

Proposition 132: Increase Penalties for Fentanyl Crimes

Placed on the ballot by citizen initiative • Passes with a majority vote

Proposition 132 proposes amending the Colorado statutes to:

- increase penalties for possession and distribution, including the selling, transfer or sharing, of any amount of certain synthetic opioids, commonly known as fentanyl; and
- eliminate the possibility of reduced penalties for certain possession and distribution offenses with mitigating circumstances.

What Your Vote Means

YES

A “yes” vote on Proposition 132 makes possession of any amount of fentanyl a felony, requires a mandatory minimum 8-year prison sentence for any quantity of fentanyl distribution, and eliminates options to reduce penalties for certain possession and distribution offenses.

NO

A “no” vote on Proposition 132 keeps minor possession charges of fentanyl a misdemeanor, maintains tiered felony penalties for fentanyl distribution based on drug quantity, and keeps options to reduce penalties for certain possession and distribution offenses.

Summary and Analysis of Proposition 132

What is fentanyl?

The term “fentanyl” refers to a type of potent synthetic opioid. Fentanyl is used medically for pain relief, but possessing or distributing fentanyl without a prescription is illegal. Fentanyl has become the leading cause of drug overdose deaths in both Colorado and the United States because it can be fatal in very small amounts and is often mixed into other illicit drugs without a user’s knowledge. Fentanyl belongs to a class of potent synthetic opioids with similar characteristics. The measure impacts fentanyl along with these related drugs.

What are the current penalties for fentanyl offenses in Colorado?

Penalties for fentanyl offenses are based on the type and quantity of the drug, and whether the offense involved personal use or intent to distribute. Current penalties range from court-ordered treatment, fines, and probation to time in prison. State law specifies which fentanyl offenses require prison sentences, which qualify for alternative penalties and reduced charges, or are subject to judicial discretion. The severity of the penalty also depends on the weight of the substance involved. A “substance” includes the total weight of any mixture containing fentanyl rather than the amount of fentanyl itself.

Who can and cannot go to prison under current law?

The most serious fentanyl-related drug crimes mandate a minimum prison sentence of 8 years up to a maximum of 32 years. This includes offenders who:

- distributed to a minor;
- distributed more than 50 grams of a substance; or
- distributed at least 4 grams of a substance that caused death.

In other cases, state law allows for sentences such as probation and treatment, and prohibits state prison for offenders who either:

- possessed less than 1 gram of a substance with no intent to distribute and do not have multiple past fentanyl convictions;
- possessed between 1 to 4 grams of a substance with no intent to distribute and provided evidence they were unaware the substance contained fentanyl; or
- distributed less than 4 grams and were eligible for "Good Samaritan" protections that reduce criminal penalties for reporting an overdose and staying until help arrives.

When prison time is neither mandated nor prohibited by state law, a judge may determine a sentence within a penalty range. In these scenarios, the judge may consider the unique circumstances of the case, including if the offender was aware of fentanyl in the substance, criminal history, risk to public safety, acceptance of responsibility, or any other circumstance that is relevant to consider at sentencing. Judges may also reduce or modify a penalty in exchange for successful completion of treatment.

How will penalties change under Proposition 132?

Proposition 132 increases criminal penalties for fentanyl offenses by expanding felony charges for possession and distribution, imposing longer prison sentences, and limiting judicial discretion.

For those convicted of distributing any amount of fentanyl, the measure requires a prison sentence of between 8 and 32 years. It eliminates the possibility for reduced penalties in "Good Samaritan" cases involving distribution.

The measure also makes possession of any amount of fentanyl a felony. However, if a person possesses less than one gram and successfully completes court-ordered drug rehabilitation treatment, the felony charge may be reduced to a misdemeanor. Individuals charged with a felony for possessing more than one gram are no longer eligible for this reduction, but the measure keeps "Good Samaritan" penalty reductions for other low-level possession offenses. Although not mandated, the measure permits varying lengths of imprisonment for possession.

Judicial discretion is limited by imposing mandatory minimum prison sentences for fentanyl distribution cases. Additionally, courts must order treatment for individuals charged with possessing less than one gram of a substance containing fentanyl, regardless of the circumstances. Finally, judges may not consider mitigating factors, such as whether an offender reasonably believed the substance did not contain fentanyl.

Table 1 compares fentanyl offense sentencing between current law and Proposition 132.

