

CHAPTER 243

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 01-1242

BY REPRESENTATIVE(S) Mitchell, Lee, Romanoff, Schultheis, and Stengel;
also SENATOR(S) Gordon, Arnold, Dyer (Arapahoe), and May.

AN ACT

CONCERNING SUBSTANTIVE CHANGES FOR STRENGTHENING OF THE CRIMINAL LAWS.

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

SECTION 1. 18-12-109 (2), Colorado Revised Statutes, is amended to read:

18-12-109. Possession, use, or removal of explosives or incendiary devices - possession of components thereof - persons exempt - hoaxes. (2) Any person who knowingly possesses, ~~or~~ controls, MANUFACTURES, GIVES, MAILES, SENDS, OR CAUSES TO BE SENT an explosive or incendiary device commits a class 4 felony.

SECTION 2. 18-3-302 (3), (4), and (5), Colorado Revised Statutes, are amended to read:

18-3-302. Second degree kidnapping. (3) Second degree kidnapping ~~by any person under subsection (1) or (2) of this section~~ is a class 2 felony if ANY OF THE FOLLOWING CIRCUMSTANCES EXIST:

- (a) The person kidnapped is a victim of a sexual assault; or
- (b) THE PERSON KIDNAPPED is a victim of a robbery.

(4) (a) Second degree kidnapping is a class 3 felony if ANY OF THE FOLLOWING CIRCUMSTANCES EXIST:

- (I) The kidnapping is accomplished with intent to sell, trade, or barter the victim for consideration; or
- (II) If the kidnapping did not include sexual assault or robbery, but is accomplished

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

by the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon; or

(III) If the kidnapping is accomplished by the perpetrator representing verbally or otherwise that he or she is armed with a deadly weapon.

(b) A defendant convicted pursuant to this subsection (4) shall be sentenced by the court in accordance with the provisions of section 16-11-309, C.R.S.

(5) Second degree kidnapping is a class 4 felony, ~~in all other cases not covered by subsection~~ EXCEPT AS PROVIDED IN SUBSECTIONS (3) ~~or~~ AND (4) of this section.

SECTION 3. 18-18-203 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-18-203. Schedule I. (2) Unless specifically excepted by Colorado or federal law or Colorado or federal regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(f) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION CONTAINING ANY QUANTITY OF GAMMA HYDROXYBUTYRATE [GHB], INCLUDING ITS SALTS, ISOMERS, AND SALTS OF ISOMERS.

SECTION 4. 18-13-123, Colorado Revised Statutes, is amended to read:

18-13-123. Unlawful administration of gamma hydroxybutyrate (GHB) or ketamine. (1) ~~Except as otherwise provided in subsection (4) of this section, it shall be unlawful for any person to knowingly possess gamma hydroxybutyrate (GHB) or the immediate chemical precursors or chemical analogs for such substance.~~

(2) ~~Except as otherwise provided in subsection (4) of this section, it shall be unlawful for any person to knowingly manufacture, distribute, dispense, sell, or possess with intent to manufacture, distribute, dispense, or sell gamma hydroxybutyrate (GHB) or the immediate chemical precursors or chemical analogs for such substance.~~

(3) Except as otherwise provided in subsection (4) of this section, it shall be unlawful for any person to knowingly cause or attempt to cause any other person to unknowingly consume or receive the direct administration of gamma hydroxybutyrate (GHB) or ketamine or the immediate chemical precursors or chemical analogs for either of such substances.

(4) It shall not be a violation of this section if gamma hydroxybutyrate (GHB) OR KETAMINE is possessed, ~~manufactured,~~ distributed OR dispensed ~~or sold~~ for bona fide medical needs by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense such substances.

(5) ~~Violation of the provisions of subsection (1) of this section is a class 1 misdemeanor.~~ Violation of the provisions of subsection (2) ~~or~~ (3) of this section is a class 3 felony; except that such violation is a class 2 felony if the violation is subsequent to a prior conviction for a violation of subsection (2) ~~or~~ (3) of this section

OR SECTION 18-18-405 WHERE THE CONTROLLED SUBSTANCE WAS GAMMA HYDROXYBUTYRATE (GHB) OR KETAMINE OR THE IMMEDIATE CHEMICAL PRECURSORS OR CHEMICAL ANALOGS FOR EITHER OF SUCH SUBSTANCES.

