

CHAPTER 391

CRIMINAL LAW AND PROCEDURE

SENATE BILL 14-163

BY SENATOR(S) Steadman and King, Ulibarri;
also REPRESENTATIVE(S) Lee and DelGrosso, Exum, Kagan, Labuda, Pabon, Priola, Tyler, Williams.

AN ACT**CONCERNING CLARIFYING CHANGES TO PROVISIONS RELATED TO THE SENTENCING OF PERSONS
CONVICTED OF DRUG CRIMES.**

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

SECTION 1. In Colorado Revised Statutes, 2-4-401, **add** (6.7) and (8.5) as follows:

2-4-401. Definitions. The following definitions apply to every statute, unless the context otherwise requires:

(6.7) "MISDEMEANOR" INCLUDES A DRUG MISDEMEANOR DESCRIBED IN ARTICLE 18 OF TITLE 18, C.R.S.

(8.5) "PETTY OFFENSE" INCLUDES A DRUG PETTY OFFENSE DESCRIBED IN ARTICLE 18 OF TITLE 18, C.R.S.

SECTION 2. In Colorado Revised Statutes, 13-90-107, **amend** (1) (a) (II) and (1) (a.5) (II) as follows:

13-90-107. Who may not testify without consent - definitions. (1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a) (II) The privilege described in this paragraph (a) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1) (a) (IV) and (1) (a) (V), C.R.S., OR TO LEVEL 1 OR 2 DRUG FELONIES AS DESCRIBED IN SECTION 18-1.3-401.5 (2) (a), C.R.S. In this instance, during the marriage or afterward, a husband shall not be

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

examined for or against his wife as to any communications intended to be made in confidence and made by one to the other during the marriage without his consent, and a wife shall not be examined for or against her husband as to any communications intended to be made in confidence and made by one to the other without her consent.

(a.5) (II) The privilege described in this paragraph (a.5) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1) (a) (IV) and (1) (a) (V), C.R.S., OR TO LEVEL 1 OR 2 DRUG FELONIES AS DESCRIBED IN SECTION 18-1.3-401.5 (2) (a), C.R.S. In this instance, during the civil union or afterward, a partner in a civil union shall not be examined for or against the other partner in the civil union as to any communications intended to be made in confidence and made by one to the other during the civil union without the other partner's consent.

SECTION 3. In Colorado Revised Statutes, **amend** 16-10-105 as follows:

16-10-105. Alternate jurors. The court may direct that a sufficient number of jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror shall be discharged when the jury retires to consider its verdict or at such time as determined by the court. When alternate jurors are impaneled, each side is entitled to one peremptory challenge in addition to those otherwise allowed by law. In a case in which a class 1, 2, or 3 felony, as described in section 18-1.3-401 (1) (a) (IV) and (1) (a) (V), C.R.S., is charged, and in a case in which a level 1 or level 2 drug felony as described in section 18-1.3-401.5, C.R.S., IS CHARGED, and in any case in which a felony listed in section 24-4.1-302 (1), C.R.S., is charged, the court shall impanel at least one juror to sit as an alternate if requested by any party.

SECTION 4. In Colorado Revised Statutes, 17-2-201, **amend** (5) (a.3) (I) as follows:

17-2-201. State board of parole. (5) (a.3) (I) Any person sentenced as a habitual criminal pursuant to section 18-1.3-801 (1.5) or (2), C.R.S., for an offense committed on or after July 1, 2003, shall be subject to the mandatory parole set forth in section 18-1.3-401 (1) (a) (V) (A) OR 18-1.3-401.5, C.R.S., for the class OR LEVEL of felony of which the person is convicted.