Table 1
Fentanyl Offense Prison Sentencing under Current Law and Proposition 132

Offense	Sentencing under Current Law	Sentencing under Proposition 132
Distribution over 50g	Mandatory, 8-32 years in prison.	Mandatory, 8-32 years in prison.
Distribution 4-50g	Possible, 4-8 years in prison. Increased charges for distribution resulting in death or distribution to a minor.	Mandatory, 8-32 years in prison.
Distribution under 4g	Possible, 2-4 years in prison. Increased charges for distribution to a minor; reduced charges for "Good Samaritan" actions.	Mandatory, 8-32 years in prison.
Possession 1-4g	Possible, 0.5-1 year in prison. Reduced charges for reasonable deniability or completing alternative sentencing, such as treatment.	Possible, 2-4 years in prison.
Possession under 1g	No prison time. Increased charges for multiple past convictions; reduced charges for reasonable deniability or completing alternative sentencing, such as treatment.	Possible, 0.5-1 year in prison. Eligible for reduced charges for completing mandatory treatment.

Argument For Proposition 132

- 1) Fentanyl is highly potent and deadly, and it warrants stronger penalties than other drugs. The measure targets drug traffickers with harsher sentences and disrupts the distribution of fentanyl, including when it is mixed into other substances. Mandated prison sentences for drug dealers are likely to enhance public safety by keeping them off the street, as well as provide victims and their families with a greater sense of justice. The measure also increases accountability for drug users and may deter fentanyl use, which could help reduce overdose deaths. Proposition 132 demonstrates Colorado's commitment to addressing fentanyl-related crime.

Argument Against Proposition 132

- 1) Proposition 132 is unlikely to reduce fentanyl use, lower crime rates, or prevent overdose deaths. Individuals may be discouraged from seeking addiction treatment, or calling for emergency assistance during overdoses, due to fear of criminal prosecution and prison time. The measure treats people who distribute trace amounts of fentanyl as major drug dealers. In addition, longer prison sentences are expensive and would shift resources away from underfunded treatment programs, education, and other public services and toward an already overcrowded and understaffed prison system.

Information about the organizations supporting and opposing this measure is available on the Colorado Secretary of State's website:

www.coloradosos.gov/pubs/elections/Initiatives/ballot/contacts/2026.html

Fiscal Impact of Proposition 132

State Revenue

Proposition 132 increases state revenue to the Judicial Department by \$23,000 in the first year, and \$73,000 in the second and future years from additional criminal fines due to the measure's increase in crime classification.

State Spending

Proposition 132 increases state spending to cover increased criminal justice system costs for the courts, public defenders, and prisons. These costs are paid from the state General Fund. Specifically, the measure increases state spending in the first budget year by \$0.9 million to pay for costs in the courts and for public defenders. In the second year, state spending under the measure is estimated to increase to \$8.9 million as more individuals are sent to prison for distributing or possessing. Prison costs will continue to increase as individuals are incarcerated for longer periods of time. By year five, total state spending is estimated to increase by \$68.2 million. In addition, due to the estimated increase in the future prison population, the state may need to construct or contract for additional prison space.

The measure does not specify a funding source to pay for this increased criminal justice-related spending, and it is assumed that these costs will be paid from the General Fund. While the measure may reduce money available for other uses (the three largest of which are Health Care Policy and Financing, Education, and Higher Education), the effect of the measure on other programs is unknown and will depend on future budgeting decisions by the state legislature.

Local Government

Similar to the state, costs will increase for county-funded district attorneys to prosecute longer cases with enhanced penalties.

Initiative 85: Increase Penalties for Fentanyl Crimes

Placed on the ballot by citizen initiative • Passes with a majority vote

Initiative 85 proposes amending the Colorado statutes to:

- increase penalties for possession and distribution, including the selling, transfer or sharing, of any amount of certain synthetic opioids, commonly known as fentanyl; and
- eliminate the possibility of reduced penalties for certain possession and distribution offenses with mitigating circumstances.

What Your Vote Means

YES

A “yes” vote on Initiative 85 makes possession of any amount of fentanyl a felony, requires a mandatory minimum 8-year prison sentence for any quantity of fentanyl distribution, and eliminates options to reduce penalties for certain possession and distribution offenses.

NO

A “no” vote on Initiative 85 keeps minor fentanyl possession charges a misdemeanor, maintains tiered felony penalties for fentanyl distribution based on drug quantity, and keeps options to reduce penalties for certain possession and distribution offenses.

