

**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

SENATE SPONSORSHIP

Mitchell and Steadman, Aguilar, Cadman, Grantham, Guzman, Jahn, Neville, Spence

HOUSE SPONSORSHIP

Beezley and Levy, Barker, DelGrosso, Ferrandino, Massey, McCann, Nikkel, Singer, Vigil

Senate Committees

Judiciary
Finance
Appropriations

House Committees

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.**

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.

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) and (2) (e) 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; EXCEPT THAT A THIRD OR SUBSEQUENT CONVICTION
3 PURSUANT TO THIS SECTION WITHIN FIVE PRECEDING YEARS IS A CLASS 6
4 FELONY.

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

10 (b) (I) Any material, compound, mixture, or preparation weighing
11 two grams or less that contains any quantity of methamphetamine OR
12 GAMMA HYDROXYBUTYRATE [GHB] commits a ~~class 6 felony~~ CLASS 1
13 MISDEMEANOR; EXCEPT THAT A THIRD OR SUBSEQUENT CONVICTION
14 PURSUANT TO THIS SECTION WITHIN FIVE PRECEDING YEARS IS A CLASS 6
15 FELONY.

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

20 (b.3) (I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
21 WEIGHING TWO HUNDRED MILLIGRAMS OR LESS THAT CONTAINS ANY
22 QUANTITY OF FLUNITRAZEPAM, COMMITS A CLASS 1 MISDEMEANOR;
23 EXCEPT THAT A THIRD OR SUBSEQUENT CONVICTION PURSUANT TO THIS
24 SECTION WITHIN FIVE PRECEDING YEARS IS A CLASS 6 FELONY.

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

1 (b.7) (I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
2 WEIGHING EIGHT HUNDRED MILLIGRAMS OR LESS THAT CONTAINS ANY
3 QUANTITY OF KETAMINE, COMMITS A CLASS 1 MISDEMEANOR; EXCEPT
4 THAT A THIRD OR SUBSEQUENT CONVICTION PURSUANT TO THIS SECTION
5 WITHIN FIVE PRECEDING YEARS IS A CLASS 6 FELONY.

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

9 (d) IN ORDER FOR A DEFENDANT TO BE ABLE TO PARTICIPATE IN A
10 TREATMENT COURT PROGRAM ESTABLISHED BY A CHIEF JUDGE IN A
11 JUDICIAL DISTRICT, A DISTRICT ATTORNEY MAY FILE MISDEMEANOR
12 CHARGES PURSUANT TO THIS SECTION IN DISTRICT COURT BY DIRECT
13 INFORMATION WITHOUT THE CONSENT OF THE DISTRICT COURT.

14 (e) IF THE DISTRICT COURT SENTENCES A DEFENDANT TO
15 PROBATION FOR A MISDEMEANOR VIOLATION OF THIS SECTION, THE
16 DEFENDANT SHALL BE SUPERVISED BY STATE PROBATION.

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

19 **18-19-103. Source of revenues - allocation of moneys.**
20 (3.7) (a) MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY PURSUANT
21 TO SENATE BILL 12-163, ENACTED IN 2012, SHALL BE DEPOSITED INTO THE
22 DRUG OFFENDER SURCHARGE FUND CREATED PURSUANT TO SUBSECTION
23 (4) OF THIS SECTION AND SHALL BE ALLOCATED PURSUANT TO SECTION
24 16-11.5-102 (3) (c), C.R.S.

