

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0342.01 Conrad Imel x2313

HOUSE BILL 20-1150

HOUSE SPONSORSHIP

McKean,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PENALTIES FOR CERTAIN VIOLATIONS PURSUANT TO THE
102 "UNIFORM CONTROLLED SUBSTANCES ACT OF 2013".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

House Bill 19-1263, enacted in 2019, made changes relating to the offense level for possession of certain controlled substances and sentencing therefor and enacted the community substance use and mental health services grant program.

The bill repeals provisions enacted by House Bill 19-1263, and reinstates provisions repealed by that act. The bill makes possession of 4

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

grams or less of a controlled substance listed in schedule I or II a level 4 drug felony, possession of more than 12 ounces of marijuana or more than 3 ounces of marijuana concentrate a level 4 drug felony, and possession of 3 ounces or less of marijuana concentrate a level 1 drug misdemeanor.

The bill clarifies that a person may be arrested for the petty offense of possession of not more than 2 ounces of marijuana and that a person may not be sentenced to confinement in jail for a first offense of abusing toxic vapors.

The bill prohibits a court from suspending a sentence to complete useful public service pursuant to the "Uniform Controlled Substances Act of 2013" (act) and requires a court to sentence a person to complete useful public service if the person receives diversion or a deferred sentence. Any person convicted of a drug offense must submit to the fingerprinting and photographing requirements of the act.

The bill clarifies that persons convicted of level 1 or 2 drug misdemeanors related to unlawful use of a controlled substance, possession of marijuana or marijuana concentrate, unlawful use or possession of certain synthetic controlled substances, or abusing toxic vapors are subject to the same sentencing scheme as a person convicted of other level 1 or 2 drug misdemeanors.

The bill repeals the community substance use and mental health services grant program established in the department of local affairs.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-18-403.5, **amend**
3 **as they will become effective March 1, 2020**, (2) introductory portion,
4 (2)(a), and (2)(c); and **repeal as they will become effective March 1,**
5 **2020**, (4) and (5) as follows:

6 **18-18-403.5. Unlawful possession of a controlled substance.**
7 (2) ~~On or after March 1, 2020~~, A person who violates subsection (1) of
8 this section by possessing:

9 (a) Any material, compound, mixture, or preparation that contains
10 any quantity of flunitrazepam, ketamine, ~~gamma-hydroxybutyrate,~~
11 ~~including its salts, isomers, and salts of isomers~~; cathinones, or ~~more than~~
12 ~~four grams~~ of a controlled substance listed in schedule I or II of part 2 of
13 this article 18 commits a level 4 drug felony.

1 (c) Any material, compound, mixture, or preparation that contains
2 not more than four grams of a controlled substance listed in schedule I or
3 H of part 2 of this article 18 or any quantity of a controlled substance
4 listed in schedule III, IV, or V of part 2 of this article 18 except
5 flunitrazepam gamma-hydroxybutyrate, or ketamine commits a level 1
6 drug misdemeanor. ~~except that a fourth or subsequent offense for a~~
7 ~~violation of this subsection (2)(c) is a level 4 drug felony.~~

8 (4) ~~Notwithstanding the provisions of subsection (2) of this~~
9 ~~section, on or after March 1, 2020, a district attorney shall not charge or~~
10 ~~prosecute a person pursuant to this section for any minuscule, residual, or~~
11 ~~unusable amount of a controlled substance that may be present in a used~~
12 ~~hypodermic needle or syringe, or other drug paraphernalia, as defined in~~
13 ~~section 18-18-426. The circumstances described in this subsection (4)~~
14 ~~may be used as a factor in a probable cause or reasonable suspicion~~
15 ~~determination of any criminal offense if the original stop or search was~~
16 ~~lawful.~~

17 (5) ~~Notwithstanding any provision of this section, a person may~~
18 ~~be charged with any other offense in this article 18, including unlawful~~
19 ~~distribution, manufacturing, dispensing, or sale of a controlled substance,~~
20 ~~or possession with intent to do the same, pursuant to section 18-18-405,~~
21 ~~when there is evidence for the person to be so charged. Such evidence~~
22 ~~may include, but is not limited to, the amount of the controlled substance~~
23 ~~that the person possesses.~~

24 **SECTION 2.** In Colorado Revised Statutes, 18-18-406, **amend**
25 **as they will become effective March 1, 2020,** (4) and (5)(a)(II) as
26 follows:

27 **18-18-406. Offenses relating to marijuana and marijuana**

1 **concentrate - definitions.** (4) ~~On or after March 1, 2020:~~

2 (a) ~~Repeated.~~ A PERSON WHO POSSESSES MORE THAN TWELVE
3 OUNCES OF MARIJUANA OR MORE THAN THREE OUNCES OF MARIJUANA
4 CONCENTRATE COMMITS A LEVEL 4 DRUG FELONY.