SECTION 5. Repeal. 18-3-406, Colorado Revised Statutes, is repealed as follows:

~~**18-3-406. Criminality of conduct.** (1) If the criminality of conduct depends on a child's being below the age of eighteen and the child was in fact at least fifteen years of age, it shall be an affirmative defense that the defendant reasonably believed the child to be eighteen years of age or older.~~

~~(2) If the criminality of conduct depends upon a child being below the age of fifteen, it shall be no defense that the defendant did not know the child's age or that he reasonably believed the child to be fifteen years of age or older.~~

SECTION 6. Part 5 of article 1 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-1-503.5. Principles of criminal culpability. (1) IF THE CRIMINALITY OF CONDUCT DEPENDS ON A CHILD'S BEING YOUNGER THAN EIGHTEEN YEARS OF AGE AND THE CHILD WAS IN FACT AT LEAST FIFTEEN YEARS OF AGE, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT REASONABLY BELIEVED THE CHILD TO BE EIGHTEEN YEARS OF AGE OR OLDER.

(2) IF THE CRIMINALITY OF CONDUCT DEPENDS ON A CHILD'S BEING YOUNGER THAN EIGHTEEN YEARS OF AGE AND THE CHILD WAS IN FACT YOUNGER THAN FIFTEEN YEARS OF AGE, THERE SHALL BE NO DEFENSE THAT THE DEFENDANT REASONABLY BELIEVED THE CHILD WAS EIGHTEEN YEARS OF AGE OR OLDER.

(3) IF THE CRIMINALITY OF CONDUCT DEPENDS ON A CHILD'S BEING YOUNGER THAN FIFTEEN YEARS OF AGE, IT SHALL BE NO DEFENSE THAT THE DEFENDANT DID NOT KNOW THE CHILD'S AGE OR THAT THE DEFENDANT REASONABLY BELIEVED THE CHILD TO BE FIFTEEN YEARS OF AGE OR OLDER.

SECTION 7. 16-10-101, Colorado Revised Statutes, is amended to read:

16-10-101. Jury trials - statement of policy. The right of a person who is accused of an offense other than a noncriminal traffic infraction or offense, or other than a municipal charter, MUNICIPAL ORDINANCE, or COUNTY ordinance violation as provided in section 16-10-109 (1), to have a trial by jury is inviolate and a matter of substantive due process of law as distinguished from one of "practice and procedure". The people shall also have the right to refuse to consent to a waiver of a trial by jury in all cases in which the accused has the right to request a trial by jury.

SECTION 8. 16-10-109 (1), Colorado Revised Statutes, is amended to read:

16-10-109. Trial by jury for petty offenses. (1) For the purposes of this section, "petty offense" means any crime or offense classified as a petty offense or, if not so classified, which is punishable by imprisonment other than in a correctional facility for not more than six months, or by a fine of not more than five hundred dollars, or

by both such imprisonment and fine, and includes any violation of a municipal ordinance or offense which was not considered a crime at common law; except that violation of a municipal traffic ordinance which does not constitute a criminal offense or any other municipal charter, MUNICIPAL ORDINANCE, or COUNTY ordinance offense which is neither criminal nor punishable by imprisonment under any counterpart state statute shall not constitute a petty offense. No child under the age of eighteen years shall be entitled to a trial by jury for a violation of a municipal ordinance OR A COUNTY ORDINANCE for which imprisonment in jail is not a possible penalty. Nothing in this subsection (1) shall prohibit a municipality OR COUNTY from granting a right to trial by jury for ordinance violations.

SECTION 9. 18-18-203 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18-18-203. Schedule I. (2) Unless specifically excepted by Colorado or federal law or Colorado or federal regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(g) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION WHICH IS A CONTROLLED SUBSTANCE ANALOG, THE CHEMICAL STRUCTURE OF WHICH IS SUBSTANTIALLY SIMILAR TO THE CHEMICAL STRUCTURE OF A CONTROLLED SUBSTANCE LISTED IN THIS SUBSECTION (2) OR THAT WAS SPECIFICALLY DESIGNED TO PRODUCE AN EFFECT SUBSTANTIALLY SIMILAR TO OR GREATER THAN THE EFFECT OF A CONTROLLED SUBSTANCE LISTED IN THIS SUBSECTION (2), ALL OR PART OF WHICH IS INTENDED FOR HUMAN CONSUMPTION.

SECTION 10. Part 1 of article 1 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-133. Appropriation to comply with section 2-2-703 - H.B. 01-1242.

(1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT H.B. 01-1242, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY:

(a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2001, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF TWO HUNDRED SEVENTY-SEVEN THOUSAND EIGHT HUNDRED SIXTY-EIGHT DOLLARS (\$277,868).

(b) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2002, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF ONE HUNDRED THIRTY-EIGHT THOUSAND NINE HUNDRED THIRTY-FOUR DOLLARS (\$138,934).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2002, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF ONE HUNDRED SIX THOUSAND SEVEN HUNDRED FIFTY-SIX

DOLLARS (\$106,756).