Summary and Analysis of Initiative 85

What is fentanyl?

The term “fentanyl” refers to a type of potent synthetic opioid. Fentanyl is used medically for pain relief, but possessing or distributing fentanyl without a prescription is illegal. Fentanyl has become the leading cause of drug overdose deaths in both Colorado and the United States because it can be fatal in very small amounts and is often mixed into other illicit drugs without a user’s knowledge. Fentanyl belongs to a class of potent synthetic opioids with similar characteristics. The measure impacts fentanyl along with these related drugs.

What are the current penalties for fentanyl offenses in Colorado?

Penalties for fentanyl offenses are based on the type and quantity of the drug, and whether the offense involved personal use or intent to distribute. Current penalties range from court-ordered treatment, fines, and probation to time in prison. State law specifies which fentanyl offenses require prison sentences, which qualify for alternative penalties and reduced charges, or are subject to judicial discretion. The severity of the penalty also depends on the weight of the

substance involved. A “substance” includes the total weight of any mixture containing fentanyl rather than the amount of fentanyl itself.

Who can and cannot go to prison under current law?

The most serious fentanyl-related drug crimes mandate a minimum prison sentence of 8 years up to a maximum of 32 years. This includes offenders who:

- distributed to a minor;
- distributed more than 50 grams of a substance; or
- distributed at least 4 grams of a substance that caused death.

In other cases, state law allows for sentences such as probation and treatment, and prohibits state prison for offenders who either:

- possessed less than 1 gram of a substance with no intent to distribute and do not have multiple past fentanyl convictions;
- possessed between 1 to 4 grams of a substance with no intent to distribute and provided evidence they were unaware the substance contained fentanyl; or
- distributed less than 4 grams and were eligible for “Good Samaritan” protections that reduce criminal penalties for reporting an overdose and staying until help arrives.

When prison time is neither mandated nor prohibited by state law, a judge may determine a sentence within a penalty range. In these scenarios, the judge may consider the unique circumstances of the case, including if the offender was aware of fentanyl in the substance, criminal history, risk to public safety, acceptance of responsibility, or any other circumstance that is relevant to consider at sentencing. Judges may also reduce or modify a penalty in exchange for successful completion of treatment.

How will penalties change under Initiative 85?

Initiative 85 increases criminal penalties for fentanyl offenses by expanding felony charges for possession and distribution, imposing longer prison sentences, and limiting judicial discretion.

For those convicted of distributing any amount of fentanyl, the measure requires a prison sentence of between 8 and 32 years. It eliminates the possibility for reduced penalties in “Good Samaritan” cases involving distribution.

The measure also makes possession of any amount of fentanyl a felony. However, if a person possesses less than one gram and successfully completes court-ordered drug rehabilitation treatment, the felony charge may be reduced to a misdemeanor. Individuals charged with a felony for possessing more than one gram are no longer eligible for this reduction, but the measure keeps “Good Samaritan” penalty reductions for other low-level possession offenses. Although not mandated, the measure permits varying lengths of imprisonment for possession.

Judicial discretion is limited by imposing mandatory minimum prison sentences for fentanyl distribution cases. Additionally, courts must order treatment for individuals charged with possessing less than one gram of a substance containing fentanyl, regardless of the

circumstances. Finally, judges may not consider mitigating factors, such as whether an offender reasonably believed the substance did not contain fentanyl.

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Possession 1-4g	Possible, 0.5-1 year in prison. Reduced charges for reasonable deniability or completing alternative sentencing, such as treatment.	Possible, 2-4 years in prison.
Possession under 1g	No prison time. Increased charges for multiple past convictions; reduced charges for reasonable deniability or completing alternative sentencing, such as treatment.	Possible, 0.5-1 year in prison. Eligible for reduced charges for completing treatment.

Argument For Initiative 85

- 1) Fentanyl is highly potent and deadly, and it warrants stronger penalties than other drugs. The measure targets drug traffickers with harsher sentences and disrupts the distribution of fentanyl, including when it is mixed into other substances. Mandated prison sentences for drug dealers are likely to enhance public safety by keeping them off the street, as well as provide victims and their families with a greater sense of justice. The measure also increases accountability for drug users and may deter fentanyl use, helping reduce overdose deaths. Initiative 85 demonstrates Colorado's commitment to addressing fentanyl-related crime.

