

CHAPTER 287

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 94-1126

BY REPRESENTATIVES Adkins, Allen, Armstrong, DeGette, Greenwood, Hagedorn, Kerns, Lawrence, and Reeser;
also SENATORS Wham and Ruddick.

AN ACT**CONCERNING CHANGES TO THE CRIMINAL LAWS.**

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

SECTION 1. 2-2-701, Colorado Revised Statutes, 1980 Repl. Vol., as amended, is repealed as follows:

2-2-701. General assembly - bills regarding the sentencing of criminal offenders - submission to a subcommittee of the criminal justice commission - legislative intent. ~~(1) It is the intent of the general assembly that the criminal justice commission created pursuant to article 1.5 of title 18, C.R.S., be utilized to review any proposed changes to criminal sentencing statutes of the state of Colorado. Therefore, members of the general assembly are encouraged to submit proposed bills concerning criminal sentencing to the criminal justice commission for review as soon as practicable.~~

~~(2) On and after July 1, 1991, any bill which is proposed by any member of the general assembly to be introduced at any session of the general assembly which affects criminal sentencing and which may result in a net increase or a net decrease in periods of imprisonment in state correctional facilities shall, whenever possible, be submitted to a subcommittee of the criminal justice commission pursuant to section 18-1.5-103 (4), C.R.S., which subcommittee shall consist of the members of the criminal justice commission who are members of the general assembly.~~

SECTION 2. 16-11-309 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-309. Mandatory sentences for violent crimes. (1) (b) Any person

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

convicted of a crime against an ~~elderly person, a person with a disability, or an~~ at-risk adult OR AT-RISK JUVENILE in which the convicted person used, or possessed and threatened the use of, a deadly weapon shall be sentenced to a term of incarceration of at least the midpoint in the presumptive range provided for such offense in section 18-1-105 (1) (a), C.R.S., without suspension. Thereafter, the provisions of paragraph (a) of this subsection (1) shall apply.

SECTION 3. 16-11-309 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

16-11-309. Mandatory sentences for violent crimes. (2) (a) (I) "CRIME OF VIOLENCE" MEANS ANY OF THE CRIMES SPECIFIED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) COMMITTED, CONSPIRED TO BE COMMITTED, OR ATTEMPTED TO BE COMMITTED BY A PERSON DURING WHICH, OR IN THE IMMEDIATE FLIGHT THEREFROM, THE PERSON:

(A) USED, OR POSSESSED AND THREATENED THE USE OF, A DEADLY WEAPON; OR

(B) CAUSED SERIOUS BODILY INJURY OR DEATH TO ANY OTHER PERSON EXCEPT ANOTHER PARTICIPANT.

(II) SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) APPLIES TO THE FOLLOWING CRIMES:

(A) ANY CRIME AGAINST AN AT-RISK ADULT OR AT-RISK JUVENILE;

(B) MURDER;

(C) FIRST OR SECOND DEGREE ASSAULT;

(D) KIDNAPPING;

(E) SEXUAL ASSAULT;

(F) AGGRAVATED ROBBERY;

(G) FIRST DEGREE ARSON;

(H) FIRST DEGREE BURGLARY;

(I) ESCAPE; OR

(J) CRIMINAL EXTORTION.

(b) (I) "CRIME OF VIOLENCE" ALSO MEANS ANY UNLAWFUL SEXUAL OFFENSE IN WHICH THE DEFENDANT CAUSED BODILY INJURY TO THE VICTIM OR IN WHICH THE DEFENDANT USED THREAT, INTIMIDATION, OR FORCE AGAINST THE VICTIM. FOR PURPOSES OF THIS SUBPARAGRAPH (I), "UNLAWFUL SEXUAL OFFENSE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 18-3-411 (1), C.R.S., AND "BODILY INJURY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 18-1-901 (3) (c), C.R.S.

(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL APPLY ONLY TO FELONY UNLAWFUL SEXUAL OFFENSES.