5 (b) A person who possesses more than six ounces of marijuana
6 BUT NOT MORE THAN TWELVE OUNCES OF MARIJUANA or NOT more than
7 three ounces of marijuana concentrate commits a level 1 drug
8 misdemeanor.

9 (c) A person who possesses more than two ounces of marijuana
10 but not more than six ounces of marijuana ~~or not more than three ounces~~
11 ~~of marijuana concentrate~~ commits a level 2 drug misdemeanor.

12 (5) (a) (II) Whenever a person is ARRESTED OR detained for a
13 violation of subsection (5)(a)(I) of this section, ~~committed on or after~~
14 ~~March 1, 2020,~~ the ARRESTING OR detaining officer shall prepare a written
15 notice or summons for the person to appear in court. The written notice
16 or summons must contain the name and address of the ARRESTED OR
17 DETAINED person; the date, time, and place where such person shall
18 appear; and a place for the signature of the person indicating the person's
19 written promise to appear on the date and at the time and place indicated
20 on the notice or summons. One copy of the notice or summons must be
21 given to the ARRESTED OR DETAINED person, one copy must be sent to the
22 court where the person is to appear, and such other copies as may be
23 required by the law enforcement agency employing the ARRESTING OR
24 DETAINING officer must be sent to the places designated by such law
25 enforcement agency. The date specified in the notice or summons to
26 appear must be at least seven days after the ~~issuance of the notice or~~
27 ~~summons~~ ARREST OR DETENTION UNLESS THE PERSON ARRESTED OR

1 DETAINED DEMANDS AN EARLIER HEARING. The place specified in the
2 notice or summons to appear must be before a judge having jurisdiction
3 of the drug petty offense within the county in which the drug petty
4 offense charged is alleged to have been committed. ~~If the person fails to~~
5 ~~appear in response to the notice or summons, the court, in its discretion,~~
6 ~~may issue a warrant for the arrest of the person or an order to show cause~~
7 ~~requiring the person's appearance in court.~~ THE ARRESTED OR DETAINED
8 PERSON, IN ORDER TO SECURE RELEASE FROM ARREST OR DETENTION,
9 MUST PROMISE IN WRITING TO APPEAR IN COURT BY SIGNING THE NOTICE
10 OR SUMMONS PREPARED BY THE ARRESTING OR DETAINING OFFICER. ANY
11 PERSON WHO DOES NOT HONOR THE WRITTEN PROMISE TO APPEAR
12 COMMITS A CLASS 3 MISDEMEANOR.

13 **SECTION 3.** In Colorado Revised Statutes, 18-18-412, **amend**
14 **as it will become effective March 1, 2020,** (2) as follows:

15 **18-18-412. Abusing toxic vapors - prohibited.** (2) A person
16 who knowingly violates the provisions of subsection (1) of this section
17 commits the offense of abusing toxic vapors. Abusing toxic vapors is a
18 level 2 drug misdemeanor; EXCEPT THAT A COURT SHALL NOT SENTENCE
19 A PERSON WHO IS CONVICTED OF A FIRST OFFENSE PURSUANT TO THIS
20 SUBSECTION (2) TO CONFINEMENT IN JAIL. A PERSON CONVICTED OF A
21 SECOND OR SUBSEQUENT OFFENSE PURSUANT TO THIS SUBSECTION (2) MAY
22 RECEIVE A SENTENCE TO CONFINEMENT IN JAIL.

23 **SECTION 4.** In Colorado Revised Statutes, 18-18-432, **amend**
24 **as they will become effective March 1, 2020,** (2)(a) and (3); and
25 **recreate and reenact, with amendments,** (2)(b) as follows:

26 **18-18-432. Drug offender public service and rehabilitation**
27 **program - definitions.** (2) (a) Upon conviction, ~~for an offense~~

1 ~~committed on or after March 1, 2020,~~ a court shall sentence each drug
2 offender, other than an offender sentenced to the department of
3 corrections or an offender sentenced directly to a community corrections
4 facility, to pay for and complete, at a minimum, forty-eight hours of
5 useful public service for any felony, twenty-four hours of useful public
6 service for any misdemeanor, and sixteen hours of useful public service
7 for any petty offense. Such useful public service is in addition to, and not
8 in lieu of, any other sentence received by the drug offender. The court
9 ~~may~~ SHALL NOT suspend any portion of the minimum number of useful
10 public service hours ordered. ~~when completion of the useful public~~
11 ~~service requirement interferes with appropriate and necessary treatment~~
12 ~~or with any other requirements of probation ordered by the court.~~ If any
13 drug offender is sentenced to probation, whether supervised by the court
14 or by a probation officer, the order to pay for and complete the useful
15 public service hours is made a condition of probation.

