

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

PREAMENDED

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

LLS NO. 10-0902.01 Michael Dohr

HOUSE BILL 10-1352

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A BILL FOR AN ACT

101 **CONCERNING CHANGES TO CRIMES INVOLVING CONTROLLED**
102 **SUBSTANCES.**

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>.)

The bill changes the classification, scope, definitions, and other specific provisions of certain drug-related crimes and the crime of fraud and deceit. The bill also includes conforming amendments and an effective date.

Section 1 makes legislative findings and declarations.

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.*

Section 2 lowers the penalty for unlawful use of a controlled substance.

Sections 3 and 4 separate the crime of possession of a controlled substance, other than marijuana, from the crime of manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute a controlled substance, and change the penalties.

Section 5 makes changes to marijuana offenses and penalties.

Section 6 amends the special offender designations for certain drug crimes as follows:

! Increases the amount of a schedule I or II controlled substance necessary to designate as a special offender a person who commits unlawful introduction, distribution, or importation into the state; and

! Clarifies the conditions under which possession of a firearm in the commission of a drug offense designates an offender as a special offender.

Section 7 lowers the penalty for fraud and deceit in connection with controlled substances from a class 5 to a class 6 felony.

Section 8 directs the general assembly to appropriate a portion of the cost savings generated by the bill to the drug offender treatment fund.

Section 9 requires the division of criminal justice in the department of public safety to analyze annually and report the fiscal savings generated by the bill.

Sections 10 through 23 make conforming amendments.

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

2 **SECTION 1.** 18-18-401, Colorado Revised Statutes, is amended
3 to read:

4 **18-18-401. Legislative declaration.** (1) The general assembly
5 hereby finds, determines, and declares that: ~~the strict control of controlled~~
6 ~~substances in this state is necessary for the immediate and future~~
7 ~~preservation of the public peace, health, and safety.~~

8 (a) THE REGULATION OF CONTROLLED SUBSTANCES IN THIS STATE
9 IS IMPORTANT AND NECESSARY FOR THE PRESERVATION OF PUBLIC SAFETY
10 AND PUBLIC HEALTH;

11 (b) SUCCESSFUL, COMMUNITY-BASED SUBSTANCE ABUSE

1 TREATMENT AND EDUCATION PROGRAMS, IN CONJUNCTION WITH MENTAL
2 HEALTH TREATMENT AS NECESSARY, PROVIDE EFFECTIVE TOOLS IN THE
3 EFFORT TO REDUCE DRUG USAGE AND CRIMINAL BEHAVIOR IN
4 COMMUNITIES. THERAPEUTIC INTERVENTION AND ONGOING
5 INDIVIDUALIZED TREATMENT PLANS PREPARED THROUGH THE USE OF
6 MEANINGFUL AND PROVEN ASSESSMENT TOOLS AND EVALUATIONS OFFER
7 A POTENTIAL ALTERNATIVE TO INCARCERATION IN APPROPRIATE
8 CIRCUMSTANCES AND SHOULD BE UTILIZED ACCORDINGLY.

9 (c) SAVINGS RECOGNIZED FROM REDUCTIONS IN INCARCERATION
10 RATES SHOULD BE DEDICATED TOWARD FUNDING COMMUNITY-BASED
11 TREATMENT OPTIONS AND OTHER MECHANISMS THAT ARE ACCESSIBLE TO
12 ALL OF THE STATE'S COUNTIES FOR THE IMPLEMENTATION AND
13 CONTINUATION OF SUCH PROGRAMS.

14 **SECTION 2.** 18-18-404 (1) (a), (2), and (3), Colorado Revised
15 Statutes, are amended to read:

16 **18-18-404. Unlawful use of a controlled substance.**
17 (1) (a) Except as is otherwise provided for offenses concerning
18 ~~marihuana~~ MARIJUANA and ~~marihuana~~ MARIJUANA concentrate in sections
19 18-18-406 and 18-18-406.5, any person who uses any controlled
20 substance, except when it is dispensed by or under the direction of a
21 person licensed or authorized by law to prescribe, administer, or dispense
22 ~~such~~ THE controlled substance for bona fide medical needs, commits A
23 CLASS 2 MISDEMEANOR.

24 ~~(I) A class 6 felony, if the controlled substance is listed in~~
25 ~~schedule I or II of part 2 of this article;~~

26 ~~(II) A class 1 misdemeanor if the controlled substance is listed in~~
27 ~~schedule III, IV, or V of part 2 of this article.~~

1 (2) ~~When any person is found guilty of a violation of subsection~~
2 ~~(1) of this section, after trial or upon a plea of guilty or nolo contendere,~~
3 ~~the court shall conduct an investigation to determine whether or not the~~
4 ~~defendant is:~~

- 5 (a) ~~Addicted to a controlled substance;~~
- 6 (b) ~~In need of treatment for the use of a controlled substance; or~~
- 7 (c) ~~Dependent on a controlled substance.~~

8 (3) ~~If the court determines that the defendant is addicted to, a~~
9 ~~person in need of treatment for, or dependent upon a controlled substance,~~
10 ~~the court may declare the defendant a person in need of treatment, and the~~
11 ~~court, without imposing sentence and with the consent of such person,~~
12 ~~shall suspend further proceedings, shall order the person to participate in~~
13 ~~a treatment program, and shall order such other reasonable conditions for~~
14 ~~such person as it may require for such period, not to exceed four years, as~~
15 ~~the court may prescribe. Upon any violation of a condition of the~~
16 ~~treatment order, the court may impose sentence and proceed as otherwise~~
17 ~~provided by law. The court, in its discretion, may dismiss the~~
18 ~~proceedings against such person and discharge him or her from treatment~~
19 ~~before the expiration of the period prescribed for the treatment. If, during~~
20 ~~the period of this treatment, such person does not violate any of the~~
21 ~~conditions set forth by the court, the court, upon the expiration of such~~
22 ~~period, shall discharge such person and dismiss any further proceedings~~
23 ~~against him or her. Such discharge and dismissal shall not be termed a~~
24 ~~conviction for the purposes of disqualification or disapproval imposed by~~
25 ~~law upon conviction of a crime, including the penalties prescribed by law~~
26 ~~for second or subsequent convictions or for any other purpose.~~