SECTION 5. In Colorado Revised Statutes, 18-1-104, **amend** (2) as follows:

18-1-104. "Offense" defined - offenses classified - common-law crimes abolished. (2) Each offense falls into one of eleven classes, ONE OF SIX DRUG OFFENSE LEVELS, OR ONE UNCLASSIFIED CATEGORY. There are six classes of felonies as ~~defined~~ DESCRIBED in section 18-1.3-401 AND FOUR LEVELS OF DRUG FELONIES AS DESCRIBED IN SECTION 18-1.3-401.5, three classes of misdemeanors as ~~defined~~ DESCRIBED in section 18-1.3-501 AND TWO LEVELS OF DRUG MISDEMEANORS AS DESCRIBED IN SECTION 18-1.3-501, ~~and~~ two classes of petty offenses as ~~defined~~

DESCRIBED in section 18-1.3-503, AND THE CATEGORY OF DRUG PETTY OFFENSE AS DESCRIBED IN SECTION 18-1.3-501 (1) (e).

SECTION 6. In Colorado Revised Statutes, **amend** 18-1-404 as follows:

18-1-404. Preliminary hearing or waiver - dispositional hearing. (1) Every person accused of a class 1, 2, or 3 felony OR LEVEL 1 OR LEVEL 2 DRUG FELONY by direct information or felony complaint has the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged in the information has been committed by the defendant. In addition, only those persons accused of a class 4, 5, or 6 felony by direct information or felony complaint which felony requires mandatory sentencing or is a crime of violence as defined in section 18-1.3-406, or is a sexual offense under part 4 of article 3 of this title, shall have the right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged in the information or felony complaint was committed by the defendant. The procedure to be followed in asserting the right to a preliminary hearing, and the time within which demand therefor must be made, as well as the time within which the hearing, if demanded, shall be had, shall be as provided by rule of the supreme court of the state of Colorado. A failure to observe and substantially comply with such rule is a waiver of the right to a preliminary hearing.

(2) (a) No person accused of a class 4, 5, or 6 felony OR LEVEL 3 OR LEVEL 4 DRUG FELONY by direct information or felony complaint, except those which require mandatory sentencing or which are crimes of violence as defined in section 18-1.3-406, or which are sexual offenses under part 4 of article 3 of this title, shall have the right to demand or receive a preliminary hearing; except that such person shall participate in a dispositional hearing for the purposes of case evaluation and potential resolution.

(b) Any defendant accused of a class 4, 5, or 6 felony OR LEVEL 3 OR LEVEL 4 DRUG FELONY who is not otherwise entitled to a preliminary hearing pursuant to paragraph (a) of this subsection (2), may demand and shall receive a preliminary hearing within a reasonable time pursuant to subsection (1) of this section, if the defendant is in custody; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing.

SECTION 7. In Colorado Revised Statutes, **add** 18-1.3-103.4 as follows:

18-1.3-103.4. Senate Bill 13-250 - legislative intent - clarification of internal reference to level 4 drug felonies. THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING SENATE BILL 13-250 WAS TO ALLOW COURTS, FOR OFFENSES COMMITTED ON AND AFTER OCTOBER 1, 2013, TO VACATE CERTAIN LEVEL 4 DRUG FELONY CONVICTIONS AND ENTER MISDEMEANOR CONVICTIONS IF THE OFFENDER COMPLETES COMMUNITY-BASED SENTENCING. WHILE THE TERM "LEVEL 4 DRUG FELONY" TO WHICH SECTION 18-1.3-103.5 (3) (b) REFERS WAS DESCRIBED IN SECTION 18-8-405 (2) (c) (II) OF THE INTRODUCED VERSION OF SENATE BILL 13-250, AN AMENDMENT TO THE BILL DURING THE LEGISLATIVE PROCESS MOVED THE LEVEL 4 DRUG FELONY DESCRIPTION TO SECTION 18-8-405 (2) (d). THE CONFORMING CHANGE WAS NOT

MADE TO THE INTERNAL REFERENCE IN SECTION 18-1.3-103.5 (3) (b), RESULTING IN AN INCORRECT INTERNAL REFERENCE BEING PUBLISHED IN THE 2013 VERSION OF THE COLORADO REVISED STATUTES. WHEN ENACTING SENATE BILL 13-250, IT WAS THE INTENT OF THE GENERAL ASSEMBLY THAT THE LEVEL 4 DRUG FELONIES TO WHICH SECTION 18-1.3-103.5 (3) (b) REFERS BE THOSE DESCRIBED IN SECTION 18-8-405 (2) (d). ACCORDINGLY, BY THE PASSAGE OF SENATE BILL 14-163, ENACTED IN 2014, THE GENERAL ASSEMBLY CORRECTS THE INTERNAL REFERENCE FOUND IN SECTION 18-1.3-103.5 (3) (b). THE CORRECTION TO THE INTERNAL REFERENCE IS EFFECTIVE AS OF THE EFFECTIVE DATE OF SENATE BILL 13-250, OCTOBER 1, 2013, AND APPLIES TO OFFENSES COMMITTED ON OR AFTER OCTOBER 1, 2013.