16 (b) THE PROVISIONS OF THIS SUBSECTION (2) RELATING TO THE
17 PERFORMANCE OF USEFUL PUBLIC SERVICE ARE ALSO APPLICABLE TO ANY
18 DRUG OFFENDER WHO RECEIVES A DIVERSION IN ACCORDANCE WITH
19 SECTION 18-1.3-101 OR WHO RECEIVES A DEFERRED SENTENCE IN
20 ACCORDANCE WITH SECTION 18-1.3-102 AND THE COMPLETION OF ANY
21 STIPULATED AMOUNT OF USEFUL PUBLIC SERVICE HOURS TO BE
22 COMPLETED BY THE DRUG OFFENDER SHALL BE ORDERED BY THE COURT
23 IN ACCORDANCE WITH THE CONDITIONS OF SUCH DEFERRED PROSECUTION
24 OR DEFERRED SENTENCE AS STIPULATED TO BY THE PROSECUTION AND THE
25 DRUG OFFENDER.

26 (3) Upon a plea of guilty, including a plea of guilty entered
27 pursuant to a deferred sentence pursuant to section 18-1.3-102 or a

1 verdict of guilty by the court or a jury, to any ~~felony~~ offense pursuant to
2 this article 18, OR UPON ENTRY OF A DIVERSION PURSUANT TO SECTION
3 18-1.3-101 FOR ANY OFFENSE UNDER THIS ARTICLE 18, the court shall
4 order the drug offender to immediately report to the sheriff's department
5 in the county where the drug offender was charged, at which time the
6 drug offender's fingerprints and photographs must be taken and returned
7 to the court, which fingerprints and photographs become a part of the
8 court's official documents and records pertaining to the charges against
9 the drug offender and the drug offender's identification in association
10 with such charges. On any trial for a violation of any criminal law of this
11 state, a duly authenticated copy of the record of former convictions and
12 judgments of any court of record for any of said crimes against the drug
13 offender named in said convictions and judgments is prima facie evidence
14 of such convictions and may be used in evidence against the drug
15 offender. Identification photographs and fingerprints that are part of the
16 record of such former convictions and judgments of any court of record
17 or which are part of the record at the place of the drug offender's
18 incarceration after sentencing for any of such former convictions and
19 judgments are prima facie evidence of the identity of the drug offender
20 and may be used in evidence against such drug offender. Any drug
21 offender who fails to immediately comply with the court's order to report
22 to the sheriff's department, to furnish fingerprints, or to have photographs
23 taken may be held in contempt of court.

24 **SECTION 5.** In Colorado Revised Statutes, 18-1-711, **amend as**
25 **it will become effective March 1, 2020,** (3)(c) as follows:

26 **18-1-711. Immunity for persons who suffer or report an**
27 **emergency drug or alcohol overdose event - definitions.** (3) The

1 immunity described in subsection (1) of this section applies to the
2 following criminal offenses:

3 (c) ~~If committed on or after March 1, 2020,~~ Unlawful possession
4 of two ounces or less of marijuana, as described in section 18-18-406
5 (5)(a)(I); or more than two ounces of marijuana but not more than six
6 ounces of marijuana ~~or not more than three ounces of marijuana~~
7 ~~concentrate,~~ as described in section 18-18-406 (4)(c); or more than six
8 ounces of marijuana BUT NO MORE THAN TWELVE OUNCES OF MARIJUANA
9 or ~~more than~~ three ounces OR LESS of marijuana concentrate as described
10 in section 18-18-406 (4)(b);

11 **SECTION 6.** In Colorado Revised Statutes, 18-1.3-501, **amend**
12 **as it will become effective March 1, 2020,** (1)(d); and **repeal as it will**
13 **become effective March 1, 2020,** (1)(d.5) as follows:

14 **18-1.3-501. Misdemeanors classified - drug misdemeanors and**
15 **drug petty offenses classified - penalties - legislative intent -**
16 **definitions.** (1) (d) ~~Except as provided in subsection (1)(d.5) of this~~
17 ~~section,~~ For purposes of sentencing a person convicted of a misdemeanor
18 drug offense described in article 18 of this title 18, committed on or after
19 October 1, 2013, drug misdemeanors are divided into two levels that are
20 distinguished from one another by the following penalties that are
21 authorized upon conviction:

22	Level	Minimum Sentence	Maximum Sentence
23	DM1	Six months imprisonment,	Eighteen months imprisonment,
24		five hundred dollar fine,	five thousand dollar fine,
25		or both	or both
26	DM2	No imprisonment,	Three hundred sixty-four days
27		fifty dollar fine	imprisonment,

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seven hundred fifty dollar
fine, or both

~~(d.5) (F) It is the intention of the general assembly to classify most drug possession on and after March 1, 2020, as a misdemeanor offense with different sentencing options and limited incarceration penalties. The purpose of this sentencing scheme is to provide offenders who are assessed to be in need of treatment or other intervention with probation supervision in conjunction with effective medical and behavioral intervention and treatment. For those drug possessors who are not in need of treatment, sentencing by the courts system should be limited. This sentencing scheme recognizes that drug use and possession is primarily a health concern and should be treated as such by Colorado courts.~~

~~(H) Notwithstanding the provisions of subsection (1)(d) of this section, for the purpose of sentencing a person convicted of a level 1 drug misdemeanor committed on or after March 1, 2020, in violation of section 18-18-403.5 or 18-18-406 (4)(b), a court may sentence an offender to probation for up to two years, with the possibility of a total of one hundred eighty days in county jail or, for a third or subsequent offense, a total of up to three hundred sixty-four days in county jail, which may be imposed in whole or in part during the time period of probation as a condition of probation or as a sanction for a violation of probation; or the court may sentence an offender to up to one hundred eighty days in the county jail; except that, for a third or subsequent offense, the court may sentence an offender to up to three hundred sixty-four days in the county jail. In addition to the sentence to probation or to the county jail, the offender may be punished by a fine of not more than one thousand dollars.~~

1 ~~(III) Notwithstanding the provisions of subsection (1)(d) of this~~
2 ~~section, for the purpose of sentencing a person convicted of a level 2 drug~~
3 ~~misdemeanor committed on or after March 1, 2020, in violation of section~~
4 ~~18-18-404, 18-18-406 (4)(c), 18-18-406.1, or 18-18-412, a court may~~
5 ~~sentence an offender to probation for up to one year, with the possibility~~
6 ~~of a total of one hundred twenty days in county jail or, for a third or~~
7 ~~subsequent offense, a total of up to one hundred eighty days in county~~
8 ~~jail, which may be imposed in whole or in part during the time period of~~
9 ~~probation as a condition of probation or as a sanction for a violation of~~
10 ~~probation; or the court may sentence an offender to up to one hundred~~
11 ~~twenty days in the county jail; except that, for a third or subsequent~~
12 ~~offense, the court may sentence an offender to up to one hundred eighty~~
13 ~~days in the county jail. In addition to the sentence to probation or to the~~
14 ~~county jail, the offender may be punished by a fine of not more than five~~
15 ~~hundred dollars.~~

16 ~~(IV) Nothing in this subsection (1)(d.5) infringes upon the~~
17 ~~authority and discretion vested with a district attorney to file~~
18 ~~misdemeanor charges in either district court or county court, which~~
19 ~~courts, pursuant to section 13-6-106, have concurrent original jurisdiction~~
20 ~~over violations of state law that constitute misdemeanors. District~~
21 ~~attorneys are encouraged to file misdemeanor or drug charges in the court~~
22 ~~where, if there is a conviction, treatment and supervision can most~~
23 ~~effectively be matched to the defendant's assessed risk and treatment need~~
24 ~~levels.~~

25 **SECTION 7.** In Colorado Revised Statutes, 18-1.3-103.5, **amend**
26 **as it will become effective March 1, 2020,** (3)(a) as follows:

27 **18-1.3-103.5. Felony convictions - vacate and enter conviction**

1 **on misdemeanor after successful completion.** (3) This section applies
2 to convictions for the following offenses:

3 (a) ~~On or after March 1, 2020,~~ Possession of a controlled
4 substance; but only when the quantity of the controlled substance is not
5 more than four grams of ~~any material, compound, mixture, or preparation~~
6 ~~containing any quantity of gamma hydroxybutyrate, including its salts,~~
7 ~~isomers, and salts of isomers~~ A SCHEDULE I OR SCHEDULE II CONTROLLED
8 SUBSTANCE; not more than two grams of METHAMPHETAMINE, HEROIN,
9 ketamine, or cathinones; or not more than four milligrams of
10 flunitrazepam. The district attorney and defendant may stipulate to the
11 amount of the controlled substance possessed by the defendant at the time
12 of sentencing, or the court shall determine the amount at the time of
13 sentencing.

