

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0878.01 Michael Dohr x4347

SENATE BILL 14-163

SENATE SPONSORSHIP

Steadman and King,

HOUSE SPONSORSHIP

Lee,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING CLARIFYING CHANGES TO PROVISIONS RELATED TO THE
102 SENTENCING OF PERSONS CONVICTED OF DRUG CRIMES.

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://www.leg.state.co.us/billsummaries>.)

Last year, the general assembly adopted SB13-250, which created a new sentencing structure for drug crimes. The bill makes clarifying and conforming changes to the statutes based on last year's legislation.

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

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

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

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

6 (6.7) "MISDEMEANOR" INCLUDES A DRUG MISDEMEANOR
7 DESCRIBED IN ARTICLE 18 OF TITLE 18, C.R.S.

8 (8.5) "PETTY OFFENSE" INCLUDES A DRUG PETTY OFFENSE
9 DESCRIBED IN ARTICLE 18 OF TITLE 18, C.R.S.

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

12 **13-90-107. Who may not testify without consent - definitions.**

13 (1) There are particular relations in which it is the policy of the law to
14 encourage confidence and to preserve it inviolate; therefore, a person
15 shall not be examined as a witness in the following cases:

16 (a) (II) The privilege described in this paragraph (a) does not
17 apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1) (a)
18 (IV) and (1) (a) (V), C.R.S., OR TO LEVEL 1 OR 2 DRUG FELONIES AS
19 DESCRIBED IN SECTION 18-1.3-401.5 (2) (a), C.R.S. In this instance, during
20 the marriage or afterward, a husband shall not be examined for or against
21 his wife as to any communications intended to be made in confidence and
22 made by one to the other during the marriage without his consent, and a
23 wife shall not be examined for or against her husband as to any
24 communications intended to be made in confidence and made by one to
25 the other without her consent.

26 (a.5) (II) The privilege described in this paragraph (a.5) does not
27 apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1) (a)

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

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

9 **16-10-105. Alternate jurors.** The court may direct that a
10 sufficient number of jurors in addition to the regular jury be called and
11 impaneled to sit as alternate jurors. Alternate jurors in the order in which
12 they are called shall replace jurors who, prior to the time the jury retires
13 to consider its verdict, become unable or disqualified to perform their
14 duties. Alternate jurors shall be drawn in the same manner, shall have the
15 same qualifications, shall be subject to the same examination and
16 challenges, shall take the same oath, and shall have the same functions,
17 powers, facilities, and privileges as the regular jurors. An alternate juror
18 shall be discharged when the jury retires to consider its verdict or at such
19 time as determined by the court. When alternate jurors are impaneled,
20 each side is entitled to one peremptory challenge in addition to those
21 otherwise allowed by law. In a case in which a class 1, 2, or 3 felony, as
22 described in section 18-1.3-401 (1) (a) (IV) and (1) (a) (V), C.R.S., is
23 charged, and in a case in which a level 1 or level 2 drug felony as
24 described in section 18-1.3-401.5, C.R.S., IS CHARGED, and in any case in
25 which a felony listed in section 24-4.1-302 (1), C.R.S., is charged, the
26 court shall impanel at least one juror to sit as an alternate if requested by
27 any party.

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

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

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

11 **18-1-104. "Offense" defined - offenses classified - common-law**
12 **crimes abolished.** (2) Each offense falls into one of eleven classes, ONE
13 OF SIX DRUG OFFENSE LEVELS, OR ONE UNCLASSIFIED CATEGORY. There
14 are six classes of felonies as ~~defined~~ DESCRIBED in section 18-1.3-401
15 AND FOUR LEVELS OF DRUG FELONIES AS DESCRIBED IN SECTION
16 18-1.3-401.5, three classes of misdemeanors as ~~defined~~ DESCRIBED in
17 section 18-1.3-501 AND TWO LEVELS OF DRUG MISDEMEANORS AS
18 DESCRIBED IN SECTION 18-1.3-501, **and** two classes of petty offenses as
19 ~~defined~~ DESCRIBED in section 18-1.3-503, AND THE CATEGORY OF DRUG
20 PETTY OFFENSE AS DESCRIBED IN SECTION 18-1.3-501 (1) (e).