27 **SECTION 3.** 18-18-405 (1) (a), the introductory portion to

1 18-18-405 (2) (a), 18-18-405 (2) (a) (I) (A), (2.3) (a), (2.5) (a), and (2.5)
2 (b), the introductory portion to 18-18-405 (3) (a), and 18-18-405 (5),
3 Colorado Revised Statutes, are amended to read:

4 **18-18-405. Unlawful distribution, manufacturing, dispensing,**
5 **or sale.** (1) (a) Except as authorized by part 3 of article 22 of title 12,
6 C.R.S., or by part 2 or 3 of this article, it is unlawful for any person
7 knowingly to manufacture, dispense, sell, OR distribute, ~~possess~~, or to
8 possess with intent to manufacture, dispense, sell, or distribute, a
9 controlled substance; or induce, attempt to induce, or conspire with one
10 or more other persons, to manufacture, dispense, sell, distribute, ~~possess~~,
11 or possess with intent to manufacture, dispense, sell, or distribute, a
12 controlled substance; or possess one or more chemicals or supplies or
13 equipment with intent to manufacture a controlled substance.

14 (2) (a) Except as is otherwise provided ~~in subsection (2.3) of this~~
15 ~~section for possession offenses not including possession with the intent~~
16 ~~to distribute involving one gram or less of any material, compound,~~
17 ~~mixture, or preparation that contains any quantity of a schedule I through~~
18 ~~IV controlled substance, and for offenses concerning marihuana~~
19 MARIJUANA and ~~marihuana~~ MARIJUANA concentrate in section 18-18-406
20 and for offenses involving minors in section 18-18-407 (1) (g), any
21 person who violates any of the provisions of subsection (1) of this
22 section:

23 (I) In the case of a controlled substance listed in schedule I or II
24 of part 2 of this article, commits:

25 (A) A class 3 felony; ~~except that a person commits a class 4 felony~~
26 ~~if such violation is based on the possession of a controlled substance~~
27 ~~listed in schedule II unless otherwise provided in paragraph (a) of~~

1 ~~subsection (3) of this section; or~~

2 ~~(2.3) (a) Any person who commits the offense of possession in~~
3 ~~violation of the provisions of subsection (1) of this section by possessing~~
4 ~~any material, compound, mixture, or preparation, weighing one gram or~~
5 ~~less that contains any quantity of a controlled substance listed in~~
6 ~~schedules I through IV of part 2 of this article commits:~~

7 ~~(I) A class 6 felony; or~~

8 ~~(II) A class 4 felony, if the violation is committed subsequent to~~
9 ~~any prior conviction under subparagraph (I), (II), or (III) of paragraph (a)~~
10 ~~of subsection (2) of this section or under this subsection (2.3).~~

11 (2.5) (a) Notwithstanding the provisions of subparagraph (III) of
12 paragraph (a) of subsection (2) of this section, a person who violates the
13 provisions of subsection (1) of this section with regard to flunitrazepam
14 OR KETAMINE commits a class 3 felony; except that the person commits
15 a class 2 felony if the violation is committed subsequent to a prior
16 conviction in this or any other state, the United States, or any territory
17 subject to the jurisdiction of the United States of a violation involving
18 flunitrazepam OR KETAMINE or to which subparagraph (I) of paragraph (a)
19 of subsection (2) of this section applies or would apply if convicted in this
20 state.

21 (b) Any person convicted of violating the provisions of subsection
22 (1) of this section with regard to flunitrazepam OR KETAMINE shall be
23 subject to the mandatory sentencing provisions of subsection (3) of this
24 section.

25 (3) (a) Unless a greater sentence is required pursuant to the
26 provisions of another statute, any person convicted pursuant to
27 subparagraph (I) of paragraph (a) of subsection (2) of this section for

1 knowingly manufacturing, dispensing, selling, distributing, ~~possessing,~~
2 or possessing with intent to manufacture, dispense, sell, or distribute, or
3 inducing, attempting to induce, or conspiring with one or more other
4 persons, to manufacture, dispense, sell, distribute, ~~possess,~~ or possess
5 with intent to manufacture, dispense, sell, or distribute an amount that is
6 or has been represented to be:

7 (5) When a person commits unlawful distribution, manufacture,
8 dispensing, sale, or possession with intent to manufacture, dispense, sell,
9 or distribute any schedule I or schedule II controlled substance, as listed
10 in section 18-18-203 or 18-18-204, ~~or~~ flunitrazepam, OR KETAMINE,
11 pursuant to subsection (1) of this section, twice or more within a period
12 of six months, without having been placed in jeopardy for the prior
13 offense or offenses, and the aggregate amount of the schedule I or
14 schedule II controlled substance, ~~or~~ flunitrazepam, OR KETAMINE involved
15 equals or exceeds twenty-five grams, the defendant shall be sentenced
16 pursuant to the mandatory sentencing requirements specified in
17 subsection (3) of this section.

18 **SECTION 4.** Part 4 of article 18 of title 18, Colorado Revised
19 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
20 read:

21 **18-18-403.5. Unlawful possession of a controlled substance.**

22 (1) EXCEPT AS AUTHORIZED BY PART 3 OF ARTICLE 22 OF TITLE 12,
23 C.R.S., OR BY PART 2 OR 3 OF THIS ARTICLE, IT IS UNLAWFUL FOR ANY
24 PERSON KNOWINGLY TO POSSESS A CONTROLLED SUBSTANCE.

25 (2) A PERSON WHO VIOLATES SUBSECTION (1) BY POSSESSING:

26 (a) (I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
27 WEIGHING FOUR GRAMS OR LESS THAT CONTAINS ANY QUANTITY OF

1 FLUNITRAZEPAM, KETAMINE, OR A CONTROLLED SUBSTANCE LISTED IN
2 SCHEDULE I OR II OF PART 2 OF THIS ARTICLE EXCEPT METHAMPHETAMINE
3 COMMITS A CLASS 6 FELONY.