(c) AS USED IN THIS SECTION, "AT-RISK ADULT" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-6.5-102 (1), C.R.S., AND "AT-RISK JUVENILE" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-6.5-102 (2), C.R.S.

SECTION 4. 18-1-405 (6) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-1-405. Speedy trial. (6) In computing the time within which a defendant shall be brought to trial as provided in subsection (1) of this section, the following periods of time shall be excluded:

(a) Any period during which the defendant is incompetent to stand trial, or is unable to appear by reason of illness or physical disability, or is under observation or examination pursuant to a plea of not guilty by reason of AT ANY TIME AFTER THE ISSUE OF insanity, INCOMPETENCY, OR IMPAIRED MENTAL CONDITION IS RAISED;

SECTION 5. 18-1-406 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 18-1-406, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-1-406. Right to jury trial. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7) OF THIS SECTION, every person accused of a felony has the right to be tried by a jury of twelve whose verdict shall be unanimous. In matters involving misdemeanors, the accused is entitled to be tried by a jury of six. In matters involving "petty offenses", the accused has the right to be tried by a jury under the terms and conditions of section 16-10-109, C.R.S.

(7) EXCEPT AS TO CLASS I FELONIES, WITH RESPECT TO A TWELVE-PERSON JURY, IF THE COURT EXCUSES A JUROR FOR JUST CAUSE AFTER THE JURY HAS RETIRED TO CONSIDER ITS VERDICT, THE COURT IN ITS DISCRETION MAY ALLOW THE REMAINING ELEVEN JURORS TO RETURN THE JURY'S VERDICT.

SECTION 6. 18-1-901 (3) (I) (II) (A), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-1-901. Definitions. (3) (I) (II) (A) "Peace officer, level Ia," means any sheriff; district attorney; assistant district attorney; deputy district attorney; special deputy district attorney; THE ATTORNEY GENERAL OF THE STATE, THE DEPUTY ATTORNEY GENERAL, AND ANY DEPUTY OR ASSISTANT ATTORNEY GENERAL ASSIGNED TO A CRIMINAL ENFORCEMENT FUNCTION IN THE OFFICE OF THE ATTORNEY GENERAL; authorized investigator of a county or district attorney, the attorney general, or the executive director of the department of public safety; agent of the Colorado bureau of investigation pursuant to section 24-33.5-409, C.R.S.; any investigator employed by the department of corrections; or any officer of the Southern Ute Indian police force or Ute Mountain Ute Indian police force who is certified pursuant to part 3 of article 31 of title 24, C.R.S., or otherwise qualified under section 24-31-305 (2), C.R.S. "Peace officer, level Ia," has the authority to enforce all the laws of the state of Colorado while acting within the scope of his THE OFFICER'S authority and in the

performance of ~~his~~ THE OFFICER'S duties.

SECTION 7. Part 10 of article 1 of title 18, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

PART 10
ORDERS AND PROCEEDINGS AGAINST DEFENDANT

18-1-1002. Criminal contempt proceedings - notice to district attorney.

BEFORE A CRIMINAL CONTEMPT PROCEEDING IS HEARD BEFORE THE COURT, NOTICE OF THE PROCEEDINGS SHALL BE PROVIDED TO THE DISTRICT ATTORNEY FOR THE DISTRICT OF THE COURT WHERE THE PROCEEDINGS ARE TO BE HEARD AND THE DISTRICT ATTORNEY FOR THE DISTRICT OF THE COURT WHERE THE ALLEGED ACT OF CRIMINAL CONTEMPT OCCURRED. THE DISTRICT ATTORNEY FOR EITHER DISTRICT SHALL BE ALLOWED TO APPEAR AND ARGUE FOR THE IMPOSITION OF CONTEMPT SANCTIONS.