21 **SECTION 6.** In Colorado Revised Statutes, 18-1-404, **amend** (1),
22 (2) (a), and (2) (b) as follows:

23 **18-1-404. Preliminary hearing or waiver - dispositional**
24 **hearing.** (1) Every person accused of a class 1, 2, or 3 felony OR LEVEL
25 1 OR LEVEL 2 DRUG FELONY by direct information or felony complaint has
26 the right to demand and receive a preliminary hearing within a reasonable
27 time to determine whether probable cause exists to believe that the

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

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

23 (b) Any defendant accused of a class 4, 5, or 6 felony OR LEVEL
24 3 OR LEVEL 4 DRUG FELONY who is not otherwise entitled to a preliminary
25 hearing pursuant to paragraph (a) of this subsection (2), may demand and
26 shall receive a preliminary hearing within a reasonable time pursuant to
27 subsection (1) of this section, if the defendant is in custody; except that,

1 upon motion of either party, the court shall vacate the preliminary hearing
2 if there is a reasonable showing that the defendant has been released from
3 custody prior to the preliminary hearing.

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

6 **18-1.3-103.4. Senate Bill 13-250 - legislative intent -**
7 **clarification of internal reference to level 4 drug felonies.** THE INTENT
8 OF THE GENERAL ASSEMBLY IN ENACTING SENATE BILL 13-250 WAS TO
9 ALLOW COURTS, FOR OFFENSES COMMITTED ON AND AFTER OCTOBER 1,
10 2013, TO VACATE CERTAIN LEVEL 4 DRUG FELONY CONVICTIONS AND
11 ENTER MISDEMEANOR CONVICTIONS IF THE OFFENDER COMPLETES
12 COMMUNITY-BASED SENTENCING. WHILE THE TERM "LEVEL 4 DRUG
13 FELONY" TO WHICH SECTION 18-1.3-103.5 (3) (b) REFERS WAS DESCRIBED
14 IN SECTION 18-8-405 (2) (c) (II) OF THE INTRODUCED VERSION OF SENATE
15 BILL 13-250, AN AMENDMENT TO THE BILL DURING THE LEGISLATIVE
16 PROCESS MOVED THE LEVEL 4 DRUG FELONY DESCRIPTION TO SECTION
17 18-8-405 (2) (d). THE CONFORMING CHANGE WAS NOT MADE TO THE
18 INTERNAL REFERENCE IN SECTION 18-1.3-103.5 (3) (b), RESULTING IN AN
19 INCORRECT INTERNAL REFERENCE BEING PUBLISHED IN THE 2013 VERSION
20 OF THE COLORADO REVISED STATUTES. WHEN ENACTING SENATE BILL
21 13-250, IT WAS THE INTENT OF THE GENERAL ASSEMBLY THAT THE LEVEL
22 4 DRUG FELONIES TO WHICH SECTION 18-1.3-103.5 (3) (b) REFERS BE
23 THOSE DESCRIBED IN SECTION 18-8-405 (2) (d). ACCORDINGLY, BY THE
24 PASSAGE OF SENATE BILL 14-____, ENACTED IN 2014, THE GENERAL
25 ASSEMBLY CORRECTS THE INTERNAL REFERENCE FOUND IN SECTION
26 18-1.3-103.5 (3) (b). THE CORRECTION TO THE INTERNAL REFERENCE IS
27 EFFECTIVE AS OF THE EFFECTIVE DATE OF SENATE BILL 13-250, OCTOBER

1 1, 2013, AND APPLIES TO OFFENSES COMMITTED ON OR AFTER OCTOBER 1,
2 2013.