4 (II) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
5 WEIGHING MORE THAN FOUR GRAMS THAT CONTAINS ANY QUANTITY OF
6 FLUNITRAZEPAM, KETAMINE, OR A CONTROLLED SUBSTANCE LISTED IN
7 SCHEDULE I OR II OF PART 2 OF THIS ARTICLE EXCEPT METHAMPHETAMINE
8 COMMITS A CLASS 4 FELONY.

9 (b) (I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
10 WEIGHING TWO GRAMS OR LESS THAT CONTAINS ANY QUANTITY OF
11 METHAMPHETAMINE COMMITS A CLASS 6 FELONY.

12 (II) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION
13 WEIGHING MORE THAN TWO GRAMS THAT CONTAINS ANY QUANTITY OF
14 METHAMPHETAMINE COMMITS A CLASS 4 FELONY.

15 (c) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT
16 CONTAINS ANY QUANTITY OF A CONTROLLED SUBSTANCE LISTED IN
17 SCHEDULE III, IV, OR V OF PART 2 OF THIS ARTICLE EXCEPT
18 FLUNITRAZEPAM OR KETAMINE COMMITS A CLASS 1 MISDEMEANOR.

19 **SECTION 5.** 18-18-405, Colorado Revised Statutes, is amended
20 BY THE ADDITION OF A NEW SUBSECTION to read:

21 **18-18-405. Unlawful distribution, manufacturing, dispensing,**
22 **sale, or possession.** (7) NOTWITHSTANDING THE PROVISIONS OF
23 SUBSECTION (2) OF THIS SECTION, AND EXCEPT AS OTHERWISE PROVIDED
24 IN SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF
25 SUBSECTION (2) OR PARAGRAPH (a) OF SUBSECTION (2.5) OF THIS SECTION,
26 A PERSON VIOLATES SUBSECTION (1) OF THIS SECTION BY SELLING,
27 DISPENSING, OR DISTRIBUTING A CONTROLLED SUBSTANCE OTHER THAN

1 MARIJUANA OR MARIJUANA CONCENTRATE TO A MINOR UNDER EIGHTEEN
2 YEARS OF AGE AND WHO IS AT LEAST EIGHTEEN YEARS OF AGE AND AT
3 LEAST TWO YEARS OLDER THAN THE MINOR COMMITS A CLASS 3 FELONY
4 AND, UNLESS A GREATER SENTENCE IS PROVIDED UNDER ANY OTHER
5 STATUTE, SHALL BE SENTENCED TO THE DEPARTMENT OF CORRECTIONS
6 FOR TERM OF AT LEAST THE MINIMUM, BUT NOT MORE THAN TWICE THE
7 MAXIMUM, OF THE PRESUMPTIVE RANGE PROVIDED FOR SUCH OFFENSE IN
8 SECTION 18-1.3-401 (1) (a) AS MODIFIED PURSUANT TO SECTION
9 18-1.3-410 (10).

10

11 **SECTION 6.** 18-18-406 (1), (3), (4), (5), (6), (7), and (8),
12 Colorado Revised Statutes, are amended, and the said 18-18-406 is
13 further amended BY THE ADDITION OF THE FOLLOWING NEW
14 SUBSECTIONS, to read:

15 **18-18-406. Offenses relating to marijuana and marijuana**
16 **concentrate.** (1) Any person who possesses ~~not more than one ounce~~
17 TWO OUNCES OR LESS of ~~marihuana~~ MARIJUANA commits a class 2 petty
18 offense and, upon conviction thereof, shall be punished by a fine of not
19 more than one hundred dollars.

20 (3) (a) (I) Any person who openly and publicly displays,
21 consumes, or uses ~~not more than one ounce~~ TWO OUNCES OR LESS of
22 ~~marihuana~~ MARIJUANA commits a class 2 petty offense and, upon
23 conviction thereof, shall be punished, at a minimum, by a fine of not less
24 than one hundred dollars or, at a maximum, by a fine of not more than
25 one hundred dollars and, notwithstanding the provisions of section
26 18-1.3-503, by fifteen days in the county jail.

27 (II) Open and public display, consumption, or use of more than

1 ~~one ounce~~ TWO OUNCES of ~~marihuana~~ MARIJUANA or any amount of
2 ~~marihuana~~ MARIJUANA concentrate shall be deemed possession thereof,
3 and violations shall be punished as provided for in subsection (4) OR (4.5)
4 of this section.

5 (b) Except as is otherwise provided for in paragraph (a) of this
6 subsection (3), consumption or use of ~~marihuana~~ MARIJUANA or
7 ~~marihuana~~ MARIJUANA concentrate shall be deemed possession thereof,
8 and violations shall be punished as provided for in subsections (1), (2),
9 ~~and~~ (4), AND (4.5) of this section.

10 (4) (a) Any person who possesses more than ~~one ounce~~ TWO
11 OUNCES of ~~marihuana~~ MARIJUANA but ~~less than eight~~ NO MORE THAN SIX
12 ounces of ~~marihuana~~ MARIJUANA commits:

13 (I) A ~~class 1~~ CLASS 2 misdemeanor. ~~or~~

14 (II) A ~~class 5 felony, if the violation is committed subsequent to~~
15 ~~a prior conviction in this or any other state, the United States, or any~~
16 ~~territory subject to the jurisdiction of the United States of a violation to~~
17 ~~which this subsection (4) applies or would apply if convicted in this state.~~

18 (b) Any person who possesses ~~eight~~ MORE THAN SIX ounces ~~or~~
19 ~~more of marihuana or any amount of marihuana concentrate~~ MARIJUANA
20 BUT NO MORE THAN TWELVE OUNCES OF MARIJUANA OR THREE OUNCES OR
21 LESS OF MARIJUANA CONCENTRATE commits:

22 (I) A ~~class 5 felony, or~~ CLASS 1 MISDEMEANOR.