SECTION 8. 18-3-203 (1) (a), Colorado Revised Statutes, 1986 Repl. Vol., is repealed as follows:

18-3-203. Assault in the second degree. (1) A person commits the crime of assault in the second degree if:

(a) ~~With intent to cause serious bodily injury to another person, he does cause such injury to any person; or~~

SECTION 9. 18-3-404 (1.5) and (1.7), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

18-3-404. Sexual assault in the third degree. (1.5) Any ~~adult~~ PERSON who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 or 18-3-403 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits sexual assault in the third degree. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years. ~~and "adult" means a person eighteen years of age or older.~~

(1.7) Any ~~adult~~ PERSON who knowingly observes another person's intimate parts without that person's consent, in a situation where the person observed has a reasonable expectation of privacy, for the purpose of the observer's own sexual gratification, commits sexual assault in the third degree.

SECTION 10. 18-3-411 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-3-411. Sex offenses against children - unlawful sexual offense defined - limitation for commencing proceedings - evidence - statutory privilege. (1) As used in this section, "unlawful sexual offense" means ENTICEMENT OF A CHILD, AS DEFINED IN SECTION 18-3-305, sexual assault in the first degree, as defined in section 18-3-402, when the victim at the time of the commission of the act is a child less than

fifteen years of age; sexual assault in the second degree, as defined in section 18-3-403 (1) (a), (1) (b), (1) (c), (1) (d), (1) (g), or (1) (h), when the victim at the time of the commission of the act is a child less than fifteen years of age, or as defined in section 18-3-403 (1) (e), when the victim is less than fifteen years of age and the actor is at least four years older than the victim; sexual assault in the third degree, as defined in section 18-3-404 (1) (a), (1) (b), (1) (c), (1) (d), (1) (f), or (1) (g), when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault on a child, as defined in section 18-3-405; sexual assault on a child by one in a position of trust, as defined in section 18-3-405.3; aggravated incest, as defined in section 18-6-302; trafficking in children, as defined in section 18-6-402; sexual exploitation of a child, as defined in section 18-6-403; procurement of a child for sexual exploitation, as defined in section 18-6-404; INDECENT EXPOSURE, AS DEFINED IN SECTION 18-7-302, soliciting for child prostitution, as defined in section 18-7-402; pandering of a child, as defined in section 18-7-403; procurement of a child, as defined in section 18-7-403.5; keeping a place of child prostitution, as defined in section 18-7-404; pimping of a child, as defined in section 18-7-405; inducement of child prostitution, as defined in section 18-7-405.5; patronizing a prostituted child, as defined in section 18-7-406; or criminal attempt, conspiracy, or solicitation to commit any of the acts specified in this subsection (1).

SECTION 11. 18-4-503 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-4-503. Second degree criminal trespass. (1) A person commits the crime of second degree criminal trespass if such person unlawfully enters or remains in or upon premises of another which are enclosed in a manner designed to exclude intruders or are fenced or if such person knowingly and unlawfully enters or remains in or upon the ~~premises~~ COMMON AREAS of a hotel, motel, condominium, or apartment building.

SECTION 12. 18-5-101 (3), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-5-101. Definitions. As used in sections 18-5-101 to 18-5-110, unless the context otherwise requires:

(3) To "falsely complete" a written instrument means:

(a) To transform an incomplete written instrument into a complete one by adding, inserting, or changing matter without the authority of anyone entitled to grant that authority, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker; OR

(b) TO TRANSFORM AN INCOMPLETE WRITTEN INSTRUMENT INTO A COMPLETE ONE BY ADDING OR INSERTING MATERIALLY FALSE INFORMATION OR ADDING OR INSERTING A MATERIALLY FALSE STATEMENT. A MATERIALLY FALSE STATEMENT IS A FALSE ASSERTION THAT AFFECTS THE ACTION, CONDUCT, OR DECISION OF THE PERSON WHO RECEIVES OR IS INTENDED TO RECEIVE THE ASSERTED INFORMATION IN A MANNER THAT DIRECTLY OR INDIRECTLY BENEFITS THE PERSON MAKING THE ASSERTION. WHETHER INFORMATION OR A STATEMENT IS MATERIAL IS A QUESTION OF LAW.