Argument Against Initiative 85

- 1) Initiative 85 is unlikely to reduce fentanyl use, lower crime rates, or prevent overdose deaths. Individuals may be discouraged from seeking addiction treatment, or calling for emergency assistance during overdoses, due to fear of criminal prosecution and prison time. The measure treats people who distribute trace amounts of fentanyl as major drug dealers. In addition, longer prison sentences are expensive and would shift resources away from

underfunded treatment programs, education, and other public services and toward an already overcrowded and understaffed prison system.

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Local Government

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Last Draft Comments from Interested Parties

Proposition 132

Increase Penalties for Fentanyl Crimes

Michael Fields, representing Advance Colorado, proponents:

Thanks so much for the latest updated version. We think that it more accurately reflects what we are trying to do with this measure. Below are a couple of thoughts for the final draft:

Suggested Changes:

1) The initial description and/or the "yes" section should include a mention of the new treatment-mandated felony. The treatment piece here is a key provision of this initiative.

For example, the YES language could read:

"A "yes" vote on Initiative 85 makes possession of any amount of fentanyl a felony **and creates a new treatment-mandated felony**, requires a mandatory minimum 8-year prison sentence for any quantity of fentanyl distribution, and eliminates options to reduce penalties for certain possession and distribution offenses."

2) Table 1 is more accurate now, but the possibility of treatment should still be mentioned in Sentencing under Initiative 85 for 1-4g of Possession. Could read "Still eligible for treatment." The current impression is that prison time is the only option.

Thanks again!

Michael

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Michael Fields

President

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Proposition 132

Increase Penalties for Fentanyl Crimes

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Proposition 132

Increase Penalties for Fentanyl Crimes

Ballot Title: Shall there be a change to the Colorado Revised Statutes creating new election processes for certain federal and state offices, and, in connection therewith, creating a new all-candidate primary election for U.S. Senate, U.S. House of Representatives, governor, attorney general, secretary of state, treasurer, CU board of regents, state board of education, and the Colorado state legislature; allowing voters to vote for any one candidate per office, regardless of the voter's or candidate's political party affiliation; providing that the four candidates for each office who receive the most votes advance to the general election; and in the general election, allowing voters to rank candidates for each office on their ballot, adopting a process for how the ranked votes are tallied, and determining the winner to be the candidate with the highest number of votes in the final tally?

Text of Measure:

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-18-102, **add** (35.5) as follows:

18-18-102. Definitions.

As used in this article 18:

(35.5) "LEVEL 4 TREATMENT-MANDATED DRUG FELONY" MEANS A LEVEL 4 DRUG FELONY THAT IS ELIGIBLE TO BE VACATED FOLLOWING SUCCESSFUL COMPLETION OF COURT-ORDERED TREATMENT FOR DRUG REHABILITATION ACCORDING TO THE PROVISIONS OF SECTION 18-1.3-103.5.

SECTION 2. In Colorado Revised Statutes, repeal and reenact, with amendments, 18-18-405 as follows:

18-18-405. Unlawful distribution, manufacturing, dispensing, or sale.

(1)(a) EXCEPT AS AUTHORIZED BY PART 1 OF ARTICLE 280 OF TITLE 12, PART 2 OF ARTICLE 80 OF TITLE 27, PART 2 OR 3 OF THIS ARTICLE 18, SECTION 18-18-434, ARTICLE 170 OF TITLE 12, OR ARTICLE 50 OF TITLE 44, IT IS UNLAWFUL FOR ANY PERSON KNOWINGLY TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE, OR TO POSSESS WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE, A CONTROLLED SUBSTANCE; OR INDUCE, ATTEMPT TO INDUCE, OR CONSPIRE WITH ONE OR MORE OTHER PERSONS, TO MANUFACTURE, DISPENSE, SELL, DISTRIBUTE, OR POSSESS WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE, A CONTROLLED SUBSTANCE; OR POSSESS ONE OR MORE CHEMICALS OR SUPPLIES OR EQUIPMENT WITH INTENT TO MANUFACTURE A CONTROLLED SUBSTANCE.

(b) AS USED IN THIS SUBSECTION (1), "DISPENSE" DOES NOT INCLUDE LABELING, AS DEFINED IN SECTION 12-280-103 (23).

