

CHAPTER 259

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 10-1352

BY REPRESENTATIVE(S) Waller, Pace, Court, Gardner B., Gerou, Kagan, King S., Levy, Loofer, Massey, May, McCann, Miklosi, Nikkel, Roberts, Ryden, Stephens, Bradford, Casso, Kerr A., Kerr J., Labuda, Liston, Merrifield, Summers, Todd, Vigil, Weissmann;
also SENATOR(S) Steadman and Mitchell, Carroll M., Hudak, Morse, Newell, Penry, White, Boyd, Keller, Williams.

AN ACT

CONCERNING CHANGES TO CRIMES INVOLVING CONTROLLED SUBSTANCES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 18-18-401, Colorado Revised Statutes, is amended to read:

18-18-401. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that: ~~the strict control of controlled substances in this state is necessary for the immediate and future preservation of the public peace, health, and safety.~~

(a) THE REGULATION OF CONTROLLED SUBSTANCES IN THIS STATE IS IMPORTANT AND NECESSARY FOR THE PRESERVATION OF PUBLIC SAFETY AND PUBLIC HEALTH;

(b) SUCCESSFUL, COMMUNITY-BASED SUBSTANCE ABUSE TREATMENT AND EDUCATION PROGRAMS, IN CONJUNCTION WITH MENTAL HEALTH TREATMENT AS NECESSARY, PROVIDE EFFECTIVE TOOLS IN THE EFFORT TO REDUCE DRUG USAGE AND CRIMINAL BEHAVIOR IN COMMUNITIES. THERAPEUTIC INTERVENTION AND ONGOING INDIVIDUALIZED TREATMENT PLANS PREPARED THROUGH THE USE OF MEANINGFUL AND PROVEN ASSESSMENT TOOLS AND EVALUATIONS OFFER A POTENTIAL ALTERNATIVE TO INCARCERATION IN APPROPRIATE CIRCUMSTANCES AND SHOULD BE UTILIZED ACCORDINGLY.

(c) SAVINGS RECOGNIZED FROM REDUCTIONS IN INCARCERATION RATES SHOULD BE DEDICATED TOWARD FUNDING COMMUNITY-BASED TREATMENT OPTIONS AND OTHER MECHANISMS THAT ARE ACCESSIBLE TO ALL OF THE STATE'S COUNTIES FOR

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

THE IMPLEMENTATION AND CONTINUATION OF SUCH PROGRAMS.

SECTION 2. 18-18-404 (1) (a), (2), and (3), Colorado Revised Statutes, are amended to read:

18-18-404. Unlawful use of a controlled substance. (1) (a) Except as is otherwise provided for offenses concerning ~~marihuana~~ MARIJUANA and ~~marihuana~~ MARIJUANA concentrate in sections 18-18-406 and 18-18-406.5, any person who uses any controlled substance, except when it is dispensed by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense ~~such~~ THE controlled substance for bona fide medical needs, commits A CLASS 2 MISDEMEANOR.

~~(I) A class 6 felony, if the controlled substance is listed in schedule I or II of part 2 of this article;~~

~~(H) A class 1 misdemeanor if the controlled substance is listed in schedule III, IV, or V of part 2 of this article.~~

(2) ~~When any person is found guilty of a violation of subsection (1) of this section, after trial or upon a plea of guilty or nolo contendere, the court shall conduct an investigation to determine whether or not the defendant is:~~

~~(a) Addicted to a controlled substance;~~

~~(b) In need of treatment for the use of a controlled substance; or~~

~~(c) Dependent on a controlled substance.~~

(3) ~~If the court determines that the defendant is addicted to, a person in need of treatment for, or dependent upon a controlled substance, the court may declare the defendant a person in need of treatment, and the court, without imposing sentence and with the consent of such person, shall suspend further proceedings, shall order the person to participate in a treatment program, and shall order such other reasonable conditions for such person as it may require for such period, not to exceed four years, as the court may prescribe. Upon any violation of a condition of the treatment order, the court may impose sentence and proceed as otherwise provided by law. The court, in its discretion, may dismiss the proceedings against such person and discharge him or her from treatment before the expiration of the period prescribed for the treatment. If, during the period of this treatment, such person does not violate any of the conditions set forth by the court, the court, upon the expiration of such period, shall discharge such person and dismiss any further proceedings against him or her. Such discharge and dismissal shall not be termed a conviction for the purposes of disqualification or disapproval imposed by law upon conviction of a crime, including the penalties prescribed by law for second or subsequent convictions or for any other purpose.~~

SECTION 3. 18-18-405 (1) (a), the introductory portion to 18-18-405 (2) (a), 18-18-405 (2) (a) (I) (A), (2.3) (a), (2.5) (a), and (2.5) (b), the introductory portion to 18-18-405 (3) (a), and 18-18-405 (5), Colorado Revised Statutes, are amended to read:

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

(1) (a) Except as authorized by part 3 of article 22 of title 12, C.R.S., or by part 2 or 3 of this article, it is unlawful for any person knowingly to manufacture, dispense, sell, OR distribute, ~~possess~~, 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, ~~possess~~, 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.