SECTION 13. 18-5-205 (7), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-5-205. Fraud by check - definitions - penalties. (7) A bank, a savings and loan association, an industrial bank, or a credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to a sheriff, deputy sheriff, undersheriff, police officer, district attorney, assistant district attorney, deputy district attorney, or authorized investigator for a district attorney OR THE ATTORNEY GENERAL investigating or prosecuting a charge under this section.

SECTION 14. 18-9-111 (5) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-9-111. Harassment - stalking. (5) Where a person commits harassment under paragraph (a) of subsection (4) of this section, the following shall apply:

(b) When a violation under subsection (4) of this section is committed in connection with a violation of a court order, including but not limited to, any restraining order or any order that sets forth the conditions of a bond, any sentence imposed for such violation pursuant to this subsection (5) shall run consecutively and not concurrently with any sentence imposed pursuant to section 18-6-803.5, and with any sentence imposed in a contempt proceeding for violation of the court order. Nothing in this paragraph (b) shall be construed to alter or diminish the inherent authority of the court to enforce its orders through civil or criminal contempt proceedings; HOWEVER, BEFORE A CRIMINAL CONTEMPT PROCEEDING IS HEARD BEFORE THE COURT, NOTICE OF THE PROCEEDINGS SHALL BE PROVIDED TO THE DISTRICT ATTORNEY FOR THE DISTRICT OF THE COURT WHERE THE PROCEEDINGS ARE TO BE HEARD AND THE DISTRICT ATTORNEY FOR THE DISTRICT OF THE COURT WHERE THE ALLEGED ACT OF CRIMINAL CONTEMPT OCCURRED. THE DISTRICT ATTORNEY FOR EITHER DISTRICT SHALL BE ALLOWED TO APPEAR AND ARGUE FOR THE IMPOSITION OF CONTEMPT SANCTIONS.

SECTION 15. 8-45-108, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

8-45-108. Intentional misrepresentation by employer. ~~Any employer who intentionally misrepresents to the board the amount of payroll or wage expenditure upon which any premium under this article is based is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.~~

SECTION 16. 18-7-101, Colorado Revised Statutes, 1986 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-7-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1.5) "MINOR" MEANS A PERSON UNDER EIGHTEEN YEARS OF AGE.

SECTION 17. 18-7-102 (1) and (2), Colorado Revised Statutes, 1986 Repl. Vol.,

are amended, and the said 18-7-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

18-7-102. Obscenity. (1) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1.5) OF THIS SECTION, a person commits wholesale promotion of obscenity if, knowing its content and character, ~~he~~ SUCH PERSON wholesale promotes or possesses with intent to wholesale promote any obscene material.

(b) Wholesale promotion of obscenity is a class 1 misdemeanor.

(1.5) (a) A PERSON COMMITS WHOLESAL PROMOTION OF OBSCENITY TO A MINOR IF, KNOWING ITS CONTENT AND CHARACTER, SUCH PERSON WHOLESAL PROMOTES TO A MINOR OR POSSESSES WITH INTENT TO WHOLESAL PROMOTE TO A MINOR ANY OBSCENE MATERIAL.

(b) WHOLESAL PROMOTION OF OBSCENITY TO A MINOR IS A CLASS 6 FELONY.

(2) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2.5) OF THIS SECTION, a person commits promotion of obscenity if, knowing its content and character, ~~he~~ SUCH PERSON:

(I) Promotes or possesses with intent to promote any obscene material; or

(II) Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(b) Promotion of obscenity is a class 2 misdemeanor.

(2.5) (a) A PERSON COMMITS PROMOTION OF OBSCENITY TO A MINOR IF, KNOWING ITS CONTENT AND CHARACTER, SUCH PERSON:

(I) PROMOTES TO A MINOR OR POSSESSES WITH INTENT TO PROMOTE TO A MINOR ANY OBSCENE MATERIAL; OR

(II) PRODUCES, PRESENTS, OR DIRECTS AN OBSCENE PERFORMANCE INVOLVING A MINOR OR PARTICIPATES IN A PORTION THEREOF THAT IS OBSCENE OR THAT CONTRIBUTES TO ITS OBSCENITY.