23 (II) A ~~class 4 felony, if the violation is committed subsequent to~~
24 ~~a prior conviction in this or any other state, the United States, or any~~
25 ~~territory subject to the jurisdiction of the United States of a violation to~~
26 ~~which this subsection (4) applies or would apply if convicted in this state.~~

27 (c) ANY PERSON WHO POSSESSES MORE THAN TWELVE OUNCES OF

1 MARIJUANA OR MORE THAN THREE OUNCES OF MARIJUANA CONCENTRATE
2 COMMITS A CLASS 6 FELONY.

3 (5) Transferring or dispensing ~~not more than one ounce~~ TWO
4 OUNCES OR LESS of ~~marihuana~~ MARIJUANA from one person to another for
5 no consideration ~~shall be deemed possession~~ IS A CLASS 2 PETTY OFFENSE
6 and SHALL not BE DEEMED dispensing or sale thereof.

7 (6) (a) (I) ~~The court may utilize treatment, probation, and deferred~~
8 ~~prosecution or deferred sentencing for any person who violates subsection~~
9 ~~(4) of this section.~~ A PERSON SHALL NOT KNOWINGLY PROCESS OR
10 MANUFACTURE ANY MARIJUANA OR MARIJUANA CONCENTRATE OR
11 KNOWINGLY ALLOW TO BE PROCESSED OR MANUFACTURED ON LAND
12 OWNED, OCCUPIED, OR CONTROLLED BY HIM OR HER ANY MARIJUANA OR
13 MARIJUANA CONCENTRATE EXCEPT AS AUTHORIZED PURSUANT TO PART 3
14 OF ARTICLE 22 OF TITLE 12, C.R.S.

15 (II) ANY PERSON WHO VIOLATES THE PROVISIONS OF
16 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) COMMITS:

17 (A) A CLASS 4 FELONY; OR

18 (B) A CLASS 3 FELONY IF THE VIOLATION IS COMMITTED
19 SUBSEQUENT TO A PRIOR CONVICTION IN THIS OR ANY OTHER STATE, THE
20 UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE
21 UNITED STATES OF A VIOLATION TO WHICH SUBPARAGRAPH (I) OF THIS
22 PARAGRAPH (a) APPLIES OR WOULD APPLY IF COMMITTED IN THIS STATE.

23 (b) (I) EXCEPT AS IS OTHERWISE PROVIDED IN SUBSECTION (7) OF
24 THIS SECTION AND EXCEPT AS AUTHORIZED BY PART 3 OF ARTICLE 22 OF
25 TITLE 12, C.R.S., OR BY PART 2 OR 3 OF THIS ARTICLE, IT IS UNLAWFUL FOR
26 ANY PERSON KNOWINGLY TO DISPENSE, SELL, DISTRIBUTE, OR POSSESS
27 WITH INTENT TO MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE

1 MARIJUANA OR MARIJUANA CONCENTRATE; OR ATTEMPT, INDUCE,
2 ATTEMPT TO INDUCE, OR CONSPIRE WITH ONE OR MORE OTHER PERSONS,
3 TO DISPENSE, SELL, DISTRIBUTE, OR POSSESS WITH INTENT TO
4 MANUFACTURE, DISPENSE, SELL, OR DISTRIBUTE MARIJUANA OR
5 MARIJUANA CONCENTRATE.

6 (II) AS USED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b),
7 "DISPENSE" DOES NOT INCLUDE LABELING, AS DEFINED IN SECTION
8 12-22-102 (16), C.R.S.

9 (III) ANY PERSON WHO VIOLATES ANY OF THE PROVISIONS OF
10 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) COMMITS:

11 (A) A CLASS 5 FELONY IF THE AMOUNT OF MARIJUANA IS LESS
12 THAN FIVE POUNDS OR THE AMOUNT OF MARIJUANA CONCENTRATE IS LESS
13 THAN ONE POUND;

14 (B) A CLASS 4 FELONY IF THE AMOUNT OF MARIJUANA IS AT LEAST
15 FIVE POUNDS BUT NOT MORE THAN ONE HUNDRED POUNDS OR THE
16 AMOUNT OF MARIJUANA CONCENTRATE IS AT LEAST ONE POUND BUT NOT
17 MORE THAN ONE HUNDRED POUNDS;

18 (C) A CLASS 3 FELONY IF THE AMOUNT OF MARIJUANA OR
19 MARIJUANA CONCENTRATE IS MORE THAN ONE HUNDRED POUNDS; OR

20 (D) A CLASS 3 FELONY IF THE VIOLATION IS COMMITTED
21 SUBSEQUENT TO ANY PRIOR CONVICTION IN THIS OR ANY OTHER STATE,
22 THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION
23 OF THE UNITED STATES OF A VIOLATION TO WHICH SUBPARAGRAPH (I) OF
24 THIS PARAGRAPH (b) APPLIES OR WOULD APPLY IF COMMITTED IN THIS
25 STATE.

26 (7) (a) Any provision of this article to the contrary
27 notwithstanding, any person eighteen years of age or older who SELLS,

1 transfers, or dispenses more than ~~one ounce~~ TWO OUNCES BUT LESS THAN
2 FIVE POUNDS of ~~marihuana~~ MARIJUANA for consideration to any person
3 under eighteen years of age but at least fifteen years of age or ~~any amount~~
4 LESS THAN ONE POUND of ~~marihuana~~ MARIJUANA concentrate, with or
5 without consideration, to another person under eighteen years of age
6 commits a class 4 felony and, in addition to the punishment prescribed in
7 section 18-1.3-401, shall be punished by a fine of not more than five
8 thousand dollars. For offenses committed on or after July 1, 1985, the
9 fine shall be in an amount within the presumptive range set out in section
10 18-1.3-401 (1) (a) (III).