~~(2) (a) Except as is otherwise provided in subsection (2.3) of this section for possession offenses not including possession with the intent to distribute involving one gram or less of any material, compound, mixture, or preparation that contains any quantity of a schedule I through IV controlled substance, and for offenses concerning marijuana MARIJUANA and marijuana MARIJUANA concentrate in section 18-18-406 and for offenses involving minors in section 18-18-407 (1) (g), any person who violates any of the provisions of subsection (1) of this section:~~

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

~~(A) 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 unless otherwise provided in paragraph (a) of subsection (3) of this section; or~~

~~(2.3) (a) Any person who commits the offense of possession in violation of the provisions of subsection (1) of this section by possessing any material, compound, mixture, or preparation, weighing one gram or less that contains any quantity of a controlled substance listed in schedules I through IV of part 2 of this article commits:~~

~~(i) A class 6 felony; or~~

~~(ii) A class 4 felony, if the violation is committed subsequent to any prior conviction under subparagraph (I), (ii), or (iii) of paragraph (a) of subsection (2) of this section or under this subsection (2.3);~~

(2.5) (a) Notwithstanding the provisions of subparagraph (iii) of paragraph (a) of subsection (2) of this section, a person who violates the provisions of subsection (1) of this section with regard to flunitrazepam OR KETAMINE commits a class 3 felony; except that the person commits a class 2 felony if the violation is committed subsequent to a prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation involving flunitrazepam OR KETAMINE or to which subparagraph (I) of paragraph (a) of subsection (2) of this section applies or would apply if convicted in this state.

(b) Any person convicted of violating the provisions of subsection (1) of this section with regard to flunitrazepam OR KETAMINE shall be subject to the mandatory sentencing provisions of subsection (3) of this section.

(3) (a) Unless a greater sentence is required pursuant to the provisions of another

statute, any person convicted pursuant to subparagraph (I) of paragraph (a) of subsection (2) of this section for knowingly manufacturing, dispensing, selling, distributing, ~~possessing~~, or possessing with intent to manufacture, dispense, sell, or distribute, or inducing, attempting to induce, or conspiring with one or more other persons, to manufacture, dispense, sell, distribute, ~~possess~~, or possess with intent to manufacture, dispense, sell, or distribute an amount that is or has been represented to be:

(5) When a person commits unlawful distribution, manufacture, dispensing, sale, or possession with intent to manufacture, dispense, sell, or distribute any schedule I or schedule II controlled substance, as listed in section 18-18-203 or 18-18-204, ~~or~~ flunitrazepam, OR KETAMINE, 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, and the aggregate amount of the schedule I or schedule II controlled substance, ~~or~~ flunitrazepam, OR KETAMINE involved equals or exceeds twenty-five grams, the defendant shall be sentenced pursuant to the mandatory sentencing requirements specified in subsection (3) of this section.

SECTION 4. Part 4 of article 18 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-18-403.5. Unlawful possession of a controlled substance. (1) EXCEPT AS AUTHORIZED BY PART 3 OF ARTICLE 22 OF TITLE 12, C.R.S., OR BY PART 2 OR 3 OF THIS ARTICLE, IT IS UNLAWFUL FOR ANY PERSON KNOWINGLY TO POSSESS A CONTROLLED SUBSTANCE.

(2) A PERSON WHO VIOLATES SUBSECTION (1) BY POSSESSING:

(a) (I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION WEIGHING FOUR GRAMS OR LESS THAT CONTAINS ANY QUANTITY OF FLUNITRAZEPAM, KETAMINE, OR A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II OF PART 2 OF THIS ARTICLE EXCEPT METHAMPHETAMINE COMMITS A CLASS 6 FELONY.

(II) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION WEIGHING MORE THAN FOUR GRAMS THAT CONTAINS ANY QUANTITY OF FLUNITRAZEPAM, KETAMINE, OR A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II OF PART 2 OF THIS ARTICLE EXCEPT METHAMPHETAMINE COMMITS A CLASS 4 FELONY.

(b) (I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION WEIGHING TWO GRAMS OR LESS THAT CONTAINS ANY QUANTITY OF METHAMPHETAMINE COMMITS A CLASS 6 FELONY.

(II) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION WEIGHING MORE THAN TWO GRAMS THAT CONTAINS ANY QUANTITY OF METHAMPHETAMINE COMMITS A CLASS 4 FELONY.

(c) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE III, IV, OR V OF PART 2 OF THIS ARTICLE EXCEPT FLUNITRAZEPAM OR KETAMINE COMMITS A CLASS 1 MISDEMEANOR.

