

V2 – Fentanyl Dealing & Possession – 4 levels

Be it Enacted by the People of the state of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-18-102, **add** (35.5) as follows:

18-18-102. Definitions.

As used in this article 18:

(35.5) “TREATMENT MANDATED DRUG FELONY” MEANS A DRUG FELONY THAT IS ELIGIBLE TO BE VACATED FOLLOWING SUCCESSFUL COMPLETION OF COURT ORDERED TREATMENT FOR DRUG REHABILITATION ACCORDING TO THE PROVISIONS OF SECTION 18-1.3-103.5.

SECTION 2. In Colorado Revised Statutes, 18-18-405, **amend** (2) introductory portion, (2)(a)(I)(D), (2)(a)(III)(A), (2)(b)(I)(B), (2)(b)(I)(C), (2)(c)(III), (2)(c)(IV), (8) introductory portion, and (8)(a); and **repeal** (2)(a)(III)(B), (2)(b)(I)(D) and (2)(c)(V) 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~~A 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:

(D) ~~More than fifty grams~~ ANY AMOUNT and contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as described in section 18-18-204 (2)(g); or

(III)(A) Except as provided in section 18-1-711 (3)(i), the defendant committed a violation of subsection (2)(a)(I)(D), ~~(2)(b)(I)(D), or (2)(c)(V)~~ of this section, and the actions in violation of subsection (2)(a)(I)(D), ~~(2)(b)(I)(D), or (2)(c)(V)~~ of this section are the proximate cause of the death of another person who used or consumed the material, compound, mixture, or preparation that contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as described in section 18-18-204 (2)(g).

~~(B) Notwithstanding subsection (2)(a)(III)(A) of this section, a defendant who committed a violation of subsection (2)(c)(V) of this section, and the actions in violation of subsection (2)(c)(V) of this section are the proximate cause of the death of another person who used or consumed the material, compound, mixture, or preparation that contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as described in section 18-18-204 (2)(g), is not subject to the mandatory sentencing requirement as described in section 18-1.3-401.5 (7).~~

(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 cathinones; OR

(C) More than ten milligrams, but not more than fifty milligrams, and contains flunitrazepam; ~~or~~

(D) ~~More than four grams, but not more than fifty grams, and contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as described in section 18-18-204 (2)(g);~~

(c) Except as provided in subsection (8) of this section, commits a level 3 drug felony if the violation involves any material, compound, mixture, or preparation that weighs:

(III) Not more than ten milligrams and contains flunitrazepam; OR

(IV) More than four grams and contains a schedule III or schedule IV controlled substance. ~~;~~ ~~or~~

~~(V) Not more than four grams and contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as described in section 18-18-204 (2)(g).~~

(8) Except for a prosecution for manufacturing, a person commits a level 1 drug misdemeanor for a violation of subsection (2)(c)(I), (2)(c)(II), ~~(2)(e)(V)~~, or (2)(d) of this section if:

(a) The distribution, dispensing, transfer, or sale involves a material, compound, mixture, or preparation that weighs not more than four grams and contains any amount of a controlled substance identified in subsection (2)(c)(I), (2)(c)(II), ~~(2)(e)(V)~~, or (2)(d) of this section;

SECTION 3. In Colorado Revised Statutes, 18-1.3-401.5, **amend** (7) and (10)(a)(III.5) as follows:

18-1.3-401.5. Drug felonies classified - presumptive and aggravated penalties - legislative intent.

~~(7) Except as provided in section 18-18-405 (2)(a)(III)(B), notwithstanding~~ 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 term of incarceration in the department of corrections of at least eight years but not more than thirty-two years. The presence of one or more of the aggravating circumstances provided in subsection (10)(a) 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~~ THE DEFENDANT’S conviction for a previous felony;

SECTION 4. In Colorado Revised Statutes, 18-18-407, **amend** (1)(h) as follows:

18-18-407. Special offender - definitions.

