

**Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0784.01 Michael Dohr x4347

**SENATE BILL 12-163**

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**A BILL FOR AN ACT**

101      **CONCERNING CHANGES TO IMPROVE OUTCOMES FOR PERSONS**  
102            **CONVICTED OF POSSESSION OF CERTAIN CONTROLLED**  
103            **SUBSTANCES CRIMES, AND, IN CONNECTION THEREWITH,**  
104            **ESTABLISHING A MISDEMEANOR PENALTY FOR POSSESSION OF**  
105            **CONTROLLED SUBSTANCES, REQUIRING A POST-ENACTMENT**  
106            **REVIEW OF THE IMPLEMENTATION OF THIS ACT, AND MAKING AN**  
107            **APPROPRIATION.**

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**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*

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.*

*http://www.leg.state.co.us/bills/summaries.*)

The bill reduces the penalty for possession of 4 grams or less of certain drugs from a class 6 felony to a class 1 misdemeanor and reduces the penalty for possession of more than 4 grams of those certain drugs from a class 4 felony to a class 6 felony. The bill appropriates the savings from the reduction in the criminal penalties to substance abuse treatment programs. The department of human services will develop a trauma-informed substance abuse treatment and best practices training program. The bill requires a post-enactment review after two years that addresses the impact of the bill on jails and the amount of funding for jail-based treatment.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds and declares that:

4 (a) Colorado drug policy and public safety would be improved by  
5 better differentiating between drug offenders who are primarily users and  
6 addicts and those more serious offenders who engage in the crimes of  
7 distribution, manufacturing, and trafficking of drugs.

8 (b) For those drug offenders who are primarily users and addicts,  
9 focusing efforts and funding on supervision and treatment in the  
10 community would be a more effective use of resources than the current  
11 system of escalating punishments that often result in a prison sentence.

12 (2) Therefore, the general assembly determines and declares that,  
13 to ensure that the best interests of Colorado are being served, the  
14 legislative service agencies of the general assembly shall conduct a  
15 post-enactment review of this act and report their conclusions to the  
16 judiciary committees of the house of representatives and senate, or any  
17 successor committees. The review shall include consideration of the  
18 following information:

19 (a) The impact of this act on jail populations in state, based on

1 offenders receiving jail sentences for convictions pursuant to section  
2 18-18-403.5, C.R.S., that would have been prison sentences when the  
3 offenses were felonies; and

4 (b) The amount of funding provided to jail-based treatment  
5 programs since the enactment of Senate Bill 12-163, enacted in 2012.

6 **SECTION 2.** In Colorado Revised Statutes, 18-18-401, **add** (1)  
7 (d) as follows:

8 **18-18-401. Legislative declaration.** (1) The general assembly  
9 hereby finds, determines, and declares that:

10 (d) COLORADO DRUG POLICY AND PUBLIC SAFETY WOULD BE  
11 IMPROVED BY BETTER DIFFERENTIATING BETWEEN DRUG OFFENDERS WHO  
12 ARE PRIMARILY USERS AND ADDICTS AND THOSE MORE SERIOUS  
13 OFFENDERS WHO ENGAGE IN THE CRIMES OF DISTRIBUTION,  
14 MANUFACTURING, AND TRAFFICKING OF DRUGS. FOR THOSE DRUG  
15 OFFENDERS WHO ARE PRIMARILY USERS AND ADDICTS, FOCUSING EFFORTS  
16 AND FUNDING ON SUPERVISION AND TREATMENT IN THE COMMUNITY  
17 WOULD BE A MORE EFFECTIVE USE OF RESOURCES THAN THE CURRENT  
18 SYSTEM OF ESCALATING PUNISHMENTS THAT OFTEN RESULT IN A PRISON  
19 SENTENCE.

20 **SECTION 3.** In Colorado Revised Statutes, 18-18-403.5, **amend**  
21 (2) (a) (I), (2) (a) (II), (2) (b) (I), and (2) (b) (II); and **add** (2) (b.3), (2)  
22 (b.7), and (2) (d) as follows:

23 **18-18-403.5. Unlawful possession of a controlled substance.**

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

25 (a) (I) Any material, compound, mixture, or preparation weighing  
26 four grams or less that contains any quantity of flunitrazepam, ketamine,  
27 or a controlled substance listed in schedule I or II of part 2 of this article

1 except methamphetamine commits a ~~class 6 felony~~ CLASS 1  
2 MISDEMEANOR.

3 (II) Any material, compound, mixture, or preparation weighing  
4 more than four grams that contains any quantity of flunitrazepam,  
5 ketamine, or a controlled substance listed in schedule I or II of part 2 of  
6 this article except methamphetamine commits a ~~class 4 felony~~ CLASS 6  
7 FELONY.

8 (b) (I) Any material, compound, mixture, or preparation weighing  
9 two grams or less that contains any quantity of methamphetamine OR  
10 GAMMA HYDROXYBUTYRATE [GHB] commits a ~~class 6 felony~~ CLASS 1  
11 MISDEMEANOR.