SECTION 5. 18-18-405, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession. (7) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, AND EXCEPT AS OTHERWISE PROVIDED IN SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (2) OR PARAGRAPH (a) OF SUBSECTION (2.5) OF THIS SECTION, A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION BY SELLING, DISPENSING, OR DISTRIBUTING A CONTROLLED SUBSTANCE OTHER THAN MARIJUANA OR MARIJUANA CONCENTRATE TO A MINOR UNDER EIGHTEEN YEARS OF AGE AND WHO IS AT LEAST EIGHTEEN YEARS OF AGE AND AT LEAST TWO YEARS OLDER THAN THE MINOR COMMITS A CLASS 3 FELONY AND, UNLESS A GREATER SENTENCE IS PROVIDED UNDER ANY OTHER STATUTE, SHALL BE SENTENCED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF AT LEAST THE MINIMUM, BUT NOT MORE THAN TWICE THE MAXIMUM, OF THE PRESUMPTIVE RANGE PROVIDED FOR SUCH OFFENSE IN SECTION 18-1.3-401 (1) (a) AS MODIFIED PURSUANT TO SECTION 18-1.3-401 (10).

SECTION 6. 18-18-406 (1), (3), (4), (5), (6), (7), and (8), Colorado Revised Statutes, are amended, and the said 18-18-406 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-18-406. Offenses relating to marijuana and marijuana concentrate. (1) Any person who possesses ~~not more than one ounce~~ TWO OUNCES OR LESS of ~~marihuana~~ MARIJUANA commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(3) (a) (I) Any person who openly and publicly displays, consumes, or uses ~~not more than one ounce~~ TWO OUNCES OR LESS of ~~marihuana~~ MARIJUANA commits a class 2 petty offense and, upon conviction thereof, shall be punished, at a minimum, by a fine of not less than one hundred dollars or, at a maximum, by a fine of not more than one hundred dollars and, notwithstanding the provisions of section 18-1.3-503, by fifteen days in the county jail.

(II) Open and public display, consumption, or use of more than ~~one ounce~~ TWO OUNCES of ~~marihuana~~ MARIJUANA or any amount of ~~marihuana~~ MARIJUANA concentrate shall be deemed possession thereof, and violations shall be punished as provided for in subsection (4) OR (4.5) of this section.

(b) Except as is otherwise provided for in paragraph (a) of this subsection (3), consumption or use of ~~marihuana~~ MARIJUANA or ~~marihuana~~ MARIJUANA concentrate shall be deemed possession thereof, and violations shall be punished as provided for in subsections (1), (2), ~~and~~ (4), AND (4.5) of this section.

(4) (a) Any person who possesses more than ~~one ounce~~ TWO OUNCES of ~~marihuana~~ MARIJUANA but ~~less than eight~~ NO MORE THAN SIX ounces of ~~marihuana~~ MARIJUANA commits:

(I) A ~~class 1~~ CLASS 2 misdemeanor. ~~or~~

(II) A ~~class 5~~ felony, if the violation is committed subsequent to a prior

~~conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which this subsection (4) applies or would apply if convicted in this state.~~

(b) Any person who possesses ~~eight~~ MORE THAN SIX ounces ~~or more~~ of ~~marihuana or any amount of marihuana concentrate~~ MARIJUANA BUT NO MORE THAN TWELVE OUNCES OF MARIJUANA OR THREE OUNCES OR LESS OF MARIJUANA CONCENTRATE commits:

(I) A ~~class 5 felony~~, or CLASS 1 MISDEMEANOR.

(II) A ~~class 4 felony~~, if the violation is committed subsequent to a prior ~~conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which this subsection (4) applies or would apply if convicted in this state.~~

(c) ANY PERSON WHO POSSESSES MORE THAN TWELVE OUNCES OF MARIJUANA OR MORE THAN THREE OUNCES OF MARIJUANA CONCENTRATE COMMITS A CLASS 6 FELONY.

(5) Transferring or dispensing ~~not more than one ounce~~ TWO OUNCES OR LESS of ~~marihuana~~ MARIJUANA from one person to another for no consideration ~~shall be deemed possession~~ IS A CLASS 2 PETTY OFFENSE and SHALL not BE DEEMED dispensing or sale thereof.

(6) (a) (I) ~~The court may utilize treatment, probation, and deferred prosecution or deferred sentencing for any person who violates subsection (4) of this section.~~ A PERSON SHALL NOT KNOWINGLY PROCESS OR MANUFACTURE ANY MARIJUANA OR MARIJUANA CONCENTRATE OR KNOWINGLY ALLOW TO BE PROCESSED OR MANUFACTURED ON LAND OWNED, OCCUPIED, OR CONTROLLED BY HIM OR HER ANY MARIJUANA OR MARIJUANA CONCENTRATE EXCEPT AS AUTHORIZED PURSUANT TO PART 3 OF ARTICLE 22 OF TITLE 12, C.R.S.