(1) A person who commits a felony offense pursuant to this part 4 under any one or more of the following aggravating circumstances commits a level 1 drug felony and is a special offender:

(h) The defendant committed a violation of section 18-18-405 (2)(a)(I)(D), ~~(2)(b)(I)(D)~~, or ~~(2)(e)(V)~~, and the defendant possessed pill or tablet manufacturing equipment with the intent to use the equipment in the manufacture of a controlled substance.

SECTION 5. In Colorado Revised Statutes, 18-18-403.5, **amend** (2.5) as follows:

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

(2.5)(a) Notwithstanding ~~subsection (2)(e)~~ SUBSECTION (2) of this section, on or after July 1, 2022-JANUARY 1, 2027, a person who violates subsection (1) of this section by knowingly possessing:

(I) Any material, compound, mixture, or preparation that weighs more than one gram and not more than four grams and contains any quantity of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as described in section 18-18-204 (2)(g), commits a ~~level 4~~ LEVEL 2 drug felony;

(II) Any material, compound, mixture, or preparation that weighs MORE THAN ONE HUNDRED MILLIGRAMS BUT not more than one gram and contains any quantity of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as described in section 18-18-204 (2)(g), commits a ~~level 1 drug misdemeanor~~ LEVEL 3 DRUG FELONY.; ~~except that a fourth or subsequent offense for a violation of this subsection (2.5)(a)(II) is a level 4 drug felony.~~

(III) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS MORE THAN SIX MILLIGRAMS BUT NO MORE THAN ONE HUNDRED MILLIGRAMS AND CONTAINS ANY QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204(2)(g), COMMITS A LEVEL 4, TREATMENT MANDATED DRUG FELONY AND SUCH DEFENDANT IS ELIGIBLE FOR COURT-ORDERED TREATMENT FOR DRUG REHABILITATION; EXCEPT THAT A THIRD OR SUBSEQUENT OFFENSE FOR A VIOLATION OF THIS SUBSECTION (2.5)(a)(III) IS A LEVEL 3 DRUG FELONY FOR WHICH CONVICTION IS NOT ELIGIBLE TO BE VACATED UNDER THE PROVISIONS OF SECTION 18-1.3-103.5.

(IV) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS NOT MORE THAN SIX MILLIGRAMS AND CONTAINS ANY QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204(2)(g), COMMITS A LEVEL 1 DRUG MISDEMEANOR.

~~(b) Notwithstanding the provisions of section 18-18-403.5(2.5)(a)(I) of this section, when a defendant shows supporting evidence to establish that he or she made a reasonable mistake of fact and did not know that the controlled substance he or she possessed contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as described in section 18-18-204(2)(g), the matter shall be submitted to the finder of fact in the form of an interrogatory included in the verdict form. Should the finder of fact determine the defendant made such a reasonable mistake of fact, the defendant commits a level 1 drug misdemeanor.~~

SECTION 6. In Colorado Revised Statutes, 18-1.3-103.5, **amend** (3)(e) as follows:

18-1.3-103.5. Felony convictions - vacate and enter conviction on misdemeanor after successful completion.

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

(e) A violation of section ~~18-18-403.5(2.5)(a)~~ 18-18-403.5(2.5)(a)(III).

SECTION 7. In Colorado Revised Statutes, 18-1.3-801, **amend** (2)(a)(I); and **repeal** (2)(c) as follows:

18-1.3-801. Punishment for habitual criminals.

(2)(a)(I) Except as otherwise provided in subsections (2)(b), ~~(2)(e)~~, and (5) of this section, every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if

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committed within this state, would be a felony, shall be adjudged an habitual criminal and shall be punished:

~~(2)(c) The provisions of subsection (2)(a) of this section do not apply to a conviction for a level 4 drug felony committed on or after July 1, 2022, pursuant to section 18-18-403.5 (2.5), or a conviction for a level 4 drug felony committed on or after July 1, 2022, for attempt or conspiracy to commit unlawful possession of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, as described in section 18-18-403.5 (2.5), even if the person has been previously convicted of three or more qualifying felony convictions.~~