SECTION 8. In Colorado Revised Statutes, 18-1.3-103.5, **amend** (2) (a), (3), (4) (a), and (4) (c) as follows:

18-1.3-103.5. Felony convictions - vacate and enter conviction on misdemeanor after successful completion. (2) (a) In a case in which the defendant enters a plea of guilty or is found guilty by the court or a jury for a crime listed in subsection (3) of this section, the court shall order, upon successful completion of any community-based sentence to probation or to a community corrections program, the DRUG felony conviction vacated and shall enter a conviction for a level 1 DRUG misdemeanor ~~drug~~ offense of possession of a controlled substance pursuant to section 18-18-403.5. Upon entry of the judgment of conviction pursuant to section 18-18-403.5, the court shall indicate in its order that the judgment of conviction is entered pursuant to the provisions of this section.

(3) This section applies to convictions for the following offenses:

(a) Possession of a controlled substance; but only when the quantity of the controlled substance is not more than four grams of a schedule I or schedule II controlled substance, not more than two grams of methamphetamine, heroin, ketamine, or ~~cathinone~~ CATHINONES, or not more than four milligrams of flunitrazepam. The district attorney and defendant may stipulate to the amount of the controlled substance possessed by the defendant at the time of sentencing, or the court shall determine the amount at the time of sentencing.

(b) A level 4 drug felony for distribution pursuant to the provisions of section 18-18-405 (2) ~~(c)~~ (d) (II);

(c) Possession of MORE THAN twelve ounces ~~or more~~ of marijuana or MORE THAN three ounces ~~or more~~ of marijuana concentrate; or

(d) A violation of section 18-18-415.

(4) Notwithstanding any provision of this section to the contrary, a defendant is not eligible for relief under this section if:

(a) The defendant has a prior conviction for a crime of violence as described in section 18-1.3-406 or a prior conviction for an offense that is required to be sentenced pursuant to the provisions of section 18-1.3-406 in this state, or a crime in another state, the United States, or any territory subject to the jurisdiction of the United States that would be a crime of violence or ~~any~~ AN offense required to be

sentenced pursuant to the provisions of section 18-1.3-406 in this state;

(c) (I) The defendant has two or more prior felony convictions for a drug offense pursuant to this ~~article~~ TITLE, or a crime in another state, the United States, or any territory subject to the jurisdiction of the United States that would be a drug offense violation of this ~~article~~ TITLE.

(II) For purposes of this paragraph (c), a ~~prior drug~~ felony conviction includes any ~~prior~~ diversion, deferred prosecution, or deferred judgment and sentence, WHETHER OR NOT COMPLETED, for a felony, ~~or any felony offense for which~~ AND ANY CONVICTION ENTERED AS A RESULT OF relief was previously granted pursuant to this section or ~~any misdemeanor drug conviction that was~~ AS A RESULT OF A GUILTY PLEA TO A MISDEMEANOR OFFENSE, AS DESCRIBED IN ARTICLE 18 OF THIS TITLE, originally charged as a ~~drug~~ felony DRUG offense, AS DESCRIBED IN ARTICLE 18 OF THIS TITLE.

SECTION 9. In Colorado Revised Statutes, 18-1.3-104, **amend** (1) (b) as follows:

18-1.3-104. Alternatives in imposition of sentence. (1) Within the limitations of the applicable statute pertaining to sentencing and subject to the provisions of this title, the trial court has the following alternatives in entering judgment imposing a sentence:

(b) Subject to the provisions of ~~section~~ SECTIONS 18-1.3-401 AND 18-1.3-401.5, in class 2, class 3, class 4, class 5, and class 6 felonies and ~~section 18-1.3-401.5 for~~ level 1, level 2, level 3, and level 4 drug felonies, the defendant may be sentenced to imprisonment for a definite period of time.