11 (b) THE SALE, TRANSFER, OR DISPENSING OF FIVE OR MORE POUNDS
12 OF MARIJUANA OR ONE POUND OR MORE OF MARIJUANA CONCENTRATE TO
13 A PERSON UNDER EIGHTEEN YEARS OF AGE BUT AT LEAST FIFTEEN YEARS
14 OF AGE IS A CLASS 3 FELONY.

15 (c) Any person eighteen years of age or older who SELLS,
16 transfers, or dispenses any amount of ~~marihuana~~ MARIJUANA OR
17 MARIJUANA CONCENTRATE, with or without consideration, to any person
18 under ~~the age of~~ fifteen years OF AGE commits a ~~class 4~~ CLASS 3 felony,
19 and, in addition to the punishment provided in section 18-1.3-401, shall
20 be punished by a fine of not more than five thousand dollars AND THE
21 COURT SHALL BE REQUIRED TO SENTENCE THE DEFENDANT TO THE
22 DEPARTMENT OF CORRECTIONS FOR A TERM THAT IS AT LEAST THE
23 MINIMUM IN THE PRESUMPTIVE RANGE BUT NO MORE THAN THE MAXIMUM
24 TERM AUTHORIZED FOR THE PUNISHMENT OF A CLASS 3 FELONY. For
25 offenses committed on or after July 1, 1985, the fine shall be in an
26 amount within the presumptive range set out in section 18-1.3-401 (1) (a)
27 (III).

1 (d) Any person commits a class 3 felony, if the violation is
2 committed subsequent to a prior conviction in this or any other state, the
3 United States, or any territory subject to the jurisdiction of the United
4 States of a violation to which PARAGRAPH (a) OF this subsection (7)
5 applies or would apply if convicted in this state, and, in addition to the
6 punishment provided in section 18-1.3-401, the court shall sentence the
7 defendant to the department of corrections for at least the minimum term
8 in the presumptive range. For offenses committed on or after July 1,
9 1985, the fine shall be in an amount within the presumptive range set out
10 in section 18-1.3-401 (1) (a) (III).

11 [REDACTED]
12 (7.5) EXCEPT FOR A PERSON WHO LAWFULLY CULTIVATES MEDICAL
13 MARIJUANA PURSUANT TO THE AUTHORITY GRANTED IN SECTION 14 OF
14 ARTICLE XVIII OF THE STATE CONSTITUTION, A PERSON SHALL NOT
15 KNOWINGLY CULTIVATE, GROW, OR PRODUCE A MARIJUANA PLANT OR
16 KNOWINGLY ALLOW A MARIJUANA PLANT TO BE CULTIVATED, GROWN, OR
17 PRODUCED ON LAND THAT THE PERSON OWNS, OCCUPIES, OR CONTROLS.
18 A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBSECTION (7.5)
19 COMMITS:

20 (a) A CLASS 1 MISDEMEANOR, IF THE OFFENSE INVOLVES SIX OR
21 FEWER PLANTS; OR

22 (b) A CLASS 5 FELONY IF THE OFFENSE INVOLVES MORE THAN SIX
23 BUT FEWER THAN THIRTY PLANTS; OR

24 (c) A CLASS 4 FELONY IF THE OFFENSE INVOLVES THIRTY OR MORE
25 PLANTS.

26 (8) (a) (I) ~~No person knowingly shall cultivate, grow, produce,~~
27 ~~process, or manufacture any marihuana or marihuana concentrate or~~

1 knowingly allow to be cultivated, grown, produced, processed, or
2 manufactured on land owned, occupied, or controlled by him any
3 marihuana or marihuana concentrate except as authorized pursuant to part
4 3 of article 22 of title 12, C.R.S.

5 (H) Any person who violates the provisions of subparagraph (I)
6 of this paragraph (a) commits:

7 (A) A class 4 felony; or

8 (B) A class 3 felony, if the violation is committed subsequent to
9 a prior conviction in this or any other state, the United States, or any
10 territory subject to the jurisdiction of the United States of a violation to
11 which this subsection (8) applies or would apply if convicted in this state.

12 (b) (I) Except as is otherwise provided in subsection (7) of this
13 section and except as authorized by part 3 of article 22 of title 12, C.R.S.,
14 or by part 2 or 3 of this article, it is unlawful for any person knowingly to
15 manufacture, dispense, sell, distribute, or possess with intent to
16 manufacture, dispense, sell, or distribute marihuana or marihuana
17 concentrate; or attempt, induce, attempt to induce, or conspire with one
18 or more other persons, to manufacture, dispense, sell, distribute, or
19 possess with intent to manufacture, dispense, sell, or distribute marihuana
20 or marihuana concentrate.

21 (H) As used in subparagraph (I) of this paragraph (b), "dispense"
22 does not include labeling, as defined in section 12-22-102 (16), C.R.S.

23 (HH) Any person who violates any of the provisions of
24 subparagraph (I) of this paragraph (b) commits:

25 (A) A class 4 felony; or

26 (B) A class 3 felony, if the violation is committed subsequent to
27 any prior conviction in this or any other state, the United States, or any

1 ~~territory subject to the jurisdiction of the United States of a violation to~~
2 ~~which this subsection (8) applies or would apply if convicted in this state.~~

3 **SECTION 7.** 18-18-407 (1) (d), (1) (e), and (1) (f), Colorado
4 Revised Statutes, are amended to read:

5 **18-18-407. Special offender.** (1) Upon a felony conviction
6 under this part 4, the presence of any one or more of the following
7 extraordinary aggravating circumstances designating the defendant a
8 special offender shall require the court to sentence the defendant to the
9 department of corrections for a term of at least the minimum term of years
10 within the presumptive range for a class 2 felony but not more than twice
11 the maximum term of years within the presumptive range for a class 2
12 felony:

13 (d) The defendant unlawfully introduced, distributed, or imported
14 into the state of Colorado MORE THAN FOUR GRAMS OF any schedule I or
15 II controlled substance ~~contained~~ LISTED in part 2 of this article OR MORE
16 THAN TWO GRAMS OF METHAMPHETAMINE;