(2) EXCEPT AS OTHERWISE PROVIDED FOR AN OFFENSE CONCERNING MARIJUANA AND MARIJUANA CONCENTRATE IN SECTION 18-18-406 AND FOR SPECIAL OFFENDERS AS PROVIDED IN SECTION 18- 18-407, A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION:

(a) COMMITS A LEVEL 1 DRUG FELONY AND IS SUBJECT TO THE MANDATORY SENTENCING PROVISIONS IN SECTION 18-1.3-401.5 (7) IF:

(I) THE VIOLATION INVOLVES ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS:

(A) MORE THAN TWO HUNDRED TWENTY-FIVE GRAMS AND CONTAINS A SCHEDULE I OR SCHEDULE II

39 CONTROLLED SUBSTANCE; OR

40 (B) MORE THAN ONE HUNDRED TWELVE GRAMS AND CONTAINS METHAMPHETAMINE, HEROIN,
41 KETAMINE, OR CATHINONES; OR

42 (C) MORE THAN FIFTY MILLIGRAMS AND CONTAINS FLUNITRAZEPAM; OR

43 (D) ANY AMOUNT AND CONTAINS FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG
44 THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g); OR

45 (II) AN ADULT SELLS, DISPENSES, DISTRIBUTES, OR OTHERWISE TRANSFERS ANY QUANTITY OF A
46 SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE OR ANY MATERIAL, COMPOUND, MIXTURE, OR
47 PREPARATION THAT CONTAINS ANY AMOUNT OF A SCHEDULE I OR SCHEDULE II CONTROLLED
48 SUBSTANCE, OTHER THAN MARIJUANA OR MARIJUANA CONCENTRATE, TO A MINOR AND THE ADULT IS
49 AT LEAST TWO YEARS OLDER THAN THE MINOR; (III) EXCEPT AS PROVIDED IN SECTION 18-1-711 (3)(i),
50 THE DEFENDANT COMMITTED A VIOLATION OF SUBSECTION (2)(a)(I)(D) OF THIS SECTION, AND THE
51 ACTIONS IN VIOLATION OF SUBSECTION (2)(a)(I)(D) OF THIS SECTION ARE THE PROXIMATE CAUSE OF THE
52 DEATH OF ANOTHER PERSON WHO USED OR CONSUMED THE MATERIAL, COMPOUND, MIXTURE, OR

53 PREPARATION THAT CONTAINED FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG
54 THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g). (b) COMMITS A LEVEL 2 DRUG FELONY IF: (I) THE

55 VIOLATION INVOLVES ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS: (A) MORE
56 THAN FOURTEEN GRAMS, BUT NOT MORE THAN TWO HUNDRED TWENTY-FIVE GRAMS, AND CONTAINS
57 A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE; (B) MORE THAN SEVEN GRAMS, BUT NOT MORE

58 THAN ONE HUNDRED TWELVE GRAMS, AND CONTAINS METHAMPHETAMINE, HEROIN, KETAMINE, OR
59 CATHINONES; OR (C) MORE THAN TEN MILLIGRAMS, BUT NOT MORE THAN FIFTY MILLIGRAMS, AND
60 CONTAINS FLUNITRAZEPAM; (II) AN ADULT SELLS, DISPENSES, DISTRIBUTES, OR OTHERWISE TRANSFERS

61 ANY QUANTITY OF A SCHEDULE III OR SCHEDULE IV CONTROLLED SUBSTANCE OR ANY MATERIAL,
62 COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF A SCHEDULE III OR
63 SCHEDULE IV CONTROLLED SUBSTANCE TO A MINOR AND THE ADULT IS AT LEAST TWO YEARS OLDER

64 THAN THE MINOR; (c) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, COMMITS A LEVEL 3
65 DRUG FELONY IF THE VIOLATION INVOLVES ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
66 THAT WEIGHS: (I) NOT MORE THAN FOURTEEN GRAMS AND CONTAINS A SCHEDULE I OR SCHEDULE II

67 CONTROLLED SUBSTANCE; (II) NOT MORE THAN SEVEN GRAMS AND CONTAINS METHAMPHETAMINE,
68 HEROIN, KETAMINE, OR CATHINONES; (III) NOT MORE THAN TEN MILLIGRAMS AND CONTAINS
69 FLUNITRAZEPAM; OR (IV) MORE THAN FOUR GRAMS AND CONTAINS A SCHEDULE III OR SCHEDULE IV