(b) PROMOTION OF OBSCENITY TO A MINOR IS A CLASS 6 FELONY.

SECTION 18. 18-7-302 (2), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 18-7-302 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

18-7-302. Indecent exposure. (2) Indecent exposure to a child ~~under the age of fourteen years is a class 2 misdemeanor; to anyone fourteen years of age or older, it is a class 2~~ 2 misdemeanor.

(3) A SECOND OFFENSE OF THE OFFENSE DESCRIBED IN SUBSECTION (2) OF THIS SECTION FOLLOWING THE CONVICTION FOR ANY SUCH OFFENSE IS A CLASS 1 MISDEMEANOR.

(4) ANY SUBSEQUENT OFFENSE OF THE OFFENSE DESCRIBED IN SUBSECTION (2) OF THIS SECTION FOLLOWING A SECOND CONVICTION FOR ANY SUCH OFFENSE IS A CLASS 6 FELONY.

SECTION 19. 18-12-105.5 (1) and (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

18-12-105.5. Unlawfully carrying a concealed weapon - unlawful possession of weapons - school, college or university grounds. (1) A person commits a class 2 misdemeanor if such person knowingly and unlawfully and without legal authority carries, brings, or has in such person's possession a deadly weapon as defined in section 18-1-901 (3) (e) in or on the real estate and all improvements erected thereon of any public or private elementary, MIDDLE, JUNIOR HIGH, or ~~secondary~~ HIGH school or any public or private college, university, or seminary, except for the purpose of presenting an authorized public demonstration or exhibition pursuant to instruction in conjunction with an organized school or class, for the purpose of carrying out the necessary duties and functions of an employee of an educational institution which require the use of a deadly weapon, or for the purpose of participation in an authorized extracurricular activity or athletic team.

(2) Notwithstanding the provisions of section 18-1-106, upon a conviction for a violation of this section either within or upon the grounds of any public or private elementary, middle, ~~secondary~~, junior high, OR high school or vocational school, the defendant shall be a special offender and the court, if it determines that incarceration is appropriate, shall be required to sentence the defendant to a term that is greater than the twelve-month maximum sentence specified for the class 2 misdemeanor but not more than twice the twelve-month maximum term specified for the class 2 misdemeanor. In addition to such term of imprisonment, the court shall fine the defendant without suspension at least the maximum fine of one thousand dollars specified for the class 2 misdemeanor but not more than ten times the one thousand dollar maximum fine specified for the class 2 misdemeanor.

SECTION 20. 18-18-203 (2) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH 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:

(c) Any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including any salts, isomers, and salts of isomers of them that are theoretically possible within the specific chemical designation:

(II.5) 2,5-DIMETHOXY-4-ETHYLAMPETAMINE (DOET);

SECTION 21. 18-18-203 (2) (e), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended 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:

(e) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(I) CATHONINE;

~~(II)~~ (II) Fenethylline;

(III) METHCATHONINE;

~~(IV)~~ (IV) N-ethylamphetamine;

~~(V)~~ (V) (+) Cis-4-methylaminore;

~~(VI)~~ (VI) N,N-dimethylamphetamine.

SECTION 22. 18-18-204 (2) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

18-18-204. Schedule II. (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 II:

(b) Any of the following synthetic opiates, including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of them that are theoretically possible within the specific chemical designation:

(IX.5) LEVO-ALPHACETYLMETHADOL;

SECTION 23. 18-18-206 (2) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

18-18-206. Schedule IV. (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 IV:

(b) Any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including any salts, isomers, and salts of isomers of them that are theoretically possible within the specific chemical designation:

(XLVIII) ZOLPIDEM.