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

5 **18-1.3-103.5. Felony convictions - vacate and enter conviction**
6 **on misdemeanor after successful completion.** (2) (a) In a case in which
7 the defendant enters a plea of guilty or is found guilty by the court or a
8 jury for a crime listed in subsection (3) of this section, the court shall
9 order, upon successful completion of any community-based sentence to
10 probation or to a community corrections program, the DRUG felony
11 conviction vacated and shall enter a conviction for a level 1 DRUG
12 misdemeanor ~~drug~~ offense of possession of a controlled substance
13 pursuant to section 18-18-403.5. Upon entry of the judgment of
14 conviction pursuant to section 18-18-403.5, the court shall indicate in its
15 order that the judgment of conviction is entered pursuant to the provisions
16 of this section.

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

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

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

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

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

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

6 (a) The defendant has a prior conviction for a crime of violence
7 as described in section 18-1.3-406 or a prior conviction for an offense that
8 is required to be sentenced pursuant to the provisions of section
9 18-1.3-406 in this state, or a crime in another state, the United States, or
10 any territory subject to the jurisdiction of the United States that would be
11 a crime of violence or ~~any~~ AN offense required to be sentenced pursuant
12 to the provisions of section 18-1.3-406 in this state;

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

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

25 **SECTION 9.** In Colorado Revised Statutes, 18-1.3-104, **amend**

26 (1) (b) as follows:

27 **18-1.3-104. Alternatives in imposition of sentence.** (1) Within

1 the limitations of the applicable statute pertaining to sentencing and
2 subject to the provisions of this title, the trial court has the following
3 alternatives in entering judgment imposing a sentence:

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

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

11 **18-1.3-401. Felonies classified - presumptive penalties.**

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

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

22 **18-1.3-401.5. Drug felonies classified - presumptive and**
23 **aggravated penalties.** (2) (b) (I) As to any person sentenced for a drug
24 felony committed on or after October 1, 2013, EXCEPT as otherwise
25 provided in ~~section 18-1.3-401 (1) (a) (III)~~ SUBPARAGRAPH (V) OF THIS
26 PARAGRAPH (b) AND IN SUBSECTION (7) OF THIS SECTION, in addition to,
27 or in lieu of, any sentence to imprisonment, probation, community

1 corrections, or work release, a fine within the following ranges may be
2 imposed for the specified level of drug felonies:

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

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

25 (7) Notwithstanding any provision of this section to the contrary,
26 if the defendant is convicted of a level 1 drug felony, the court shall
27 sentence the defendant to a ~~period~~ TERM OF INCARCERATION IN THE

1 DEPARTMENT OF CORRECTIONS of at least eight years ~~in the department of~~
2 ~~corrections~~ BUT NOT MORE THAN THIRTY-TWO YEARS. THE PRESENCE OF
3 ONE OR MORE OF THE AGGRAVATING CIRCUMSTANCES PROVIDED IN
4 PARAGRAPH (a) OF SUBSECTION (10) OF THIS SECTION OR IN SECTION
5 18-18-407 (1) REQUIRES THE COURT TO SENTENCE A DEFENDANT
6 CONVICTED OF A LEVEL 1 DRUG FELONY TO A TERM OF INCARCERATION IN
7 THE DEPARTMENT OF CORRECTIONS OF AT LEAST TWELVE YEARS BUT NO
8 MORE THAN THIRTY-TWO YEARS. THE COURT MAY IMPOSE A FINE IN
9 ADDITION TO IMPRISONMENT.

10 (10) (a) Except for a level 1 drug felony, the presence of one or
11 more of the following aggravating circumstances at the time of the
12 commission of a drug felony offense requires the court, if it sentences the
13 defendant to incarceration, to sentence the defendant to a term of at least
14 the midpoint in the presumptive range but not more than the maximum
15 term of the aggravated range:

16 (III.5) THE DEFENDANT WAS ON APPEAL BOND FOLLOWING HIS OR
17 HER CONVICTION FOR A PREVIOUS FELONY;

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

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

26 (b) AT THE TIME OF THE COMMISSION OF THE DRUG FELONY, the
27 defendant was charged with or was on bond for a delinquent act that

1 would have constituted a felony if committed by an adult;