(II) ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) COMMITS:

(A) A CLASS 4 FELONY; OR

(B) A CLASS 3 FELONY IF THE VIOLATION IS COMMITTED SUBSEQUENT TO A PRIOR CONVICTION IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF A VIOLATION TO WHICH SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) APPLIES OR WOULD APPLY IF COMMITTED IN THIS STATE.

(b) (I) EXCEPT AS IS OTHERWISE PROVIDED IN SUBSECTION (7) OF THIS SECTION AND EXCEPT AS AUTHORIZED BY PART 3 OF ARTICLE 22 OF TITLE 12, C.R.S., OR BY PART 2 OR 3 OF THIS ARTICLE, IT IS UNLAWFUL FOR ANY PERSON KNOWINGLY TO DISPENSE, SELL, DISTRIBUTE, OR POSSESS WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE MARIJUANA OR MARIJUANA CONCENTRATE; OR ATTEMPT, INDUCE, ATTEMPT TO INDUCE, OR CONSPIRE WITH ONE OR MORE OTHER PERSONS, TO DISPENSE, SELL, DISTRIBUTE, OR POSSESS WITH INTENT TO MANUFACTURE, DISPENSE,

SELL, OR DISTRIBUTE MARIJUANA OR MARIJUANA CONCENTRATE.

(II) AS USED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), "DISPENSE" DOES NOT INCLUDE LABELING, AS DEFINED IN SECTION 12-22-102 (16), C.R.S.

(III) ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) COMMITS:

(A) A CLASS 5 FELONY IF THE AMOUNT OF MARIJUANA IS LESS THAN FIVE POUNDS OR THE AMOUNT OF MARIJUANA CONCENTRATE IS LESS THAN ONE POUND;

(B) A CLASS 4 FELONY IF THE AMOUNT OF MARIJUANA IS AT LEAST FIVE POUNDS BUT NOT MORE THAN ONE HUNDRED POUNDS OR THE AMOUNT OF MARIJUANA CONCENTRATE IS AT LEAST ONE POUND BUT NOT MORE THAN ONE HUNDRED POUNDS;

(C) A CLASS 3 FELONY IF THE AMOUNT OF MARIJUANA OR MARIJUANA CONCENTRATE IS MORE THAN ONE HUNDRED POUNDS; OR

(D) A CLASS 3 FELONY IF THE VIOLATION IS COMMITTED SUBSEQUENT TO ANY PRIOR CONVICTION IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF A VIOLATION TO WHICH SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) APPLIES OR WOULD APPLY IF COMMITTED IN THIS STATE.

(7) (a) Any provision of this article to the contrary notwithstanding, any person eighteen years of age or older who SELLS, transfers, or dispenses more than ~~one ounce~~ TWO OUNCES BUT LESS THAN FIVE POUNDS of ~~marihwana~~ MARIJUANA for consideration to any person under eighteen years of age but at least fifteen years of age or ~~any amount~~ LESS THAN ONE POUND of ~~marihwana~~ MARIJUANA concentrate, with or without consideration, to another person under eighteen years of age commits a class 4 felony and, in addition to the punishment prescribed in section 18-1.3-401, shall be punished by a fine of not more than five thousand dollars. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section 18-1.3-401 (1) (a) (III).

(b) THE SALE, TRANSFER, OR DISPENSING OF FIVE OR MORE POUNDS OF MARIJUANA OR ONE POUND OR MORE OF MARIJUANA CONCENTRATE TO A PERSON UNDER EIGHTEEN YEARS OF AGE BUT AT LEAST FIFTEEN YEARS OF AGE IS A CLASS 3 FELONY.

(c) Any person eighteen years of age or older who SELLS, transfers, or dispenses any amount of ~~marihwana~~ MARIJUANA OR MARIJUANA CONCENTRATE, with or without consideration, to any person under ~~the age of~~ fifteen years OF AGE commits a ~~class 4~~ CLASS 3 felony, ~~and, in addition to the punishment provided in section 18-1.3-401, shall be punished by a fine of not more than five thousand dollars~~ AND THE COURT SHALL BE REQUIRED TO SENTENCE THE DEFENDANT TO THE DEPARTMENT OF CORRECTIONS FOR A TERM THAT IS AT LEAST THE MINIMUM IN THE PRESUMPTIVE RANGE BUT NO MORE THAN THE MAXIMUM TERM AUTHORIZED FOR THE PUNISHMENT OF A CLASS 3 FELONY. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section 18-1.3-401 (1) (a) (III).

(d) Any person commits a class 3 felony, if the violation is committed subsequent to a prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which PARAGRAPH (a) OF this subsection (7) applies or would apply if convicted in this state, and, in addition to the punishment provided in section 18-1.3-401, the court shall sentence the defendant to the department of corrections for at least the minimum term in the presumptive range. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section 18-1.3-401 (1) (a) (III).