17 (e) The defendant unlawfully sold, dispensed, distributed,
18 possessed, or imported into the state of Colorado a quantity in excess of
19 one hundred pounds of ~~marihuana~~ MARIJUANA or ~~marihuana~~ MARIJUANA
20 concentrate;

21 (f) (I) The defendant used, displayed, OR possessed ~~or had~~
22 ~~available for use~~ ON HIS OR HER PERSON OR WITHIN HIS OR HER IMMEDIATE
23 REACH, a deadly weapon as defined in section 18-1-901 (3) (e) AT THE
24 TIME OF THE COMMISSION OF A VIOLATION OF THIS PART 4; OR

25 (II) THE DEFENDANT OR A CONFEDERATE OF THE DEFENDANT
26 POSSESSED A FIREARM, AS DEFINED IN SECTION 18-1-901 (3) (h), TO WHICH
27 THE DEFENDANT OR CONFEDERATE HAD ACCESS IN A MANNER THAT POSED

1 A RISK TO OTHERS OR IN A VEHICLE THE DEFENDANT WAS OCCUPYING
2 DURING THE COMMISSION OF A VIOLATION OF THIS PART 4;

3 **SECTION 8.** 18-18-415 (2), Colorado Revised Statutes, is
4 amended to read:

5 **18-18-415. Fraud and deceit.** (2) Any person who violates any
6 provision of this section commits:

7 (a) A ~~class 5~~ CLASS 6 felony and shall be punished as provided in
8 section 18-1.3-401. ~~or~~

9 (b) ~~A class 4 felony, if the violation is committed subsequent to~~
10 ~~a prior conviction for a violation to which this subsection (2) applies and~~
11 ~~shall be punished as provided in section 18-1.3-401.~~

12 **SECTION 9.** 18-19-103 (4) (a) and (5.5), Colorado Revised
13 Statutes, are amended, and the said 18-19-103 is further amended BY
14 THE ADDITION OF A NEW SUBSECTION, to read:

15 **18-19-103. Source of revenues - allocation of moneys.**
16 (3.5) MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY PURSUANT TO
17 HOUSE BILL 10-1352, ENACTED IN 2010, SHALL BE DEPOSITED INTO THE
18 DRUG OFFENDER SURCHARGE FUND CREATED PURSUANT TO SUBSECTION
19 (4) OF THIS SECTION AND SHALL BE ALLOCATED PURSUANT TO SECTION
20 16-11.5-102 (3) (c), C.R.S.

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

1 general fund of the state at the end of any fiscal year. All moneys in the
2 fund shall be subject to annual appropriation by the general assembly to
3 the judicial department, the department of corrections, the division of
4 criminal justice of the department of public safety, and the department of
5 human services, after consideration of the plan developed pursuant to
6 section 16-11.5-102 (3), C.R.S., to cover the costs associated with
7 substance abuse assessment, testing, education, and treatment.

8 (5.5) (a) There is hereby created in the state treasury a drug
9 offender treatment fund, REFERRED TO IN THIS SUBSECTION (5.5) AS THE
10 "FUND", that shall consist of moneys appropriated thereto. In addition, the
11 fund may accept gifts, grants, and donations. All interest derived from
12 the deposit and investment of moneys in the fund shall be credited to the
13 fund. Any moneys not appropriated by the general assembly shall remain
14 in the ~~drug offender treatment~~ fund and shall not be transferred or revert
15 to the general fund of the state at the end of any fiscal year. All moneys
16 in the fund shall be subject to annual appropriation by the general
17 assembly to the judicial department for allocation to the interagency task
18 force on treatment for costs associated with community-based substance
19 abuse treatment. EACH FISCAL YEAR, THE GENERAL ASSEMBLY SHALL
20 APPROPRIATE TO THE FUND THE SAVINGS GENERATED BY HOUSE BILL
21 10-1352, ENACTED IN 2010. THE APPROPRIATION SHALL BE MADE AFTER
22 CONSIDERATION OF THE DIVISION OF CRIMINAL JUSTICE'S ANNUAL REPORT
23 REQUIRED PURSUANT TO SECTION 24-33.5-503 (1) (u), C.R.S.

24 (b) Notwithstanding any provision of paragraph (a) of this
25 subsection (5.5) to the contrary, on April 20, 2009, the state treasurer
26 shall deduct three hundred fifty thousand dollars from the ~~drug offender~~
27 ~~treatment~~ fund and transfer such sum to the general fund.

1 **SECTION 10.** 16-11.5-102 (3), Colorado Revised Statutes, is
2 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

3 **16-11.5-102. Substance abuse assessment - standardized**
4 **procedure.** (3) (c) (I) THE MONEYS ALLOCATED TO THE DRUG OFFENDER
5 SURCHARGE FUND PURSUANT TO SECTION 18-19-103 (3.5), C.R.S., SHALL
6 ONLY BE USED TO COVER THE COSTS ASSOCIATED WITH THE TREATMENT
7 OF SUBSTANCE ABUSE OR CO-OCCURRING DISORDERS OF ADULT
8 OFFENDERS WHO ARE ASSESSED TO BE IN NEED OF TREATMENT AND WHO
9 ARE:

10 (A) ON DIVERSION;

11 (B) ON PROBATION;

12 (C) ON PAROLE;

13 (D) IN COMMUNITY CORRECTIONS; OR

14 (E) IN JAIL.

15 (II) THE PLAN TO ALLOCATE MONEYS DEPOSITED IN THE DRUG
16 OFFENDER SURCHARGE FUND PURSUANT TO SECTION 18-19-103 (3.5),
17 C.R.S., SHALL BE DEVELOPED PURSUANT TO PARAGRAPH (a) OF
18 SUBSECTION (3) AND SHALL ALSO INCLUDE A REPRESENTATIVE
19 DESIGNATED BY THE COLORADO DISTRICT ATTORNEY'S COUNCIL, THE
20 STATE PUBLIC DEFENDER, A REPRESENTATIVE FROM A STATEWIDE
21 ASSOCIATION REPRESENTING COUNTY SHERIFFS, AND REPRESENTATIVE
22 FROM A STATEWIDE ASSOCIATION REPRESENTING COUNTIES.