SECTION 10. In Colorado Revised Statutes, 18-1.3-401, **amend** (1) (a) (V) (A) introductory portion as follows:

18-1.3-401. Felonies classified - presumptive penalties. (1) (a) (V) (A) EXCEPT AS OTHERWISE PROVIDED IN SECTION 18-1.3-401.5 FOR OFFENSES CONTAINED IN ARTICLE 18 OF THIS TITLE COMMITTED ON OR AFTER OCTOBER 1, 2013, as to any person sentenced for a felony committed on or after July 1, 1993, felonies are divided into six classes ~~which~~ THAT are distinguished from one another by the following presumptive ranges of penalties ~~which~~ THAT are authorized upon conviction:

SECTION 11. In Colorado Revised Statutes, 18-1.3-401.5, **amend** (2) (b) (I) introductory portion, (4), (7), (11), and (12); and **add** (2) (b) (V) and (10) (a) (III.5) as follows:

18-1.3-401.5. Drug felonies classified - presumptive and aggravated penalties. (2) (b) (I) As to any person sentenced for a drug felony committed on or after October 1, 2013, EXCEPT as otherwise provided in ~~section 18-1.3-401 (1) (a)~~ ~~(II)~~ SUBPARAGRAPH (V) OF THIS PARAGRAPH (b) AND IN SUBSECTION (7) OF THIS SECTION, in addition to, or in lieu of, any sentence to imprisonment, probation, community corrections, or work release, a fine within the following ranges may be imposed for the specified level of drug felonies:

(V) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), A PERSON WHO HAS BEEN TWICE CONVICTED OF A FELONY UNDER THE LAWS OF THIS STATE, ANY OTHER STATE, OR THE UNITED STATES PRIOR TO THE CONVICTION FOR WHICH HE OR SHE IS BEING SENTENCED SHALL NOT BE ELIGIBLE TO RECEIVE A FINE IN LIEU OF ANY SENTENCE TO IMPRISONMENT, COMMUNITY CORRECTIONS, OR WORK RELEASE BUT SHALL BE SENTENCED TO AT LEAST THE MINIMUM SENTENCE SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (2) AND MAY RECEIVE A FINE IN ADDITION TO SAID SENTENCE.

(4) The mandatory period of parole imposed pursuant to paragraph (a) of subsection (2) of this section commences immediately upon the discharge of an offender from imprisonment in the custody of the department of corrections. If the offender has been granted release to parole supervision by the state board of parole, the offender is deemed to have discharged the offender's sentence to imprisonment provided for in subsection (2) of this section in the same manner as if such sentence were discharged pursuant to law. When an offender is released by the state board of parole or released because the offender's sentence was discharged pursuant to law, the mandatory period of parole must be served by the offender. An offender sentenced for a drug felony may receive earned time pursuant to section 17-22.5-405, C.R.S., and while serving a mandatory parole period in accordance with this section.

(7) 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 ~~period~~ TERM OF INCARCERATION IN THE DEPARTMENT OF CORRECTIONS OF AT LEAST ~~eight years in the department of corrections~~ BUT NOT MORE THAN THIRTY-TWO YEARS. THE PRESENCE OF ONE OR MORE OF THE AGGRAVATING CIRCUMSTANCES PROVIDED IN PARAGRAPH (a) OF SUBSECTION (10) 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 CONVICTION FOR A PREVIOUS FELONY;

(11) Except for a level 1 drug felony, the presence of any one or more of the following sentence-enhancing circumstances ~~at the time of the commission of the drug felony~~ allows the court, if it sentences the defendant to incarceration, to sentence the defendant to a term in the presumptive or aggravated range:

(a) AT THE TIME OF THE COMMISSION OF THE DRUG FELONY, the defendant was charged with or was on bond for a felony in a previous case and the defendant was convicted of any felony in the previous case;