12 (II) Any material, compound, mixture, or preparation weighing  
13 more than two grams that contains any quantity of methamphetamine OR  
14 GAMMA HYDROXYBUTYRATE [GHB] commits a ~~class 4 felony~~ CLASS 6  
15 FELONY.

16 (b.3) (I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION  
17 WEIGHING TWO HUNDRED MILLIGRAMS OR LESS THAT CONTAINS ANY  
18 QUANTITY OF FLUNITRAZEPAM, COMMITS A CLASS 1 MISDEMEANOR.

19 (II) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION  
20 WEIGHING MORE THAN TWO HUNDRED MILLIGRAMS THAT CONTAINS ANY  
21 QUANTITY OF FLUNITRAZEPAM, COMMITS A CLASS 6 FELONY.

22 (b.7) (I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION  
23 WEIGHING EIGHT HUNDRED MILLIGRAMS OR LESS THAT CONTAINS ANY  
24 QUANTITY OF KETAMINE, COMMITS A CLASS 1 MISDEMEANOR.

25 (II) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION  
26 WEIGHING MORE THAN EIGHT HUNDRED MILLIGRAMS THAT CONTAINS ANY  
27 QUANTITY OF KETAMINE, COMMITS A CLASS 6 FELONY.

1 (d) NOTHING IN THIS SECTION INFRINGES UPON THE AUTHORITY  
2 AND DISCRETION VESTED WITH THE DISTRICT ATTORNEY TO FILE  
3 MISDEMEANOR CHARGES IN DISTRICT OR COUNTY COURT, AS THESE  
4 COURTS HAVE CONCURRENT ORIGINAL JURISDICTION OVER MISDEMEANOR  
5 OFFENSES PURSUANT TO SECTION 13-6-106, C.R.S. DISTRICT ATTORNEYS  
6 ARE ENCOURAGED TO FILE MISDEMEANOR OR DRUG CHARGES IN THE  
7 COURT WHERE, IF THERE IS A CONVICTION, TREATMENT AND SUPERVISION  
8 CAN MOST EFFECTIVELY BE MATCHED TO THE DEFENDANT'S ASSESSED RISK  
9 AND TREATMENT NEED LEVELS.

10 **SECTION 4.** In Colorado Revised Statutes, 18-19-103, **amend**  
11 (4) (a); and **add** (3.7) as follows:

12 **18-19-103. Source of revenues - allocation of moneys.**  
13 (3.7) (a) MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY PURSUANT  
14 TO SENATE BILL 12-163, ENACTED IN 2012, SHALL BE DEPOSITED INTO THE  
15 DRUG OFFENDER SURCHARGE FUND CREATED PURSUANT TO SUBSECTION  
16 (4) OF THIS SECTION AND SHALL BE ALLOCATED PURSUANT TO SECTION  
17 16-11.5-102 (3) (c), C.R.S.

18 (b) EACH FISCAL YEAR, THE GENERAL ASSEMBLY SHALL  
19 APPROPRIATE TO THE DRUG OFFENDER SURCHARGE FUND CREATED  
20 PURSUANT TO SUBSECTION (4) OF THIS SECTION THE SAVINGS GENERATED  
21 BY SENATE BILL 12-163, ENACTED IN 2012.

22 (4) (a) There is hereby created in the state treasury a drug offender  
23 surcharge fund, which shall consist of moneys received by the state  
24 treasurer pursuant to paragraph (d) of subsection (3) AND SUBSECTIONS  
25 (3.5) AND (3.7) of this section. ~~and subsection (3.5) of this section~~ All  
26 interest derived from the deposit and investment of moneys in the fund  
27 shall be credited to the fund. Any moneys not appropriated by the general

1 assembly shall remain in the drug offender surcharge fund and shall not  
2 be transferred or revert to the general fund of the state at the end of any  
3 fiscal year. All moneys in the fund shall be subject to annual  
4 appropriation by the general assembly to the judicial department, the  
5 department of corrections, the division of criminal justice of the  
6 department of public safety, and the department of human services, after  
7 consideration of the plan developed pursuant to section 16-11.5-102 (3),  
8 C.R.S., to cover the costs associated with substance abuse assessment,  
9 testing, education, and treatment.

10 **SECTION 5.** In Colorado Revised Statutes, 16-11.5-102, **amend**  
11 (3) (c) as follows:

12 **16-11.5-102. Substance abuse assessment - standardized**  
13 **procedure.** (3) (c) (I) The moneys allocated to the drug offender  
14 surcharge fund pursuant to section 18-19-103 (3.5) AND (3.7), C.R.S.,  
15 shall only be used to cover the costs associated with the treatment of  
16 substance abuse or co-occurring disorders of adult offenders who are  
17 assessed to be in need of treatment and who are:

- 18 (A) On diversion;
- 19 (B) On probation;
- 20 (C) On parole;
- 21 (D) In community corrections; or
- 22 (E) In jail.