23 **SECTION 11.** 24-33.5-503 (1), Colorado Revised Statutes, is
24 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

25 **24-33.5-503. Duties of division.** (1) The division has the
26 following duties:

27 (u) TO ANALYZE THE AMOUNT OF FISCAL SAVINGS THAT HOUSE

1 BILL 10-1352, ENACTED IN 2010, HAS GENERATED OVER THE PREVIOUS
2 FISCAL YEAR. BEGINNING JANUARY 15, 2011, THE DIVISION SHALL REPORT
3 THE ANALYSIS ANNUALLY TO THE JOINT BUDGET COMMITTEE.

4 SECTION 12. 12-22-303 (18), Colorado Revised Statutes, is
5 amended to read:

6 12-22-303. **Definitions.** As used in this part 3, unless the context
7 otherwise requires:

8 (18) "~~Marihuana concentrate~~" "MARIJUANA CONCENTRATE" means
9 hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative,
10 preparation, compound, or mixture, whether natural or synthesized, of
11 tetrahydrocannabinols.

12 SECTION 13. 12-22-304 (7), Colorado Revised Statutes, is
13 amended to read:

14 12-22-304. **License required - controlled substances - repeal.**
15 (7) No license shall be issued under this part 3 to a researcher,
16 manufacturer, or distributor of ~~marihuana~~ MARIJUANA or ~~marihuana~~
17 MARIJUANA concentrate.

18 SECTION 14. 16-13-303 (1) (c) (II), Colorado Revised Statutes,
19 is amended to read:

20 16-13-303. **Class 1 public nuisance.** (1) Every building or part
21 of a building including the ground upon which it is situate and all fixtures
22 and contents thereof, every vehicle, and any real property shall be deemed
23 a class 1 public nuisance when:

24 (c) (II) Used for unlawful possession of any controlled substance,
25 as defined in section 18-18-102 (5), C.R.S., except for possession of less
26 than ~~eight~~ SIXTEEN ounces of ~~marihuana~~ MARIJUANA;

27 SECTION 15. 16-13-503 (2), Colorado Revised Statutes, is

1 amended to read:

2 **16-13-503. Subject acts.** (2) Mere possession of less than ~~eight~~
3 SIXTEEN ounces of ~~marihuana~~ MARIJUANA shall not be an act subject to
4 the provisions of this part 5.

5 **SECTION 16.** 18-1.3-201 (2) (c), Colorado Revised Statutes, is
6 amended to read:

7 **18-1.3-201. Application for probation.** (2) (c) Notwithstanding
8 the provisions of paragraph (a) of this subsection (2) and subsection (4)
9 of this section, an offender convicted of a violation of ~~section 18-18-405~~
10 ~~(2.3)~~ SECTION 18-18-403.5 may be eligible for probation upon
11 recommendation of the district attorney.

12 **SECTION 17.** 18-8-203 (1), Colorado Revised Statutes, is
13 amended to read:

14 **18-8-203. Introducing contraband in the first degree.** (1) A
15 person commits introducing contraband in the first degree if he or she
16 knowingly and unlawfully:

17 (a) Introduces or attempts to introduce a dangerous instrument, ~~as~~
18 ~~defined in subsection (4) of this section,~~ malt, vinous, or spirituous liquor,
19 as defined in section 12-47-103, C.R.S., fermented malt beverage, as
20 defined in section 12-46-103, C.R.S., controlled substance, as defined in
21 section ~~12-22-303 (7), C.R.S.~~ 18-18-102 (5), or ~~marihuana~~ MARIJUANA or
22 ~~marihuana~~ MARIJUANA concentrate, as defined in section 12-22-303 (17)
23 and (18), C.R.S., into a detention facility or at any location where an
24 inmate is or is likely to be located, while ~~such~~ THE inmate is in the
25 custody and under the jurisdiction of a political subdivision of the state
26 of Colorado or the department of corrections, but not on parole; or

27 (b) Being a person confined in a detention facility, makes any

1 dangerous instrument, controlled substance, ~~marihuana~~ MARIJUANA or
2 ~~marihuana~~ MARIJUANA concentrate, or alcohol.

3 **SECTION 18.** 18-18-102 (5), (18), and (19), Colorado Revised
4 Statutes, are amended to read:

5 **18-18-102. Definitions.** As used in this article:

6 (5) "Controlled substance" means a drug, substance, or immediate
7 precursor included in schedules I through V of part 2 of this article,
8 including cocaine, ~~marihuana~~ MARIJUANA, and ~~marihuana~~ MARIJUANA
9 concentrate.

10 (18) ~~"Marihuana"~~ or "Marijuana" means all parts of the plant
11 cannabis sativa L., whether growing or not, the seeds thereof, the resin
12 extracted from any part of the plant, and every compound, manufacture,
13 salt, derivative, mixture, or preparation of the plant, its seeds, or its resin.
14 It does not include fiber produced from the stalks, oil or cake made from
15 the seeds of the plant, or sterilized seed of the plant which is incapable of
16 germination if these items exist apart from any other item defined as
17 ~~"marihuana"~~ "MARIJUANA" in this subsection (18). ~~"Marihuana"~~
18 "MARIJUANA" does not include ~~marihuana~~ MARIJUANA concentrate as
19 defined in subsection (19) of this section.

20 (19) ~~"Marihuana concentrate"~~ "MARIJUANA CONCENTRATE" means
21 hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative,
22 preparation, compound, or mixture, whether natural or synthesized, of
23 tetrahydrocannabinols.