(b) AT THE TIME OF THE COMMISSION OF THE DRUG FELONY, the defendant was charged with or was on bond for a delinquent act that would have constituted a felony if committed by an adult;

(c) AT THE TIME OF THE COMMISSION OF THE DRUG FELONY, the defendant was on bond for having pled guilty to a lesser offense when the original offense charged was a felony;

(c.5) AT THE TIME OF THE COMMISSION OF THE DRUG FELONY, THE DEFENDANT WAS UNDER A DEFERRED JUDGMENT AND SENTENCE FOR ANOTHER FELONY;

(d) AT THE TIME OF THE COMMISSION OF THE DRUG FELONY, the defendant was on bond in a juvenile prosecution under title 19, C.R.S., for having pled guilty to a lesser delinquent act when the original delinquent act charged would have constituted a felony if committed by an adult;

(e) AT THE TIME OF THE COMMISSION OF THE DRUG FELONY, the defendant was under a deferred judgment and sentence for a delinquent act that would have constituted a felony if committed by an adult; or

(f) AT THE TIME OF THE COMMISSION OF THE DRUG FELONY, the defendant was on parole for having been adjudicated a delinquent child for an offense that would constitute a felony if committed by an adult.

(12) When it appears to the satisfaction of the court that the ends of justice and the best interest of the public, as well as the defendant, will be best served thereby, the court has the power to suspend the imposition or execution of sentence for such period and upon such terms and conditions as it may deem best; except that the court may not suspend a sentence ~~to the minimum term of incarceration~~ when the defendant is convicted of a level 1 drug felony. In no instance may a sentence be suspended if the defendant is ineligible for probation pursuant to section 18-1.3-201, except upon an express waiver being made by the sentencing court regarding a particular defendant upon recommendation of the district attorney and approval of such recommendation by an order of the sentencing court pursuant to section 18-1.3-201 (4).

SECTION 12. In Colorado Revised Statutes, 18-1.3-501, **amend** (1) (d) as follows:

18-1.3-501. Misdemeanors classified - drug misdemeanors and drug petty offenses classified - penalties - definitions. (1) (d) For purposes of sentencing a person convicted of a misdemeanor drug offense described in article 18 of this title, committed on or after October 1, 2013, drug misdemeanors are divided into two levels that are distinguished from one another by the following penalties ~~and~~ that are authorized upon conviction:

Level	Minimum Sentence	Maximum Sentence
DM1	Six months imprisonment, five hundred dollars fine, or both	Eighteen months imprisonment, five thousand dollars fine, or both
DM2	No imprisonment, fifty dollars fine	Twelve months imprisonment, seven hundred fifty dollars fine, OR BOTH

SECTION 13. In Colorado Revised Statutes, 18-1.3-801, **amend** (2) (b) as follows:

18-1.3-801. Punishment for habitual criminals. (2) (b) The provisions of paragraph (a) of this subsection (2) shall not apply to a conviction for a level 4 drug felony pursuant to section 18-18-403.5 (2), or a conviction for a level 4 drug felony for attempt or conspiracy to commit unlawful possession of a controlled substance, as described in section 18-18-403.5 (2), if the amount of the schedule I or schedule II controlled substance possessed is not more than four grams or not more than two grams of methamphetamine, heroin, ~~cathinone~~ CATHINONES, OR ketamine or not more THAN four milligrams of flunitrazepam, even if the person has been previously convicted of three or more qualifying felony convictions.

SECTION 14. In Colorado Revised Statutes, 18-2-101, **amend** (10) as follows:

18-2-101. Criminal attempt. (10) (a) Except as otherwise provided by law, criminal attempt to commit a level 1 drug felony is a level 2 drug felony; criminal attempt to commit a level 2 drug felony is a level 3 drug felony; criminal attempt to commit a level 3 drug felony is a level 4 drug felony; and criminal attempt to commit a level 4 drug felony is a ~~level 1 drug misdemeanor~~ LEVEL 4 DRUG FELONY.

(b) Except as otherwise provided by law, criminal attempt to commit a level 1 drug misdemeanor is a level 2 drug misdemeanor; and criminal attempt to commit a level 2 DRUG misdemeanor is a level 2 DRUG misdemeanor.