70 CONTROLLED SUBSTANCE. (d) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION OR SECTION
71 18-1-711 (3)(j), COMMITS A LEVEL 4 DRUG FELONY IF: (I) THE VIOLATION INVOLVES ANY MATERIAL,

72 COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS NOT MORE THAN FOUR GRAMS AND CONTAINS
73 A SCHEDULE III OR SCHEDULE IV CONTROLLED SUBSTANCE; OR (II) NOTWITHSTANDING SUBSECTION
74 (2)(c) OF THIS SECTION, THE VIOLATION INVOLVES DISTRIBUTION OR TRANSFER OF THE CONTROLLED

75 SUBSTANCE FOR THE PURPOSE OF CONSUMING ALL OF THE CONTROLLED SUBSTANCE WITH ANOTHER
76 PERSON OR PERSONS AT A TIME SUBSTANTIALLY CONTEMPORANEOUS WITH THE TRANSFER; EXCEPT
77 THAT THIS SUBPARAGRAPH (II) APPLIES ONLY IF THE DISTRIBUTION OR TRANSFER INVOLVES NOT MORE

78 THAN FOUR GRAMS OF A SCHEDULE I OR II CONTROLLED SUBSTANCE OR NOT MORE THAN TWO GRAMS
79 OF METHAMPHETAMINE, HEROIN, KETAMINE, OR CATHINONES; (e) COMMITS A LEVEL 1 DRUG
80 MISDEMEANOR IF THE VIOLATION INVOLVES: (I) A SCHEDULE V CONTROLLED SUBSTANCE; OR (II) A

TRANSFER WITH NO REMUNERATION OF NOT MORE THAN FOUR GRAMS OF A SCHEDULE III OR SCHEDULE IV CONTROLLED SUBSTANCE. (3) WHEN A PERSON COMMITS UNLAWFUL DISTRIBUTION, MANUFACTURE, DISPENSING, SALE, OR POSSESSION WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE ANY SCHEDULE I OR 2025-2026 #85 - Final 3 SCHEDULE II CONTROLLED SUBSTANCE, AS LISTED IN SECTION 18-18-203 OR 18-18-204, FLUNITRAZEPAM, KETAMINE, OR CATHINONES, OR CONSPIRES WITH ONE OR MORE PERSONS TO COMMIT THE OFFENSE, PURSUANT TO SUBSECTION (1) OF THIS SECTION, TWICE OR MORE WITHIN A PERIOD OF SIX MONTHS, WITHOUT HAVING BEEN PLACED IN JEOPARDY FOR THE PRIOR OFFENSE OR OFFENSES, THE AGGREGATE AMOUNT OF THE SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE, FLUNITRAZEPAM, KETAMINE, OR CATHINONES INVOLVED MAY BE USED TO DETERMINE THE LEVEL OF DRUG OFFENSE. (4) EXCEPT FOR A PROSECUTION FOR MANUFACTURING, A PERSON COMMITS A LEVEL 1 DRUG MISDEMEANOR FOR A VIOLATION OF SUBSECTION (2)(c)(I), (2)(c)(II), OR (2)(d) OF THIS SECTION IF: (a) THE DISTRIBUTION, DISPENSING, TRANSFER, OR SALE INVOLVES A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS NOT MORE THAN FOUR GRAMS AND CONTAINS ANY AMOUNT OF A CONTROLLED SUBSTANCE IDENTIFIED IN SUBSECTION (2)(c)(I), (2)(c)(II), OR (2)(d) OF THIS SECTION; (b) THE DEFENDANT REPORTS IN GOOD FAITH AN EMERGENCY DRUG OVERDOSE EVENT TO A LAW ENFORCEMENT OFFICER, TO THE 911 SYSTEM, OR TO A MEDICAL PROVIDER, OR THE DEFENDANT AIDS OR SEEKS AID FOR THE PERSON WHO SUFFERED THE EMERGENCY DRUG OVERDOSE; (c) THE DEFENDANT REMAINS AT THE SCENE OF THE EVENT UNTIL A LAW ENFORCEMENT OFFICER OR AN EMERGENCY MEDICAL RESPONDER ARRIVES OR THE DEFENDANT REMAINS AT THE FACILITIES OF THE MEDICAL PROVIDER UNTIL A LAW ENFORCEMENT OFFICER ARRIVES; (d) THE DEFENDANT IDENTIFIES HIMSELF OR HERSELF AND COOPERATES WITH THE LAW ENFORCEMENT OFFICER, EMERGENCY MEDICAL RESPONDER, OR MEDICAL PROVIDER; AND (e) THE OFFENSE ARISES FROM THE SAME COURSE OF EVENTS FROM WHICH THE EMERGENCY OVERDOSE EVENT AROSE. SECTION 3. In Colorado Revised Statutes, 18-1.3-401.5, amend (7) and (10)(a)(III.5) as follows: 18-1.3-401.5. Drug felonies classified - presumptive and aggravated penalties - legislative intent. (7) Except as provided in section 18-18-405 (2)(a)(III)(B), notwithstanding NOTWITHSTANDING any provision of this section to the contrary, if the defendant is convicted of a level 1 drug felony, the court shall sentence the defendant to a term of incarceration in the department of corrections of at least eight years but not more than thirty-two years. The presence of one or more of the aggravating circumstances provided in subsection (10)(a) of this section or in section 18-18-407 (1) requires the court to sentence a defendant convicted of a level 1 drug felony to a term of incarceration in the department of corrections of at least twelve years but no more than thirty-two years. The court may impose a fine in addition to imprisonment. (10)(a) Except for a level 1 drug felony, the presence of one or more of the following aggravating circumstances at the time of the commission of a drug felony offense requires the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than the maximum term of the aggravated range: (III.5) The defendant was on appeal bond following his or her THE DEFENDANT'S conviction for a previous felony; 2025-2026 #85 - Final 4 SECTION 4. In Colorado Revised Statutes, 18-18-407, amend (1)(h) as follows: 18-18-407. Special offender - definitions. (1) A person who commits a felony offense pursuant to this part 4 under any one or more of the following aggravating circumstances commits a level 1 drug felony and is a special offender: (h) The defendant committed a violation of section 18-18-405 (2)(a)(I)(D), (2)(b)(I)(D), or (2)(c)(V), and the defendant possessed pill or tablet manufacturing equipment with the intent to use the equipment in the manufacture of a controlled