(c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2003, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF ONE HUNDRED THIRTY-EIGHT THOUSAND NINE HUNDRED THIRTY-FOUR DOLLARS (\$138,934).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2003, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF ONE HUNDRED SIXTY THOUSAND ONE HUNDRED THIRTY-FOUR DOLLARS (\$160,134).

(d) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2004, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN SECTION 17-1-116, THE SUM OF SEVENTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-SEVEN DOLLARS (\$79,887).

(II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2004, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF TWO HUNDRED THIRTEEN THOUSAND FIVE HUNDRED TWELVE DOLLARS (\$213,512).

(e) FOR THE FISCAL YEAR BEGINNING JULY 1, 2005, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT OF CORRECTIONS, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF TWO HUNDRED FORTY-FOUR THOUSAND TWO HUNDRED FOUR DOLLARS (\$244,204).

SECTION 11. 24-75-302 (2) (n), (2) (o), (2) (p), and (2) (q), Colorado Revised Statutes, are amended to read:

24-75-302. Capital construction fund - capital assessment fees - calculation.

(2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2005, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(n) On July 1, 2001, one hundred million dollars, plus one hundred fifty-four thousand six hundred thirty-six dollars pursuant to H.B. 97-1186; plus nine hundred five thousand seven hundred twenty-three dollars pursuant to H.B. 97-1077, enacted at the first regular session of the sixty-first general assembly; plus nine thousand eight hundred ninety dollars pursuant to S.B. 98-021, enacted at the second regular session of the sixty-first general assembly; plus three hundred forty-nine thousand fifty-five

dollars pursuant to H.B. 98-1160, enacted at the second regular session of the sixty-first general assembly; plus three hundred twenty-six thousand thirty-two dollars pursuant to H.B. 00-1107, enacted at the second regular session of the sixty-second general assembly; plus ninety-seven thousand two hundred fifty-four dollars pursuant to H.B. 00-1111, enacted at the second regular session of the sixty-second general assembly; plus two hundred ninety-one thousand seven hundred sixty-one dollars pursuant to H.B. 00-1158, enacted at the second regular session of the sixty-second general assembly; plus one million one hundred sixteen thousand nine hundred seventy-one dollars pursuant to H.B. 00-1201, enacted at the second regular session of the sixty-second general assembly; plus four hundred sixteen thousand eight hundred two dollars pursuant to H.B. 00-1214, enacted at the second regular session of the sixty-second general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 00-1247, enacted at the second regular session of the sixty-second general assembly; PLUS TWO HUNDRED SEVENTY SEVEN THOUSAND EIGHT HUNDRED SIXTY-EIGHT DOLLARS PURSUANT TO H.B. 01-1242, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY;

(o) On July 1, 2002, one hundred million dollars plus thirteen thousand nine hundred sixty-two dollars pursuant to S.B. 98-021, enacted at the second regular session of the sixty-first general assembly; plus eight million three hundred seven thousand five hundred nine dollars pursuant to H.B. 98-1156, enacted at the second regular session of the sixty-first general assembly; plus three hundred ninety-seven thousand nine hundred twenty-three dollars pursuant to H.B. 98-1160, enacted at the second regular session of the sixty-first general assembly; plus fifty thousand three hundred sixty-four dollars pursuant to H.B. 00-1107, enacted at the second regular session of the sixty-second general assembly; plus one hundred twenty-one thousand five hundred sixty-seven dollars pursuant to H.B. 00-1201, enacted at the second regular session of the sixty-second general assembly; plus two hundred fifty thousand eighty-one dollars pursuant to H.B. 00-1214, enacted at the second regular session of the sixty-second general assembly; plus forty thousand five hundred twenty-two dollars pursuant to H.B. 00-1247, enacted at the second regular session of the sixty-second general assembly; PLUS ONE HUNDRED THIRTY-EIGHT THOUSAND NINE HUNDRED THIRTY-FOUR DOLLARS PURSUANT TO H.B. 01-1242, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY;

(p) On July 1, 2003, one hundred million dollars; PLUS ONE HUNDRED THIRTY-EIGHT THOUSAND NINE HUNDRED THIRTY-FOUR DOLLARS PURSUANT TO H.B. 01-1242, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY;

(q) On July 1, 2004, one hundred million dollars plus two hundred thirty-three thousand eight hundred seventy-two dollars pursuant to H.B. 00-1201, enacted at the second regular session of the sixty-second general assembly; PLUS SEVENTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-SEVEN DOLLARS PURSUANT TO H.B. 01-1242, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY;

SECTION 12. Effective date - applicability. This act shall take effect July 1, 2001, and shall apply to offenses committed on or after said date.

SECTION 13. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2001