24 **SECTION 19.** 18-18-406.5 (1) and (2), Colorado Revised
25 Statutes, are amended to read:

26 **18-18-406.5. Unlawful use of marijuana in a detention facility.**

27 (1) Any person confined in any detention facility in this state who

1 possesses or uses up to eight ounces of ~~marihuana~~ MARIJUANA commits
2 a class 6 felony; except that, if the person commits a second or
3 subsequent violation where both the initial and subsequent violations
4 involved more than one ounce of ~~marihuana~~ MARIJUANA, the person
5 commits a class 5 felony.

6 (2) Any person confined in any detention facility in this state who
7 possesses or uses eight ounces or more of ~~marihuana~~ MARIJUANA shall be
8 subject to the provisions of section 18-18-406 (4) (b).

9 **SECTION 20. Repeal.** 18-18-408, Colorado Revised Statutes,
10 is repealed.

11 **SECTION 21.** 18-18-414 (1) (d), Colorado Revised Statutes, is
12 amended to read:

13 **18-18-414. Unlawful acts - licenses - penalties.** (1) Except as
14 otherwise provided in this article or in article 22 of title 12, C.R.S., the
15 following acts are unlawful:

16 (d) The dispensing of any ~~marihuana~~ MARIJUANA or ~~marihuana~~
17 MARIJUANA concentrate;

18 **SECTION 22.** 18-18-426 (1) (c), the introductory portion to
19 18-18-426 (1) (g), and 18-18-426 (1) (g) (V), Colorado Revised Statutes,
20 are amended to read:

21 **18-18-426. Drug paraphernalia - definitions.** As used in
22 sections 18-18-425 to 18-18-430, unless the context otherwise requires:

23 (1) "Drug paraphernalia" means all equipment, products, and
24 materials of any kind which are used, intended for use, or designed for
25 use in planting, propagating, cultivating, growing, harvesting,
26 manufacturing, compounding, converting, producing, processing,
27 preparing, testing, analyzing, packaging, repackaging, storing, containing,

1 concealing, injecting, ingesting, inhaling, or otherwise introducing into
2 the human body a controlled substance in violation of the laws of this
3 state. "Drug paraphernalia" includes, but is not limited to:

4 (c) Separation gins and sifters used, intended for use, or designed
5 for use in removing twigs and seeds from or in otherwise cleaning or
6 refining ~~marihuana~~ MARIJUANA;

7 (g) Objects used, intended for use, or designed for use in
8 ingesting, inhaling, or otherwise introducing ~~marihuana~~ MARIJUANA,
9 cocaine, hashish, or hashish oil into the human body, such as:

10 (V) Roach clips, meaning objects used to hold burning material,
11 such as a ~~marihuana~~ MARIJUANA cigarette that has become too small or
12 too short to be held in the hand;

13 **SECTION 23.** 19-2-104 (1) (a) (I), Colorado Revised Statutes, is
14 amended to read:

15 **19-2-104. Jurisdiction.** (1) Except as otherwise provided by law,
16 the juvenile court shall have exclusive original jurisdiction in
17 proceedings:

18 (a) Concerning any juvenile ten years of age or older who has
19 violated:

20 (I) Any federal or state law, except nonfelony state traffic, game
21 and fish, and parks and recreation laws or ~~regulations~~ RULES, the offenses
22 specified in section 18-13-121, C.R.S., concerning tobacco products, the
23 offense specified in section 18-13-122, C.R.S., concerning the illegal
24 possession or consumption of ethyl alcohol by an underage person, and
25 the offenses specified in section 18-18-406 (1) and (3), C.R.S.,
26 concerning ~~marihuana~~ MARIJUANA and ~~marihuana~~ MARIJUANA
27 concentrate;

1 **SECTION 24.** 25-5-415 (1) (l), Colorado Revised Statutes, is
2 amended to read:

3 **25-5-415. Misbranding.** (1) A drug or device shall be deemed
4 to be misbranded:

5 (l) If it is for use by man and contains any quantity of the narcotic
6 or hypnotic substance alpha eucaine, barbituric acid, betaeucaine, bromal,
7 cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, ~~marihuana~~
8 MARIJUANA, morphine, opium, paraldehyde, peyote, or sulphonmethane,
9 or any chemical derivative of such substance, which derivative, after
10 investigation, has been found to be and designated as habit-forming by
11 ~~regulations~~ RULES issued by the department or pursuant to the federal act,
12 unless its label bears the name and quantity or proportion of ~~such~~ THE
13 substance or derivative and in juxtaposition therewith the statement
14 "Warning - May be habit-forming";

15 **SECTION 25.** 26-6-108 (2) (c.5), Colorado Revised Statutes, is
16 amended to read:

17 **26-6-108. Denial of license - suspension - revocation -**
18 **probation - refusal to renew license - fines.** (2) The department may
19 deny an application, or suspend, revoke, or make probationary the license
20 of any facility regulated and licensed under this part 1 or assess a fine
21 against the licensee pursuant to section 26-6-114 should the licensee, an
22 affiliate of the licensee, a person employed by the licensee, or a person
23 who resides with the licensee at the facility:

24 (c.5) Be convicted of unlawful use of a controlled substance as
25 specified in section 18-18-404, C.R.S., unlawful distribution,
26 manufacturing, dispensing, sale, or possession of a controlled substance
27 as specified in section 18-18-403.5, 18-18-405, OR 18-18-405.5, C.R.S.,

1 or unlawful offenses relating to ~~marihuana~~ MARIJUANA or ~~marihuana~~
2 MARIJUANA concentrate as specified in section 18-18-406, C.R.S.; or

3 **SECTION 26. Act subject to petition - effective date -**
4 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
5 following the expiration of the ninety-day period after final adjournment
6 of the general assembly (August 11, 2010, if adjournment sine die is on
7 May 12, 2010); except that, if a referendum petition is filed pursuant to
8 section 1 (3) of article V of the state constitution against this act or an
9 item, section, or part of this act within such period, then the act, item,
10 section, or part shall not take effect unless approved by the people at the
11 general election to be held in November 2010 and shall take effect on the
12 date of the official declaration of the vote thereon by the governor.

13 (2) The provisions of this act shall apply to offenses committed on
14 or after the applicable effective date of this act.