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An Act

HOUSE BILL 26-1020

BY REPRESENTATIVE(S) Gilchrist and Bacon, Boesenecker, Brown, Camacho, Clifford, Duran, English, Espenosa, Joseph, Lieder, Lindsay, Marshall, Nguyen, Willford, Zokaie, McCluskie;
also SENATOR(S) Ball and Frizell, Amabile, Bridges, Bright, Carson, Catlin, Cutter, Daugherty, Gonzales J., Jodeh, Kipp, Kirkmeyer, Marchman, Pelton R., Simpson, Snyder, Wallace, Weissman, Zamora Wilson, Coleman.

CONCERNING COLORIMETRIC FIELD DRUG TESTS IN CASES INVOLVING DRUG POSSESSION.

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

(1) A summons and complaint may be issued by ~~any~~ A peace officer for an offense constituting a misdemeanor or a petty offense committed in

the peace officer's presence or, if not committed in the peace officer's presence, that the peace officer has probable cause to believe was committed and probable cause to believe was committed by the person charged. Except for:

(a) Penalty assessment notices, which must be handled pursuant to the procedures set forth in section 16-2-201 or 16-2.3-102, a copy of a summons and complaint so issued must be filed immediately with the county court before which appearance is required, and a second copy must be given to the district attorney or deputy district attorney for the county; AND

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

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

16-3-105. Release by arresting authority.

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

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

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

(1.5)(a.5) as follows:

16-5-206. Summons instead of warrant.

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

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

SECTION 7. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO