

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 26-0418.01 Lindy Schaible x4215

HOUSE BILL 26-1020

HOUSE SPONSORSHIP

Gilchrist and Bacon,

SENATE SPONSORSHIP

Ball,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING COLORIMETRIC FIELD DRUG TESTS IN CASES INVOLVING**
102 **DRUG POSSESSION.**

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 current law, a person may be arrested and detained for level 1 drug misdemeanor possession.

The bill defines "colorimetric field drug test" and requires that when a colorimetric field drug test was used and a person is suspected of a level 1 drug misdemeanor for possession or a municipal drug possession charge, a peace officer shall not arrest the person and instead shall issue

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

a summons.

The bill also requires that when a colorimetric field drug test was used, before accepting a plea from a person charged with a drug possession for level 4 drug felony possession and lower, the trial court is required to issue an advisement with specified language, including language stating that colorimetric field drug tests have known error rates and that the defendant has the right to enter a not guilty plea and to request drug testing from an accredited forensic laboratory.

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

SECTION 1. In Colorado Revised Statutes, 18-18-102, **amend** the introductory portion; and **add** (4.5) as follows:

18-18-102. Definitions.

As used in this article 18, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(4.5) "COLORIMETRIC FIELD DRUG TEST" MEANS A PRESUMPTIVE CHEMICAL SCREENING METHOD PERFORMED OUTSIDE OF A FORENSIC LABORATORY BY SOMEONE OTHER THAN A FORENSIC CHEMIST THAT USES ONE OR MORE REAGENT SUBSTANCES THAT, WHEN BROUGHT INTO PHYSICAL CONTACT WITH AN UNKNOWN SUBSTANCE, PRODUCES A VISIBLE COLOR CHANGE INTENDED TO INDICATE THE POSSIBLE PRESENCE OF A CONTROLLED SUBSTANCE.

SECTION 2. In Colorado Revised Statutes, 18-18-403.5, **add** (7) and (8) as follows:

18-18-403.5. Unlawful possession of a controlled substance - notice to revisor of statutes - repeal.

(7) NOTWITHSTANDING SUBSECTIONS (2) AND (2.5) OF THIS SECTION, WHEN A COLORIMETRIC FIELD DRUG TEST WAS USED, A PEACE OFFICER SHALL NOT ARREST A PERSON WHEN THE SOLE BASIS FOR THE ARREST IS A LEVEL 1 DRUG MISDEMEANOR FOR POSSESSION OF A

1 CONTROLLED SUBSTANCE PURSUANT TO SUBSECTION (2)(c) OR (2.5)(a)(II)
2 OF THIS SECTION, OR WHEN THE SOLE BASIS FOR THE ARREST IS A
3 MUNICIPAL DRUG POSSESSION CHARGE, AND SHALL INSTEAD ISSUE A
4 SUMMONS AND COMPLAINT PURSUANT TO SECTION 16-2-104.

5 (8) BEFORE ACCEPTING A PLEA FROM A PERSON CHARGED WITH
6 POSSESSION OF A CONTROLLED SUBSTANCE PURSUANT TO SUBSECTION (1),
7 (2), OR (2.5) OF THIS SECTION, OR FOR A DRUG POSSESSION OFFENSE IN
8 MUNICIPAL COURT, WHEN A COLORIMETRIC FIELD DRUG TEST WAS USED,
9 A TRIAL JUDGE SHALL ISSUE AN ADVISEMENT THAT INCLUDES THE
10 FOLLOWING LANGUAGE: "THE COURT CANNOT ACCEPT A PLEA WITHOUT
11 FIRST ADVISING THE DEFENDANT THAT PRESUMPTIVE COLORIMETRIC FIELD
12 DRUG TESTS ARE SUBJECT TO FALSE POSITIVE RESULTS. PRESUMPTIVE
13 COLORIMETRIC FIELD DRUG TESTS HAVE KNOWN ERROR RATES AND ARE
14 INADMISSIBLE IN COURT. THE DEFENDANT HAS THE RIGHT TO ENTER A NOT
15 GUILTY PLEA AND TO REQUEST DRUG TESTING BY AN ACCREDITED
16 FORENSIC LABORATORY."