(7.5) EXCEPT FOR A PERSON WHO LAWFULLY CULTIVATES MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED IN SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, A PERSON SHALL NOT KNOWINGLY CULTIVATE, GROW, OR PRODUCE A MARIJUANA PLANT OR KNOWINGLY ALLOW A MARIJUANA PLANT TO BE CULTIVATED, GROWN, OR PRODUCED ON LAND THAT THE PERSON OWNS, OCCUPIES, OR CONTROLS. A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBSECTION (7.5) COMMITS:

(a) A CLASS 1 MISDEMEANOR, IF THE OFFENSE INVOLVES SIX OR FEWER PLANTS;
OR

(b) A CLASS 5 FELONY IF THE OFFENSE INVOLVES MORE THAN SIX BUT FEWER THAN THIRTY PLANTS; OR

(c) A CLASS 4 FELONY IF THE OFFENSE INVOLVES THIRTY OR MORE PLANTS.

~~(8) (a) (i) No person knowingly shall cultivate, grow, produce, process, or manufacture any marihuana or marihuana concentrate or knowingly allow to be cultivated, grown, produced, processed, or manufactured on land owned, occupied, or controlled by him any marihuana or marihuana concentrate except as authorized pursuant to part 3 of article 22 of title 12, C.R.S.~~

~~(H) Any person who violates the provisions of subparagraph (i) of this paragraph (a) commits:~~

~~(A) A class 4 felony, or~~

~~(B) A class 3 felony, if the violation is committed subsequent to a prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which this subsection (8) applies or would apply if convicted in this state.~~

~~(b) (i) Except as is otherwise provided in subsection (7) of this section and except as authorized by part 3 of article 22 of title 12, C.R.S., or by part 2 or 3 of this article, it is unlawful for any person knowingly to manufacture, dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute marihuana or marihuana concentrate, or attempt, 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 marihuana or marihuana concentrate.~~

~~(H) As used in subparagraph (f) of this paragraph (b), "dispense" does not include labeling, as defined in section 12-22-102 (16), C.R.S.~~

~~(H) Any person who violates any of the provisions of subparagraph (f) of this paragraph (b) commits:~~

~~(A) A class 4 felony; or~~

~~(B) A class 3 felony, if the violation is committed subsequent to any prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which this subsection (8) applies or would apply if convicted in this state.~~

SECTION 7. 18-18-407 (1) (d), (1) (e), and (1) (f), Colorado Revised Statutes, are amended to read:

18-18-407. Special offender. (1) Upon a felony conviction under this part 4, the presence of any one or more of the following extraordinary aggravating circumstances designating the defendant a special offender shall require the court to sentence the defendant to the department of corrections for a term of at least the minimum term of years within the presumptive range for a class 2 felony but not more than twice the maximum term of years within the presumptive range for a class 2 felony:

(d) The defendant unlawfully introduced, distributed, or imported into the state of Colorado MORE THAN FOUR GRAMS OF any schedule I or II controlled substance ~~contained~~ LISTED in part 2 of this article OR MORE THAN TWO GRAMS OF METHAMPHETAMINE;

(e) The defendant unlawfully sold, dispensed, distributed, possessed, or imported into the state of Colorado a quantity in excess of one hundred pounds of ~~marijuana~~ MARIJUANA or ~~marijuana~~ MARIJUANA concentrate;

(f) (I) The defendant used, displayed, OR possessed ~~or had available for use~~ ON HIS OR HER PERSON OR WITHIN HIS OR HER IMMEDIATE REACH, a deadly weapon as defined in section 18-1-901 (3) (e) AT THE TIME OF THE COMMISSION OF A VIOLATION OF THIS PART 4; OR

(II) THE DEFENDANT OR A CONFEDERATE OF THE DEFENDANT POSSESSED A FIREARM, AS DEFINED IN SECTION 18-1-901 (3) (h), TO WHICH THE DEFENDANT OR CONFEDERATE HAD ACCESS IN A MANNER THAT POSED A RISK TO OTHERS OR IN A VEHICLE THE DEFENDANT WAS OCCUPYING DURING THE COMMISSION OF A VIOLATION OF THIS PART 4;

SECTION 8. 18-18-415 (2), Colorado Revised Statutes, is amended to read:

18-18-415. Fraud and deceit. (2) Any person who violates any provision of this section commits:

(a) A ~~class 5~~ CLASS 6 felony and shall be punished as provided in section 18-1.3-401. ~~or~~

(b) ~~A class 4 felony, if the violation is committed subsequent to a prior conviction for a violation to which this subsection (2) applies and shall be punished as provided in section 18-1.3-401.~~

SECTION 9. 18-19-103 (4) (a), Colorado Revised Statutes, is amended, and the said 18-19-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-19-103. Source of revenues - allocation of moneys. (3.5) (a) MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY PURSUANT TO HOUSE BILL 10-1352, ENACTED IN 2010, SHALL BE DEPOSITED INTO THE DRUG OFFENDER SURCHARGE FUND CREATED PURSUANT TO SUBSECTION (4) OF THIS SECTION AND SHALL BE ALLOCATED PURSUANT TO SECTION 16-11.5-102 (3) (c), C.R.S.