25 (b) EACH FISCAL YEAR, THE GENERAL ASSEMBLY SHALL
26 APPROPRIATE TO THE DRUG OFFENDER SURCHARGE FUND CREATED
27 PURSUANT TO SUBSECTION (4) OF THIS SECTION THE SAVINGS GENERATED

1 BY SENATE BILL 12-163, ENACTED IN 2012.

2 (4) (a) There is hereby created in the state treasury a drug offender
3 surcharge fund, which shall consist of moneys received by the state
4 treasurer pursuant to paragraph (d) of subsection (3) AND SUBSECTIONS
5 (3.5) AND (3.7) of this section. ~~and subsection (3.5) of this section~~ All
6 interest derived from the deposit and investment of moneys in the fund
7 shall be credited to the fund. Any moneys not appropriated by the general
8 assembly shall remain in the drug offender surcharge fund and shall not
9 be transferred or revert to the general fund of the state at the end of any
10 fiscal year. All moneys in the fund shall be subject to annual
11 appropriation by the general assembly to the judicial department, the
12 department of corrections, the division of criminal justice of the
13 department of public safety, and the department of human services, after
14 consideration of the plan developed pursuant to section 16-11.5-102 (3),
15 C.R.S., to cover the costs associated with substance abuse assessment,
16 testing, education, and treatment.

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

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

- 25 (A) On diversion;
26 (B) On probation;
27 (C) On parole;

1 (D) In community corrections; or

2 (E) In jail.

3 (II) The plan to allocate moneys deposited in the drug offender
4 surcharge fund pursuant to section 18-19-103 (3.5) AND (3.7), C.R.S.,
5 shall be developed pursuant to paragraph (a) of this subsection (3) and
6 shall also include a representative designated by the Colorado district
7 attorney's council, the state public defender, a representative from a
8 statewide association representing county sheriffs, and a representative
9 from a statewide association representing counties.

10 **SECTION 6.** In Colorado Revised Statutes, 18-19-103, **add** (3.7)
11 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 CORRECTIONAL TREATMENT CASH FUND CREATED PURSUANT TO
16 SUBSECTION (4) OF THIS SECTION AND SHALL BE ALLOCATED PURSUANT TO
17 SECTION 16-11.5-102 (3) (c), C.R.S.

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

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

24 **18-19-103. Source of revenues - allocation of moneys.**

25 (4) (a) There is hereby created in the state treasury the correctional
26 treatment cash fund, referred to in this paragraph (a) as the "fund", which
27 shall consist of moneys received by the state treasurer pursuant to

1 paragraph (d) of subsection (3) AND SUBSECTIONS (3.5) AND (3.7) of this
2 section ~~and subsection (3.5) of this section~~ and, in addition, each year, the
3 general assembly shall appropriate at least two million two hundred
4 thousand dollars generated from estimated savings from the enactment of
5 Senate Bill 03-318, enacted in 2003, to the fund. The moneys in the fund
6 shall be used for the purposes described in paragraph (c) of subsection (5)
7 of this section. All interest derived from the deposit and investment of
8 moneys in the fund shall be credited to the fund. Any moneys not
9 appropriated by the general assembly shall remain in the fund and shall
10 not be transferred or revert to the general fund of the state at the end of
11 any fiscal year.

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

14 **26-1-140. Trauma-informed substance abuse treatment and**
15 **best practices training program.** BY JUNE 30, 2013, THE STATE
16 DEPARTMENT SHALL DEVELOP A TRAINING PROGRAM FOR
17 TRAUMA-INFORMED SUBSTANCE ABUSE TREATMENT AND BEST PRACTICES
18 AND SHALL MAKE THE TRAINING PROGRAM AVAILABLE TO LICENSED
19 SUBSTANCE ABUSE TREATMENT PROGRAMS.

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

22 **26-1-201. Programs administered - services provided -**
23 **department of human services.** (1) This section specifies the programs
24 to be administered and the services to be provided by the department of
25 human services. These programs and services include the following:

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

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

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

5 **SECTION 10. Accountability.** Two years after this act becomes
6 law and in accordance with section 2-2-1201, Colorado Revised Statutes,
7 the legislative service agencies of the Colorado General Assembly shall
8 conduct a post-enactment review of the implementation of this act
9 utilizing the information contained in the legislative declaration set forth
10 in section 1 of this act.

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

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

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