23 (II) The plan to allocate moneys deposited in the drug offender  
24 surcharge fund pursuant to section 18-19-103 (3.5) AND (3.7), C.R.S.,  
25 shall be developed pursuant to paragraph (a) of this subsection (3) and  
26 shall also include a representative designated by the Colorado district  
27 attorney's council, the state public defender, a representative from a

1 statewide association representing county sheriffs, and a representative  
2 from a statewide association representing counties.

3 **SECTION 6.** In Colorado Revised Statutes, 18-19-103, **add** (3.7)  
4 as follows:

5 **18-19-103. Source of revenues - allocation of moneys.**

6 (3.7) (a) MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY PURSUANT  
7 TO SENATE BILL 12-163, ENACTED IN 2012, SHALL BE DEPOSITED INTO THE  
8 CORRECTIONAL TREATMENT CASH FUND CREATED PURSUANT TO  
9 SUBSECTION (4) OF THIS SECTION AND SHALL BE ALLOCATED PURSUANT TO  
10 SECTION 16-11.5-102 (3) (c), C.R.S.

11 (b) EACH FISCAL YEAR, THE GENERAL ASSEMBLY SHALL  
12 APPROPRIATE TO THE CORRECTIONAL TREATMENT CASH FUND CREATED  
13 PURSUANT TO SUBSECTION (4) OF THIS SECTION THE SAVINGS GENERATED  
14 BY SENATE BILL 12-163, ENACTED IN 2012.

15 **SECTION 7.** In Colorado Revised Statutes, 18-19-103, **amend**  
16 **as amended by Senate Bill 12-104** (4) (a) as follows:

17 **18-19-103. Source of revenues - allocation of moneys.**

18 (4) (a) There is hereby created in the state treasury the correctional  
19 treatment cash fund, referred to in this paragraph (a) as the "fund", which  
20 shall consist of moneys received by the state treasurer pursuant to  
21 paragraph (d) of subsection (3) AND SUBSECTIONS (3.5) AND (3.7) of this  
22 section ~~and subsection (3.5) of this section~~ and, in addition, each year, the  
23 general assembly shall appropriate at least two million two hundred  
24 thousand dollars generated from estimated savings from the enactment of  
25 Senate Bill 03-318, enacted in 2003, to the fund. The moneys in the fund  
26 shall be used for the purposes described in paragraph (c) of subsection (5)  
27 of this section. All interest derived from the deposit and investment of

1 moneys in the fund shall be credited to the fund. Any moneys not  
2 appropriated by the general assembly shall remain in the fund and shall  
3 not be transferred or revert to the general fund of the state at the end of  
4 any fiscal year.

5 **SECTION 8.** In Colorado Revised Statutes, **add** 26-1-140 as  
6 follows:

7 **26-1-140. Trauma-informed substance abuse treatment and**  
8 **best practices training program.** BY JUNE 30, 2013, THE STATE  
9 DEPARTMENT SHALL DEVELOP A TRAINING PROGRAM FOR  
10 TRAUMA-INFORMED SUBSTANCE ABUSE TREATMENT AND BEST PRACTICES  
11 AND SHALL MAKE THE TRAINING PROGRAM AVAILABLE TO LICENSED  
12 SUBSTANCE ABUSE TREATMENT PROGRAMS.

13 **SECTION 9.** In Colorado Revised Statutes, 26-1-201, **amend** (1)  
14 (aa) and (1) (bb); and **add** (1) (cc) as follows:

15 **26-1-201. Programs administered - services provided -**  
16 **department of human services.** (1) This section specifies the programs  
17 to be administered and the services to be provided by the department of  
18 human services. These programs and services include the following:

19 (aa) The Colorado mental health institute at Pueblo, as specified  
20 in article 93 of title 27, C.R.S.; ~~and~~

21 (bb) The Colorado mental health institute at Fort Logan, as  
22 specified in article 94 of title 27, C.R.S.; AND

23 (cc) THE TRAUMA-INFORMED SUBSTANCE ABUSE TREATMENT AND  
24 BEST PRACTICES TRAINING PROGRAM SPECIFIED IN SECTION 26-1-140.

25 **SECTION 10. Accountability.** Two years after this act becomes  
26 law and in accordance with section 2-2-1201, Colorado Revised Statutes,  
27 the legislative service agencies of the Colorado General Assembly shall



1     conduct a post-enactment review of the implementation of this act  
2     utilizing the information contained in the legislative declaration set forth  
3     in section 1 of this act.

4             **SECTION 11. Effective date - applicability.** (1) This act takes  
5     effect July 1, 2012; except that sections 4 and 5 of this act take effect only  
6     if Senate Bill 12-104 does not become law, and sections 6 and 7 of this  
7     act take effect only if Senate Bill 12-104 becomes law.

8             (2) The provisions of this act apply to offenses committed on or  
9     after July 1, 2012.

10            **SECTION 12. Safety clause.** The general assembly hereby finds,  
11     determines, and declares that this act is necessary for the immediate  
12     preservation of the public peace, health, and safety.