(b) EACH FISCAL YEAR, THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE DRUG OFFENDER SURCHARGE FUND CREATED PURSUANT TO SUBSECTION (4) OF THIS SECTION THE SAVINGS GENERATED BY HOUSE BILL 10-1352, ENACTED IN 2010. THE APPROPRIATION SHALL BE MADE AFTER CONSIDERATION OF THE DIVISION OF CRIMINAL JUSTICE'S ANNUAL REPORT REQUIRED PURSUANT TO SECTION 24-33.5-503 (1) (u), C.R.S.

(4) (a) There is hereby created in the state treasury a drug offender surcharge fund, which shall consist of moneys received by the state treasurer pursuant to paragraph (d) of subsection (3) of this section AND SUBSECTION (3.5) OF THIS SECTION. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated by the general assembly shall remain in the drug offender surcharge fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year. All moneys in the fund shall be subject to annual appropriation by the general assembly to the judicial department, the department of corrections, the division of criminal justice of the department of public safety, and the department of human services, after consideration of the plan developed pursuant to section 16-11.5-102 (3), C.R.S., to cover the costs associated with substance abuse assessment, testing, education, and treatment.

(b) Notwithstanding any provision of paragraph (a) of this subsection (5.5) to the contrary, on April 20, 2009, the state treasurer shall deduct three hundred fifty thousand dollars from the ~~drug offender treatment~~ fund and transfer such sum to the general fund.

SECTION 10. 16-11.5-102 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16-11.5-102. Substance abuse assessment - standardized procedure. (3) (c) (I) THE MONEYS ALLOCATED TO THE DRUG OFFENDER SURCHARGE FUND PURSUANT TO SECTION 18-19-103 (3.5), C.R.S., SHALL ONLY BE USED TO COVER THE COSTS ASSOCIATED WITH THE TREATMENT OF SUBSTANCE ABUSE OR CO-OCCURRING DISORDERS OF ADULT OFFENDERS WHO ARE ASSESSED TO BE IN NEED OF TREATMENT AND WHO ARE:

(A) ON DIVERSION;

- (B) ON PROBATION;
- (C) ON PAROLE;
- (D) IN COMMUNITY CORRECTIONS; OR
- (E) IN JAIL.

(II) THE PLAN TO ALLOCATE MONEYS DEPOSITED IN THE DRUG OFFENDER SURCHARGE FUND PURSUANT TO SECTION 18-19-103 (3.5), C.R.S., SHALL BE DEVELOPED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) AND SHALL ALSO INCLUDE A REPRESENTATIVE DESIGNATED BY THE COLORADO DISTRICT ATTORNEY'S COUNCIL, THE STATE PUBLIC DEFENDER, A REPRESENTATIVE FROM A STATEWIDE ASSOCIATION REPRESENTING COUNTY SHERIFFS, AND A REPRESENTATIVE FROM A STATEWIDE ASSOCIATION REPRESENTING COUNTIES.

SECTION 11. 24-33.5-503 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-33.5-503. Duties of division. (1) The division has the following duties:

(u) TO ANALYZE THE AMOUNT OF FISCAL SAVINGS THAT HOUSE BILL 10-1352, ENACTED IN 2010, HAS GENERATED OVER THE PREVIOUS FISCAL YEAR. BEGINNING JANUARY 15, 2011, THE DIVISION SHALL REPORT THE ANALYSIS ANNUALLY TO THE JOINT BUDGET COMMITTEE.

SECTION 12. 12-22-303 (18), Colorado Revised Statutes, is amended to read:

12-22-303. Definitions. As used in this part 3, unless the context otherwise requires:

(18) ~~"Marihuana concentrate"~~ "MARIJUANA CONCENTRATE" means hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinols.

SECTION 13. 12-22-304 (7), Colorado Revised Statutes, is amended to read:

12-22-304. License required - controlled substances - repeal. (7) No license shall be issued under this part 3 to a researcher, manufacturer, or distributor of ~~marihuana~~ MARIJUANA or ~~marihuana~~ MARIJUANA concentrate.

SECTION 14. 16-13-303 (1) (c) (II), Colorado Revised Statutes, is amended to read:

16-13-303. Class 1 public nuisance. (1) Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

(c) (II) Used for unlawful possession of any controlled substance, as defined in section 18-18-102 (5), C.R.S., except for possession of less than ~~eight~~ SIXTEEN ounces of ~~marihuana~~ MARIJUANA;

SECTION 15. 16-13-503 (2), Colorado Revised Statutes, is amended to read:

16-13-503. Subject acts. (2) Mere possession of less than ~~eight~~ SIXTEEN ounces of ~~marihuana~~ MARIJUANA shall not be an act subject to the provisions of this part 5.