substance. SECTION 5. In Colorado Revised Statutes, repeal and reenact 18-18-403.5 as follows: 18-18-403.5. Unlawful possession of a controlled substance - notice to revisor of statutes - repeal. (1) EXCEPT AS AUTHORIZED BY PART 1 OR 3 OF ARTICLE 280 OF TITLE 12, PART 2 OF ARTICLE 80 OF TITLE 27, SECTION 18-1-711, SECTION 18-18-428 (1)(b), PART 2 OR 3 OF THIS ARTICLE 18, SECTION 18-18-434, ARTICLE 170 OF TITLE 12, OR ARTICLE 50 OF TITLE 44, IT IS UNLAWFUL FOR A PERSON KNOWINGLY TO POSSESS 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 18 COMMITS A LEVEL 4 DRUG FELONY. (b) 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 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)(b) IS A LEVEL 4 DRUG FELONY. (3)(a) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, ON OR AFTER JANUARY 1, 2027, A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION BY KNOWINGLY POSSESSING: (I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS MORE THAN ONE GRAM AND NOT MORE THAN FOUR GRAMS AND CONTAINS ANY QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), COMMITS A LEVEL 3 DRUG FELONY; (II) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS NOT MORE THAN ONE GRAM AND CONTAINS ANY QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), COMMITS A LEVEL 4 TREATMENTMANDATED DRUG FELONY AND SUCH DEFENDANT IS ELIGIBLE FOR COURT-ORDERED TREATMENT FOR DRUG REHABILITATION. (4)(a) A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION BY POSSESSING ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS A QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), THAT IS MORE THAN SIXTY PERCENT OF THE TOTAL COMPOSITION OF THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION, COMMITS A LEVEL 2 DRUG FELONY. 2025-2026 #85 - Final 5 (b)(I) THIS SUBSECTION (4) TAKES EFFECT AT 12:01 A.M. THIRTY DAYS AFTER THE DATE IDENTIFIED IN THE NOTICE PROVIDED TO THE REVISOR OF STATUTES BY THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION THAT THE COLORADO BUREAU OF INVESTIGATION HAS THE RESOURCES TO DETERMINE THE QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), COMPARED TO THE TOTAL COMPOSITION OF THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION, OR ON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES IF THE NOTICE DOES NOT SPECIFY A DIFFERENT DATE. (II) THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING WHEN THE CONDITION SPECIFIED IN SUBSECTION (4)(b)(I) OF THIS SECTION HAS OCCURRED BY E-MAILING THE NOTICE TO REVISOROFSTATUTES.GA@COLEG.GOV. (III) CONCURRENT WITH THE NOTICE REQUIRED IN SUBSECTION (4)(b)(II) OF THIS SECTION, THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION SHALL NOTIFY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE, THE