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

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

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

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

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

19 (12) When it appears to the satisfaction of the court that the ends
20 of justice and the best interest of the public, as well as the defendant, will
21 be best served thereby, the court has the power to suspend the imposition
22 or execution of sentence for such period and upon such terms and
23 conditions as it may deem best; except that the court may not suspend a
24 sentence ~~to the minimum term of incarceration~~ when the defendant is
25 convicted of a level 1 drug felony. In no instance may a sentence be
26 suspended if the defendant is ineligible for probation pursuant to section
27 18-1.3-201, except upon an express waiver being made by the sentencing

1 court regarding a particular defendant upon recommendation of the
2 district attorney and approval of such recommendation by an order of the
3 sentencing court pursuant to section 18-1.3-201 (4).

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

6 **18-1.3-501. Misdemeanors classified - drug misdemeanors and**
7 **drug petty offenses classified - penalties - definitions.** (1) (d) For
8 purposes of sentencing a person convicted of a misdemeanor drug offense
9 described in article 18 of this title, committed on or after October 1, 2013,
10 drug misdemeanors are divided into two levels that are distinguished from
11 one another by the following penalties ~~and~~ that are authorized upon
12 conviction:

13	Level	Minimum Sentence	Maximum Sentence
14	DM1	Six months imprisonment,	Eighteen months
15			imprisonment,
16		five hundred dollars fine, or both	five thousand
17			dollars fine, or
18			both
19	DM2	No imprisonment, fifty	Twelve months
20		dollars fine,	imprisonment
21			seven hundred
22			fifty dollars fine,
23			OR BOTH

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

26 **18-1.3-801. Punishment for habitual criminals.** (2) (b) The
27 provisions of paragraph (a) of this subsection (2) shall not apply to a

1 conviction for a level 4 drug felony pursuant to section 18-18-403.5 (2),
2 or a conviction for a level 4 drug felony for attempt or conspiracy to
3 commit unlawful possession of a controlled substance, as described in
4 section 18-18-403.5 (2), if the amount of the schedule I or schedule II
5 controlled substance possessed is not more than four grams or not more
6 than two grams of methamphetamine, heroin, ~~cathinone~~ CATHINONES, OR
7 ketamine or not more THAN four milligrams of flunitrazepam, even if the
8 person has been previously convicted of three or more qualifying felony
9 convictions.

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

12 **18-2-101. Criminal attempt.** (10) (a) Except as otherwise
13 provided by law, criminal attempt to commit a level 1 drug felony is a
14 level 2 drug felony; criminal attempt to commit a level 2 drug felony is
15 a level 3 drug felony; criminal attempt to commit a level 3 drug felony is
16 a level 4 drug felony; and criminal attempt to commit a level 4 drug
17 felony is a ~~level 1 drug misdemeanor~~ LEVEL 4 DRUG FELONY.

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

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

24 **18-2-206. Penalties for criminal conspiracy - when convictions**
25 **barred.** (7) (a) Except as otherwise provided by law, conspiracy to
26 commit a level 1 drug felony is a level 2 drug felony; conspiracy to
27 commit a level 2 drug felony is a level 3 drug felony; conspiracy to

1 commit a level 3 drug felony is a level 4 drug felony; and conspiracy to
2 commit a level 4 drug felony is a level ~~1 drug misdemeanor~~ 4 DRUG
3 FELONY.

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

7 **18-18-102. Definitions.** As used in this article:

8 (3.5) (a) "Cathinones" means any synthetic or natural material
9 containing any quantity of a cathinone chemical structure, including any
10 analogs, salts, isomers, or salts of isomers of any synthetic or natural
11 material containing a cathinone chemical structure, including but not
12 limited to the following substances and any analogs, salts, isomers, or
13 salts of isomers of any of the following substances:

- 14 (IX) 4'-Methyl-alpha-pyrrolidinopropiophenone (~~MPPP~~)
15 (MePPP);
- 16 (XXIII) 2-(Methylamino)-1-phenyl-1-pentanone Pentedrone); ~~and~~
- 17 (XXIV) N-methylethcathinone (4-MEC); AND
- 18 (XXV) (S)-2-AMINO-1-PHENYL-1-PROPANONE (CATHINONE).