SECTION 16. 18-1.3-201 (2) (c), Colorado Revised Statutes, is amended to read:

18-1.3-201. Application for probation. (2) (c) Notwithstanding the provisions of paragraph (a) of this subsection (2) and subsection (4) of this section, an offender convicted of a violation of ~~section 18-18-405 (2.3)~~ SECTION 18-18-403.5 may be eligible for probation upon recommendation of the district attorney.

SECTION 17. 18-8-203 (1), Colorado Revised Statutes, is amended to read:

18-8-203. Introducing contraband in the first degree. (1) A person commits introducing contraband in the first degree if he or she knowingly and unlawfully:

(a) Introduces or attempts to introduce a dangerous instrument, ~~as defined in subsection (4) of this section~~, malt, vinous, or spirituous liquor, as defined in section 12-47-103, C.R.S., fermented malt beverage, as defined in section 12-46-103, C.R.S., controlled substance, as defined in section ~~12-22-303 (7)~~, C.R.S. 18-18-102 (5), or ~~marihuana~~ MARIJUANA or ~~marihuana~~ MARIJUANA concentrate, as defined in section 12-22-303 (17) and (18), C.R.S., into a detention facility or at any location where an inmate is or is likely to be located, while ~~such~~ THE inmate is in the custody and under the jurisdiction of a political subdivision of the state of Colorado or the department of corrections, but not on parole; or

(b) Being a person confined in a detention facility, makes any dangerous instrument, controlled substance, ~~marihuana~~ MARIJUANA or ~~marihuana~~ MARIJUANA concentrate, or alcohol.

SECTION 18. 18-18-102 (5), (18), and (19), Colorado Revised Statutes, are amended to read:

18-18-102. Definitions. As used in this article:

(5) "Controlled substance" means a drug, substance, or immediate precursor included in schedules I through V of part 2 of this article, including cocaine, ~~marihuana~~ MARIJUANA, and ~~marihuana~~ MARIJUANA concentrate.

(18) ~~"Marihuana" or "Marijuana"~~ means all parts of the plant cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination if these items exist apart from any other item defined as ~~"marihuana"~~ "MARIJUANA" in this subsection (18). ~~"Marihuana"~~ "MARIJUANA" does not include ~~marihuana~~ MARIJUANA concentrate as defined in subsection (19) of this section.

(19) ~~"Marihuana concentrate"~~ "MARIJUANA CONCENTRATE" means hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinols.

SECTION 19. 18-18-406.5 (1) and (2), Colorado Revised Statutes, are amended to read:

18-18-406.5. Unlawful use of marijuana in a detention facility. (1) Any person confined in any detention facility in this state who possesses or uses up to eight ounces of ~~marihuana~~ MARIJUANA commits a class 6 felony; except that, if the person commits a second or subsequent violation where both the initial and subsequent violations involved more than one ounce of ~~marihuana~~ MARIJUANA, the person commits a class 5 felony.

(2) Any person confined in any detention facility in this state who possesses or uses eight ounces or more of ~~marihuana~~ MARIJUANA shall be subject to the provisions of section 18-18-406 (4) (b).

SECTION 20. 18-18-414 (1) (d), Colorado Revised Statutes, is amended to read:

18-18-414. Unlawful acts - licenses - penalties. (1) Except as otherwise provided in this article or in article 22 of title 12, C.R.S., the following acts are unlawful:

(d) The dispensing of any ~~marihuana~~ MARIJUANA or ~~marihuana~~ MARIJUANA concentrate;

SECTION 21. 18-18-426 (1) (c), the introductory portion to 18-18-426 (1) (g), and 18-18-426 (1) (g) (V), Colorado Revised Statutes, are amended to read:

18-18-426. Drug paraphernalia - definitions. As used in sections 18-18-425 to 18-18-430, unless the context otherwise requires:

(1) "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of this state. "Drug paraphernalia" includes, but is not limited to:

(c) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining ~~marihuana~~ MARIJUANA;

(g) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing ~~marihuana~~ MARIJUANA, cocaine, hashish, or hashish oil into the human body, such as:

(V) Roach clips, meaning objects used to hold burning material, such as a ~~marihuana~~ MARIJUANA cigarette that has become too small or too short to be held

in the hand;

SECTION 22. 19-2-104 (1) (a) (I), Colorado Revised Statutes, is amended to read:

19-2-104. Jurisdiction. (1) Except as otherwise provided by law, the juvenile court shall have exclusive original jurisdiction in proceedings:

(a) Concerning any juvenile ten years of age or older who has violated:

(I) Any federal or state law, except nonfelony state traffic, game and fish, and parks and recreation laws or ~~regulations~~ RULES, the offenses specified in section 18-13-121, C.R.S., concerning tobacco products, the offense specified in section 18-13-122, C.R.S., concerning the illegal possession or consumption of ethyl alcohol by an underage person, and the offenses specified in section 18-18-406 (1) and (3), C.R.S., concerning ~~marihuana~~ MARIJUANA and ~~marihuana~~ MARIJUANA concentrate;

SECTION 23. 25-5-415 (1) (I), Colorado Revised Statutes, is amended to read:

25-5-415. Misbranding. (1) A drug or device shall be deemed to be misbranded:

(I) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, ~~marihuana~~ MARIJUANA, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative, after investigation, has been found to be and designated as habit-forming by ~~regulations~~ RULES issued by the department or pursuant to the federal act, unless its label bears the name and quantity or proportion of ~~such~~ THE substance or derivative and in juxtaposition therewith the statement "Warning - May be habit-forming";

SECTION 24. 26-6-108 (2) (c.5), Colorado Revised Statutes, is amended to read:

26-6-108. Denial of license - suspension - revocation - probation - refusal to renew license - fines. (2) The department may deny an application, or suspend, revoke, or make probationary the license of any facility regulated and licensed under this part 1 or assess a fine against the licensee pursuant to section 26-6-114 should the licensee, an affiliate of the licensee, a person employed by the licensee, or a person who resides with the licensee at the facility:

(c.5) Be convicted of unlawful use of a controlled substance as specified in section 18-18-404, C.R.S., unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance as specified in section 18-18-403.5, 18-18-405, OR 18-18-405.5, C.R.S., or unlawful offenses relating to ~~marihuana~~ MARIJUANA or ~~marihuana~~ MARIJUANA concentrate as specified in section 18-18-406, C.R.S.; or

SECTION 25. 18-19-103 (1) (c), (1) (d), (1) (e), (1) (f), (1) (g), (1) (h), and (2),

Colorado Revised Statutes, are amended to read:

18-19-103. Source of revenues - allocation of moneys. (1) For offenses committed on and after July 1, 1996, each drug offender who is convicted, or receives a deferred sentence pursuant to section 18-1.3-102, shall be required to pay a surcharge to the clerk of the court in the county in which the conviction occurs or in which the deferred sentence is entered. Such surcharge shall be in the following amounts:

(c) For each class 4 felony of which a person is convicted, ~~one~~ TWO thousand ~~five hundred~~ dollars;

(d) For each class 5 felony of which a person is convicted, one thousand ~~one~~ FIVE hundred ~~twenty-five~~ dollars;

(e) For each class 6 felony of which a person is convicted, ~~seven~~ ONE THOUSAND TWO hundred fifty dollars;

(f) For each class 1 misdemeanor of which a person is convicted, ~~six hundred~~ ONE THOUSAND dollars;

(g) For each class 2 misdemeanor of which a person is convicted, ~~four~~ SIX hundred ~~fifty~~ dollars;

(h) For each class 3 misdemeanor of which a person is convicted, ~~two~~ THREE hundred ~~twenty-five~~ dollars.

(2) Each drug offender convicted of a violation of section 18-18-406 (1), or who receives a deferred sentence pursuant to section 18-1.3-102 for a violation of section 18-18-406 (1), shall be assessed a surcharge of ~~one~~ TWO hundred dollars.

SECTION 26. Appropriation - adjustments to the 2010 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, for allocation to the probation and related services division, for probation programs, for the fiscal year beginning July 1, 2010, the sum of two hundred sixty-three thousand three hundred seventy-seven dollars (\$263,377) and 4.8 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public safety, for allocation to the division of criminal justice, for analyzing and reporting on the annual fiscal savings generated by House Bill 10-1352, for the fiscal year beginning July 1, 2010, the sum of thirty-six thousand five hundred twenty-eight dollars (\$36,528) and 0.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, for allocation to the probation and related services division, to be credited to the drug offender surcharge fund created in section 18-19-103 (4), Colorado Revised

Statutes, for the fiscal year beginning July 1, 2010, the sum of one million four hundred sixty-eight thousand one hundred ninety-six dollars (\$1,468,196).

(4) For the implementation of this act, the general fund appropriation made in the annual general appropriation act for the fiscal year beginning July 1, 2010, to the department of corrections, management, external capacity subprogram, for payments to house state prisoners, is decreased by one million five hundred twenty-three thousand five hundred eighty-nine dollars (\$1,523,589).

(5) For the implementation of this act, the general fund appropriation made in the annual general appropriation act for the fiscal year beginning July 1, 2010, to the judicial department, public defender, for personal services and operating expenses, is decreased by two hundred forty-four thousand five hundred twelve dollars (\$244,512) and 5.6 FTE.

SECTION 27. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to offenses committed on or after the applicable effective date of this act.

Approved: May 25, 2010