CHIEF JUSTICE OF THE SUPREME COURT, THE GOVERNOR, THE ATTORNEY GENERAL, THE STATE PUBLIC DEFENDER, AND EACH DISTRICT ATTORNEY IN THE STATE, THAT THE COLORADO BUREAU OF INVESTIGATION HAS THE RESOURCES TO DETERMINE THE QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), COMPARED TO THE TOTAL COMPOSITION OF THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION. (IV) THIS SUBSECTION (4)(b) IS REPEALED, EFFECTIVE ONE YEAR AFTER NOTICE TO THE REVISOR OF STATUTES PURSUANT TO SUBSECTION (4)(b)(II) OF THIS SECTION. (5) IF THE CIRCUMSTANCES DESCRIBED IN SECTION 18-18-428 (1)(b) OCCUR, THE PEACE OFFICER SHALL NOT ARREST THE PERSON PURSUANT TO THIS SECTION FOR ANY MINUSCULE, RESIDUAL CONTROLLED SUBSTANCE THAT MAY BE PRESENT IN THE USED HYPODERMIC NEEDLE OR SYRINGE, AND THE DISTRICT ATTORNEY SHALL NOT CHARGE OR PROSECUTE THE PERSON PURSUANT TO THIS SECTION FOR ANY MINUSCULE, RESIDUAL CONTROLLED SUBSTANCE THAT MAY BE PRESENT IN A USED HYPODERMIC NEEDLE OR SYRINGE. THE CIRCUMSTANCES DESCRIBED IN SECTION 18-18-428 (1)(b) 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. (6) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, ON 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. (7) 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. (8) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION TO THE CONTRARY, A PEACE OFFICER SHALL NOT ARREST AND A DISTRICT ATTORNEY SHALL NOT CHARGE OR PROSECUTE AN EMPLOYEE, AGENT, OR VOLUNTEER OF AN ENTITY DESCRIBED IN SECTION 12-30-110 (1)(a) WHO, IN THE 2025-2026 #85 - Final 6 PERFORMANCE OF THE PERSON'S DUTIES, IS IN POSSESSION OF A CONTROLLED SUBSTANCE, INCLUDING FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), FOR THE PURPOSE OF SAFE DISPOSAL OF THE CONTROLLED SUBSTANCE, INCLUDING FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), IN ACCORDANCE WITH APPLICABLE LAW. AS USED IN THIS SUBSECTION (6), "SAFE DISPOSAL" MEANS THE PROCEDURE AND PROCESS FOR DEPOSITING THE CONTROLLED SUBSTANCE, INCLUDING FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), IN A SECURE CONTAINER FOR LAW ENFORCEMENT TO SUBSEQUENTLY ACCESS AND DISPOSE OF. SECTION 6. In Colorado Revised Statutes, 18-1.3-103.5, amend (3)(e) 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: (e) A violation of section 18-18-403.5 (2.5)(a) 18-18-403.5(2.5)(a)(II). SECTION 7. In Colorado Revised Statutes, 18-1.3-801, amend (2)(a)(I); and repeal (2)(c) as follows: 18-1.3-801. Punishment for habitual

207 criminals. (2)(a)(I) Except as otherwise provided in subsections (2)(b), (2)(c), and (5) of this section, every
208 person convicted in this state of any felony, who has been three times previously convicted, upon charges
209 separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state
210 or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to
211 the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall
212 be adjudged an habitual criminal and shall be punished: (2)(c) The provisions of subsection (2)(a) of this
213 section do not apply to a conviction for a level 4 drug felony committed on or after July 1, 2022, pursuant
214 to section 18-18-403.5 (2.5), or a conviction for a level 4 drug felony committed on or after July 1, 2022, for
215 attempt or conspiracy to commit unlawful possession of fentanyl, carfentanil, benzimidazole opiate, or an
216 analog thereof, as described in section 18-18-403.5 (2.5), even if the person has been previously convicted
217 of three or more qualifying felony convictions. SECTION 8. Effective Date. This measure is effective January
218 1, 2027.