14 **SECTION 8.** In Colorado Revised Statutes, 18-1.3-801, **amend**
15 **as it will become effective March 1, 2020,** (2)(b) as follows:

16 **18-1.3-801. Punishment for habitual criminals.** (2) (b) The
17 provisions of subsection (2)(a) of this section do not apply to a conviction
18 for a level 4 drug felony ~~committed on or after March 1, 2020,~~ pursuant
19 to section 18-18-403.5 (2), or a conviction for a level 4 drug felony
20 ~~committed on or after March 1, 2020,~~ for attempt or conspiracy to commit
21 unlawful possession of a controlled substance, as described in section
22 18-18-403.5 (2), if the amount of the controlled substance possessed is
23 not more than four grams ~~of any material, compound, mixture, or~~
24 ~~preparation containing any quantity of gamma hydroxybutyrate, including~~
25 ~~its salts, isomers, and salts of isomers,~~ or OF A SCHEDULE I OR SCHEDULE
26 II CONTROLLED SUBSTANCE; not more than two grams of
27 METHAMPHETAMINE, HEROIN, cathinones, or ketamine; or not more than

1 four milligrams of flunitrazepam; even if the person has been previously
2 convicted of three or more qualifying felony convictions.

3 **SECTION 9.** In Colorado Revised Statutes, **repeal** 24-32-127 as
4 follows:

5 **24-32-127. Community substance use and mental health**
6 **services grant program - creation.** ~~(1) There is created in the~~
7 ~~department of local affairs the community substance use and mental~~
8 ~~health services grant program, referred to in this section as the "grant~~
9 ~~program", to provide grants to counties that provide substance use or~~
10 ~~mental health treatment services to, facilitate diversion programs for, or~~
11 ~~develop other strategies to reduce jail and prison bed use by, persons who~~
12 ~~come into contact with the criminal justice system. A county that provides~~
13 ~~such treatment services and programs in collaboration with public health~~
14 ~~agencies, law enforcement agencies, and community-based organizations~~
15 ~~is eligible for a grant pursuant to the grant program.~~

16 ~~(2) The department shall issue a grant to any eligible county. The~~
17 ~~amount of a grant awarded pursuant to this section must be based on the~~
18 ~~cost of the services provided and the number of persons that receive~~
19 ~~services.~~

20 ~~(3) The department may develop policies and procedures~~
21 ~~necessary for the operation of the grant program, including the~~
22 ~~application process; the formula for determining the amount awarded to~~
23 ~~each eligible county; a process for verifying that the county is providing~~
24 ~~services described in this section in collaboration with public health~~
25 ~~agencies, law enforcement agencies, and community-based organizations;~~
26 ~~and a requirement that each grant recipient provides a report to the~~
27 ~~department describing how the grant funds were utilized.~~

1 ~~(4) Beginning for fiscal year 2020-21, and for each year~~
2 ~~thereafter, the general assembly shall appropriate to the department, for~~
3 ~~the purpose of providing grants pursuant to the grant program, at least one~~
4 ~~million eight hundred thousand dollars from the general fund generated~~
5 ~~from estimated savings from House Bill 19-1263, enacted in 2019.~~

6 **SECTION 10. Potential appropriation.** Pursuant to section
7 2-2-703, C.R.S., any bill that results in a net increase in periods of
8 imprisonment in state correctional facilities must include an appropriation
9 of money that is sufficient to cover any increased capital construction, any
10 operational costs, and increased parole costs that are the result of the bill
11 for the department of corrections in each of the first five years following
12 the effective date of the bill. Because this act may increase periods of
13 imprisonment, this act may require a five-year appropriation.

14 **SECTION 11. Act subject to petition - effective date -**
15 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
16 the expiration of the ninety-day period after final adjournment of the
17 general assembly (August 5, 2020, if adjournment sine die is on May 6,
18 2020); except that, if a referendum petition is filed pursuant to section 1
19 (3) of article V of the state constitution against this act or an item, section,
20 or part of this act within such period, then the act, item, section, or part
21 will not take effect unless approved by the people at the general election
22 to be held in November 2020 and, in such case, will take effect on the
23 date of the official declaration of the vote thereon by the governor.

24 (2) This act applies to offenses committed on or after the
25 applicable effective date of this act.