SECTION 15. In Colorado Revised Statutes, 18-2-206, **amend** (7) (a) as follows:

18-2-206. Penalties for criminal conspiracy - when convictions barred. (7) (a) Except as otherwise provided by law, conspiracy to commit a level 1 drug felony is a level 2 drug felony; conspiracy to commit a level 2 drug felony is a level 3 drug felony; conspiracy to commit a level 3 drug felony is a level 4 drug felony; and conspiracy to commit a level 4 drug felony is a ~~level 1 drug misdemeanor~~ 4 DRUG FELONY.

SECTION 16. In Colorado Revised Statutes, 18-18-102, **amend** (3.5) (a) (IX), (3.5) (a) (XXIII), (3.5) (a) (XXIV), and (5); and **add** (3.5) (a) (XXV) as follows:

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

(3.5) (a) "Cathinones" means any synthetic or natural material containing any quantity of a cathinone chemical structure, including any analogs, salts, isomers, or salts of isomers of any synthetic or natural material containing a cathinone chemical structure, including but not limited to the following substances and any analogs, salts, isomers, or salts of isomers of any of the following substances:

(IX) 4¹-Methyl-alpha-pyrrolidinopropiophenone (~~MPPP~~) (MePPP);

(XXIII) 2-(Methylamino)-1-phenyl-1-pentanone Pentedrone); ~~and~~

(XXIV) N-methylethcathinone (4-MEC); AND

(XXV) (S)-2-AMINO-1-PHENYL-1-PROPANONE (CATHINONE).

(5) "Controlled substance" means a drug, substance, or immediate precursor included in schedules I through V of part 2 of this article, including cocaine, marijuana, marijuana concentrate, ~~a cathinone~~ CATHINONES, any synthetic cannabinoid, and salvia divinorum.

SECTION 17. In Colorado Revised Statutes, 18-18-205, **amend** (2) (d) (III) and (2) (d) (IV) as follows:

18-18-205. Schedule III. (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 III:

(d) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as follows:

(III) Not more than 300 milligrams of ~~dihydrocodeinone~~ HYDROCODONE per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(IV) Not more than 300 milligrams of ~~dihydrocodeinone~~ HYDROCODONE per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

SECTION 18. In Colorado Revised Statutes, 18-18-403.5, **amend** (2) (a) as follows:

18-18-403.5. Unlawful possession of a controlled substance. (2) 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, CATHINONES, or a controlled substance listed in schedule I or II of part 2 of this article commits a level 4 drug felony.

SECTION 19. In Colorado Revised Statutes, 18-18-405, **amend** (2) (a) (I) (B),

(2) (b) (I) (B), (2) (c) (II), (2) (d) (II), and (5) as follows:

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

(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, any 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:

(B) More than one hundred twelve grams and contains methamphetamine, heroin, ketamine, or ~~cathinone~~ CATHINONES; or

(b) Commits a level 2 drug felony if:

(I) The violation involves any material, compound, mixture, or preparation that weighs:

(B) More than seven grams, but not more THAN one hundred twelve grams, and contains methamphetamine, heroin, ketamine, or ~~cathinone~~ CATHINONES; or

(c) Commits a level 3 drug felony if the violation involves any material, compound, mixture, or preparation that weighs:

(II) Not more than seven grams and contains methamphetamine, heroin, ketamine, or ~~cathinone~~ CATHINONES;

(d) Commits a level 4 drug felony if:

(II) Notwithstanding the provisions of paragraph (c) of this subsection (2), the violation involves distribution or transfer of the controlled substance for the purpose of consuming all of the controlled substance with another person or persons at a time substantially contemporaneous with the transfer; except that this subparagraph (II) applies only if the distribution or transfer involves not more than four grams of a schedule I or II controlled substance or not more than two grams of methamphetamine, heroin, ketamine, or ~~cathinone~~ CATHINONES.

(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, flunitrazepam, ~~or~~ 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, ~~or~~ ketamine, OR CATHINONES involved may be used to determine the level of drug offense.

