AND BEHAVIORAL INTERVENTION AND TREATMENT. FOR THOSE DRUG
7 POSSESSORS WHO ARE NOT IN NEED OF TREATMENT, SENTENCING BY THE
8 COURTS SYSTEM SHOULD BE LIMITED. THIS SENTENCING SCHEME
9 RECOGNIZES THAT DRUG USE AND POSSESSION IS PRIMARILY A HEALTH
10 CONCERN AND SHOULD BE TREATED AS SUCH BY COLORADO COURTS.

11 (II) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1)(d) OF
12 THIS SECTION, FOR THE PURPOSE OF SENTENCING A PERSON CONVICTED OF
13 A LEVEL 1 DRUG MISDEMEANOR IN VIOLATION OF SECTION 18-18-403.5 OR
14 18-18-406 (4)(b), A COURT MAY SENTENCE AN OFFENDER TO PROBATION
15 FOR UP TO TWO YEARS, WITH THE POSSIBILITY OF A TOTAL OF ONE
16 HUNDRED EIGHTY DAYS IN COUNTY JAIL, WHICH MAY BE IMPOSED IN
17 WHOLE OR IN PART DURING THE TIME PERIOD OF PROBATION AS A
18 CONDITION OF PROBATION OR AS A SANCTION FOR A VIOLATION OF
19 PROBATION, OR THE COURT MAY SENTENCE AN OFFENDER TO UP TO ONE
20 HUNDRED EIGHTY DAYS IN THE COUNTY JAIL. IN ADDITION TO THE
21 SENTENCE TO PROBATION OR TO THE COUNTY JAIL, THE OFFENDER MAY BE
22 PUNISHED BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS.

23 (III) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1)(d)
24 OF THIS SECTION, FOR THE PURPOSE OF SENTENCING A PERSON CONVICTED
25 OF A LEVEL 2 DRUG MISDEMEANOR IN VIOLATION OF SECTION 18-18-404,
26 18-18-406 (4)(c), 18-18-406.1, OR 18-18-412, A COURT MAY SENTENCE AN
27 OFFENDER TO PROBATION FOR UP TO ONE YEAR, WITH THE POSSIBILITY OF

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

8 **SECTION 7.** In Colorado Revised Statutes, 18-1.3-103.5, **amend**
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,~~ ANY MATERIAL,
16 COMPOUND, MIXTURE, OR PREPARATION CONTAINING ANY QUANTITY OF
17 GAMMA HYDROXYBUTYRATE, INCLUDING ITS SALTS, ISOMERS, AND SALTS
18 OF ISOMERS; not more than two grams of ~~methamphetamine, heroin,~~
19 ~~ketamine or cathinones;~~ or not more than four milligrams of
20 flunitrazepam. The district attorney and defendant may stipulate to the
21 amount of the controlled substance possessed by the defendant at the time
22 of sentencing, or the court shall determine the amount at the time of
23 sentencing.

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

26 **18-1.3-801. Punishment for habitual criminals.** (2) (b) The
27 provisions of ~~paragraph (a) of this subsection (2) shall not~~ SUBSECTION

1 (2)(a) DO NOT apply to a conviction for a level 4 drug felony pursuant to
2 section 18-18-403.5 (2), or a conviction for a level 4 drug felony for
3 attempt or conspiracy to commit unlawful possession of a controlled
4 substance, as described in section 18-18-403.5 (2), if the amount of the
5 ~~schedule I or schedule H~~ controlled substance possessed is not more than
6 four grams OF ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
7 CONTAINING ANY QUANTITY OF GAMMA HYDROXYBUTYRATE, INCLUDING
8 ITS SALTS, ISOMERS, AND SALTS OF ISOMERS, or not more than two grams
9 of ~~methamphetamine, heroin,~~ cathinones or ketamine, or not more than
10 four milligrams of flunitrazepam, even if the person has been previously
11 convicted of three or more qualifying felony convictions. [REDACTED]

12 SECTION 9. In Colorado Revised Statutes, **add** 13-3-117 as
13 follows:

14 **13-3-117. County court drug court grant program - eligibility.**

15 (1) THERE IS CREATED IN THE JUDICIAL DEPARTMENT THE COUNTY COURT
16 DRUG COURT GRANT PROGRAM, REFERRED TO IN THIS SECTION AS THE
17 "GRANT PROGRAM", FOR THE PURPOSE OF PROVIDING TO AN ELIGIBLE CITY
18 AND COUNTY THE MONEY TO OPERATE AN EVIDENCE-BASED
19 MISDEMEANOR DRUG COURT IN ITS COUNTY COURT OR TO CONDUCT
20 SCREENING, ASSESSMENT, DIVERSION, OR TREATMENT, OR PROVIDE
21 SUPERVISION, FOR DRUG OFFENDERS. THE STATE COURT ADMINISTRATOR
22 SHALL ADMINISTER THE GRANT PROGRAM AND DEVELOP POLICIES AND
23 PROCEDURES FOR THE OPERATION OF THE GRANT PROGRAM.

24 (2) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
25 ASSEMBLY, THE STATE COURT ADMINISTRATOR SHALL AWARD A GRANT TO
26 EACH ELIGIBLE CITY AND COUNTY. A CITY AND COUNTY IS ELIGIBLE TO
27 RECEIVE A GRANT IF THE COUNTY COURT OF THE CITY AND COUNTY DOES

1 NOT RECEIVE FUNDING FOR THE OPERATION OF ITS COUNTY COURT
2 PURSUANT TO SECTION 13-3-104.

3

4 **SECTION 10. Effective date - applicability.** This act takes
5 effect upon passage; except that sections 1 to 8 of this act take effect
6 January 1, 2020, and apply to offenses committed on or after said date.

7 **SECTION 11. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.