17 **SECTION 3.** In Colorado Revised Statutes, **amend** 16-2-104 as
18 follows:

19 **16-2-104. Issuance of summons and complaint.**

20 (1) A summons and complaint may be issued by ~~any~~ A peace
21 officer for an offense constituting a misdemeanor or a petty offense
22 committed in the peace officer's presence or, if not committed in the
23 peace officer's presence, that the peace officer has probable cause to
24 believe was committed and probable cause to believe was committed by
25 the person charged. Except for:

26 (a) Penalty assessment notices, which must be handled pursuant
27 to the procedures set forth in section 16-2-201 or 16-2.3-102, a copy of

1 a summons and complaint so issued must be filed immediately with the
2 county court before which appearance is required, and a second copy
3 must be given to the district attorney or deputy district attorney for the
4 county; AND

5 (b) WHEN A COLORIMETRIC FIELD DRUG TEST WAS USED AND A
6 PERSON IS SOLELY SUSPECTED OF A LEVEL 1 DRUG MISDEMEANOR FOR
7 POSSESSION OF A CONTROLLED SUBSTANCE PURSUANT TO SECTION
8 18-18-403.5 (2)(c) OR (2.5)(a)(II), OR SOLELY SUSPECTED OF A MUNICIPAL
9 DRUG POSSESSION CHARGE, A PEACE OFFICER SHALL ISSUE A SUMMONS
10 AND COMPLAINT AND SHALL NOT ARREST THE PERSON.

11 **SECTION 4.** In Colorado Revised Statutes, 16-3-105, **amend** (2);
12 and **add** (1.3) as follows:

13 **16-3-105. Release by arresting authority.**

14 (1.3) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, IF A
15 PERSON IS SOLELY SUSPECTED OF A LEVEL 1 DRUG MISDEMEANOR FOR
16 POSSESSION OF A CONTROLLED SUBSTANCE PURSUANT TO SECTION
17 18-18-403.5 (2)(c) OR (2.5)(a)(II), OR SOLELY SUSPECTED OF DRUG
18 POSSESSION IN VIOLATION OF MUNICIPAL LAW, AND A COLORIMETRIC FIELD
19 DRUG TEST WAS USED, THE PEACE OFFICER SHALL NOT ARREST THE PERSON
20 AND SHALL INSTEAD RELEASE THE PERSON AND ISSUE A SUMMONS
21 COMMANDING THE PERSON'S APPEARANCE AT A LATER DATE.

22 (2) If the person is released in accordance with ~~subsection (1)(b)~~
23 SUBSECTIONS (1)(b) OR (1.3) of this section, ~~he~~ THE PERSON shall be given
24 a summons and complaint as provided for in sections 16-2-104 and
25 16-2-106 and shall sign a written acknowledgment of its receipt and a
26 promise to appear at the time and place specified.

27 **SECTION 5.** In Colorado Revised Statutes, 16-5-206, **add**

1 (1.5)(a.5) as follows:

2 **16-5-206. Summons instead of warrant.**

3 (1.5) (a.5) NOTWITHSTANDING SUBSECTIONS (1) AND (1.5)(a) OF
4 THIS SECTION, IF A PERSON IS SOLELY SUSPECTED OF A LEVEL 1 DRUG
5 MISDEMEANOR FOR POSSESSION OF A CONTROLLED SUBSTANCE PURSUANT
6 TO SECTION 18-18-403.5 (2)(c) OR (2.5)(a)(II), OR SOLELY SUSPECTED OF
7 DRUG POSSESSION IN VIOLATION OF MUNICIPAL LAW, AND A COLORIMETRIC
8 FIELD DRUG TEST WAS USED, A LAW ENFORCEMENT OFFICER SHALL ISSUE
9 A SUMMONS COMMANDING THE APPEARANCE OF THE DEFENDANT INSTEAD
10 OF A WARRANT FOR THE DEFENDANT'S ARREST.

11 **SECTION 6. Applicability.** This act applies to offenses
12 committed on or after the effective date of this act.

13 **SECTION 7. Safety clause.** The general assembly finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, or safety or for appropriations for
16 the support and maintenance of the departments of the state and state
17 institutions.