SECTION 20. In Colorado Revised Statutes, 18-18-407, **amend** (1) introductory portion, (1) (c), and (1) (d) (II) as follows:

18-18-407. Special offender - definitions. (1) ~~Upon~~ A PERSON WHO COMMITS a felony ~~conviction~~ OFFENSE under this part 4, ~~the presence of~~ UNDER any one or more of the following aggravating circumstances ~~designated the defendant a special offender shall require the court to sentence the defendant to the department of corrections for at least the minimum term of years within the presumptive range for~~ COMMITS a level 1 drug felony AND IS A SPECIAL OFFENDER:

(c) The defendant committed the violation and in the course of that violation, INTRODUCED OR imported into the state of Colorado more than fourteen grams of any schedule I or II controlled substance listed in part 2 of this article or more than seven grams of methamphetamine, heroin, ketamine, or ~~cathinone~~ CATHINONES, or ten milligrams of flunitrazepam;

(d) (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 at the time of the commission of the violation; ~~of subsection (1) of this section;~~

SECTION 21. In Colorado Revised Statutes, 18-19-103, **amend** (5) (d) (I), (5) (d) (IV), and (5) (d) (V); and **add** (5) (d) (VI) as follows:

18-19-103. Source of revenues - allocation of moneys. (5) (d) Moneys from the correctional treatment cash fund may be used to serve the following populations:

(I) Adults and juveniles ~~servin~~g a ON diversion ~~sentence~~ for a state offense and adults and juveniles under supervision in a pretrial diversion program for a state offense;

(IV) Offenders sentenced or transitioned to a community corrections program; ~~and~~

(V) Offenders serving a sentence in a county jail, on a work-release program supervised by the county jail, or receiving after-care treatment following release from jail if the offender participated in a jail treatment program; AND

(VI) OFFENDERS ON BOND OR ON SUMMONS, WITH A PENDING CRIMINAL CASE IN A PRE-TRIAL TREATMENT PROGRAM.

SECTION 22. In Colorado Revised Statutes, 24-72-308.6, **amend** (2) (a) (II.5) (B) and (2) (a) (III.5) (B) as follows:

24-72-308.6. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2011.

(2) **Sealing of conviction records.** (a) (II.5) (B) If the offense is a level 2 ~~or level 3~~ drug misdemeanor in article 18 of title 18, C.R.S., the petition may be filed three years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning

a criminal conviction.

(III.5) (B) If a petition is filed for the sealing of a level 1 OR level 2 ~~or level 3~~ drug misdemeanor in article 18 of title 18, C.R.S., the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney may object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney does not object, the court shall order that the record be sealed after the defendant documents to the court that he or she has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later. If the district attorney objects to the petition, the court shall set the matter for hearing. To order the record sealed, the criminal history filed with the petition as required by paragraph (b) of this subsection (2) must document to the court that the defendant has not been charged with or convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

SECTION 23. In Colorado Revised Statutes, 16-5-301, **amend** (1) (b) (I) as follows:

16-5-301. Preliminary hearing or waiver - dispositional hearing. (1) (b) (I) No person accused of a class 4, 5, or 6 felony OR LEVEL 3 OR LEVEL 4 DRUG FELONY by direct information or felony complaint, except those which require mandatory sentencing or which are crimes of violence as defined in section 18-1.3-406, C.R.S., or which are sexual offenses under part 4 of article 3 of title 18, C.R.S., shall have the right to demand or receive a preliminary hearing; except that such person shall participate in a dispositional hearing for the purposes of case evaluation and potential resolution.

SECTION 24. In Colorado Revised Statutes, 18-18-406.5, **amend** (1); and **repeal** (2) as follows:

18-18-406.5. Unlawful use of marijuana in a detention facility. (1) A person confined in a detention facility in this state who possesses or uses ~~up to eight ounces~~ of marijuana commits a level 1 drug misdemeanor.

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

SECTION 25. Effective date. (1) Sections 1 through 7, 9, 10, 11, 12, 21, 22, 23, and 24 of this act take effect upon passage.

(2) Sections 8 and 13 through 20 of this act take effect on July 1, 2014.

SECTION 26. 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: June 6, 2014