SECTION 24. 18-18-405 (2) (a) (I) and (4) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

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

possession. (2) Except as is otherwise provided for offenses concerning marihuana and marihuana concentrate in section 18-18-406 and offenses involving minors in section 18-18-407 (1) (g), any person who violates any of the provisions of subsection (1) of this section:

(a) In the case of a controlled substance listed in schedule I or II of part 2 of this article, commits:

(I) A class 3 felony; EXCEPT THAT A PERSON COMMITS A CLASS 4 FELONY IF SUCH VIOLATION IS BASED ON THE POSSESSION OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE II; or

(4) (a) Except as otherwise provided in section 18-18-407 relating to special offenders, any person convicted pursuant to paragraph (a), (b), (c), or (d) of subsection (2) of this section for knowingly dispensing, selling, distributing, or possessing with intent to dispense, sell, or distribute a controlled substance to any person either within or upon the grounds of any public or private elementary, middle, ~~secondary~~; junior high, OR high school, vocational school, or public housing development, or within one thousand feet of the perimeter of any such school or public housing development grounds on any street, alley, parkway, sidewalk, public park, playground, or other area or premises which is accessible to the public, or within any private dwelling which is accessible to the public for the purpose of the sale, distribution, use, or exchange of controlled substances in violation of this article, shall be sentenced to the department of corrections for a minimum term of five years notwithstanding a lesser minimum term of incarceration in the presumptive range provided for such offense in section 18-1-105 (1) (a).

SECTION 25. 18-18-407 (2) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-18-407. Special offender. (2) (a) Upon a conviction for a violation of section 18-18-404 or 18-18-405, if the defendant unlawfully used any controlled substance in violation of section 18-18-404 or sold or distributed any controlled substance in violation of section 18-18-405 either within or upon the grounds of any public or private elementary, middle, ~~secondary~~; junior high, OR high school, vocational school, or public housing development, or within one thousand feet of the perimeter of any such school or public housing development grounds on any street, alley, parkway, sidewalk, public park, playground, or other area or premises which is accessible to the public, or within any private dwelling which is accessible to the public for the purpose of the sale, distribution, use, or exchange of controlled substances in violation of this article, or in any school bus as defined in section 42-1-102 (69), C.R.S., while such school bus is engaged in the transportation of persons who are students at any public or private elementary, middle, JUNIOR HIGH, or ~~secondary~~ HIGH school, the defendant shall be a special offender and ~~shall require~~ the court IS REQUIRED, in addition to IMPOSING any sentence to imprisonment, to fine the defendant without suspension at least twice the minimum fine provided for in section 18-1-105 (1) (a) (III) if the defendant's offense is a felony or in section 18-1-106 (1) if the defendant's offense is a misdemeanor.

SECTION 26. 35-43-128, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-43-128. Theft of certain animals - penalty. Any person who commits theft of, or knowingly kills, sells, drives, leads, transports, or rides away, or in any manner deprives the owner of the immediate possession of any cattle, horses, mules, sheep, goats, swine, or asses, either live or slaughtered, or any portion of the slaughtered carcass thereof, or any person who commits theft of, or knowingly kills, sells, drives, leads, transports, or rides away, or in any manner applies to ~~his~~ THE PERSON'S own use any cattle, horses, mules, goats, sheep, asses, or swine, either live or slaughtered, or any portion of the slaughtered carcass thereof, the owner of which is unknown, or any person who knowingly purchases from anyone not having the lawful right to sell and dispose of the same any cattle, horses, mules, sheep, goats, swine, or asses, either live or slaughtered, or any portion of the slaughtered carcass thereof, commits a class ~~4~~ 4 felony and shall be punished as provided in section 18-1-105, C.R.S.

SECTION 27. No appropriation. The general assembly finds that general fund moneys saved as a result of the amendment to section 18-18-405 (2) (a) (I), Colorado Revised Statutes, as set forth in section 16 of this act, offset the general fund moneys required for the implementation of this act. Therefore, the general assembly determines that this act can be implemented within existing appropriations, and no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 28. Effective date - applicability. This act shall take effect July 1, 1994, and shall apply to acts committed on or after said date.

SECTION 29. 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: May 31, 1994