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

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

25 **18-18-205. Schedule III.** (2) Unless specifically excepted by
26 Colorado or federal law, or Colorado or federal regulation, or more
27 specifically included in another schedule, the following controlled

1 substances are listed in schedule III:

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

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

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

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

15 **18-18-403.5. Unlawful possession of a controlled substance.**

16 (2) A person who violates subsection (1) of this section by possessing:

17 (a) Any material, compound, mixture, or preparation that contains
18 any quantity of flunitrazepam, ketamine, CATHINONES, or a controlled
19 substance listed in schedule I or II of part 2 of this article commits a level
20 4 drug felony.

21 **SECTION 19.** In Colorado Revised Statutes, 18-18-405, **amend**
22 (2) (a) (I) (B), (2) (b) (I) (B), (2) (c) (II), (2) (d) (II), and (5) as follows:

23 **18-18-405. Unlawful distribution, manufacturing, dispensing,**
24 **or sale.** (2) Except as otherwise provided for an offense concerning
25 marijuana and marijuana concentrate in section 18-18-406 and for special
26 offenders as provided in section 18-18-407, any person who violates any
27 of the provisions of subsection (1) of this section:

1 (a) Commits a level 1 drug felony and is subject to the mandatory
2 sentencing provisions in section 18-1.3-401.5 (7) if:

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

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

7 (b) Commits a level 2 drug felony if:

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

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

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

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

17 (d) Commits a level 4 drug felony if:

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

26 (5) When a person commits unlawful distribution, manufacture,
27 dispensing, sale, or possession with intent to manufacture, dispense, sell,

1 or distribute any schedule I or schedule II controlled substance, as listed
2 in section 18-18-203 or 18-18-204, flunitrazepam, ~~or~~ ketamine, OR
3 CATHINONES, or conspires with one or more persons to commit the
4 offense, pursuant to subsection (1) of this section, twice or more within
5 a period of six months, without having been placed in jeopardy for the
6 prior offense or offenses, the aggregate amount of the schedule I or
7 schedule II controlled substance, flunitrazepam, ~~or~~ ketamine, OR
8 CATHINONES involved may be used to determine the level of drug offense.

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

11 **18-18-407. Special offender - definitions.** (1) ~~Upon~~ A PERSON
12 WHO COMMITS a felony ~~conviction~~ OFFENSE under this part 4, ~~the presence~~
13 ~~of~~ UNDER any one or more of the following aggravating circumstances
14 ~~designated the defendant a special offender shall require the court to~~
15 ~~sentence the defendant to the department of corrections for at least the~~
16 ~~minimum term of years within the presumptive range for~~ COMMITS a level
17 1 drug felony AND IS A SPECIAL OFFENDER:

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

24 (d) (II) The defendant or a confederate of the defendant possessed
25 a firearm, as defined in section 18-1-901 (3) (h), to which the defendant
26 or confederate had access in a manner that posed a risk to others or in a
27 vehicle the defendant was occupying at the time of the commission of the

1 violation; of subsection (1) of this section;

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

4 **18-19-103. Source of revenues - allocation of moneys.**

5 (5) (d) Moneys from the correctional treatment cash fund may be used to
6 serve the following populations:

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

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

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

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

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

20 **24-72-308.6. Sealing of criminal conviction records**
21 **information for offenses involving controlled substances for**
22 **convictions entered on or after July 1, 2011. (2) Sealing of conviction**
23 **records.** (a) (II.5) (B) If the offense is a level 2 ~~or level 3~~ drug
24 misdemeanor in article 18 of title 18, C.R.S., the petition may be filed
25 three years after the later of the date of the final disposition of all criminal
26 proceedings against the defendant or the release of the defendant from
27 supervision concerning a criminal conviction.

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

19 **SECTION 23. Effective date.** (1) Sections 1 through 7, 9, 10,
20 11, 12, 21, and 22 of this act take effect upon passage.

21 (2) Sections 8 and 13 through 20 of this act take effect on July 1,
22 2014.

23 **SECTION 24. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.