

# Annual Security Report

This Report is published by the Colorado Media School (the “School”) to provide information to students, staff and visitors to the School about incidents of crime, crime prevention procedures, and safety measures to that these campus community members can make informed decisions related to their safety. The School does not provide residential dormitories or any other facilities for on campus student housing, so the information reported herein relates to the school’s campus itself as well as the parking lot areas surrounding the school. This information is presented in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (known as the “Clery Act”). The School’s Campus Director has primary responsibility for collecting and publishing crime statistics related to campus operations, and obtains statistics from the Lakewood, CO, Police Department.

## Campus Security

As a small institution, the School does not employ dedicated security personnel. However, all staff members are empowered to take action in case of natural disasters, medical emergencies, or criminal activity by immediately involving campus administration as well as the local police. The campus also maintains a closed-circuit TV (CCTV) system which monitors many parts of the campus and records activity that may help to prevent criminal activities, or apprehend the perpetrators using the video recordings maintained by the School. Staff members are also responsible for securing the campus after hours and also unlocking the campus facilities at the beginning of the day.

## Campus Security Assistance

All staff members are instructed to assist in the prevention of and/or investigation of on campus crimes, and for immediately reporting these matters to the Campus Director and, where situations require immediate outside assistance, to summon local police and/or emergency services.

## How to Report Crimes or Incidents on Campus

All students and staff members are encouraged to promptly contact and report on campus crimes to the Campus Director and to the Lakewood Police by dialing 911 from a cell phone, or 9-911 from any telephone within the campus. In any such reporting, students and staff are encouraged to furnish all pertinent information when reporting a crime or incident. Local police, working in conjunction with School staff, investigate incidents and prepare the required police reports. Such efforts include identification of responsible parties, violations of the School’s Code of Conduct (as printed in the School Catalog), and encourage resolution and restitution of property as appropriate. **Crimes or incidents occurring on campus may be reported to any staff member**, including instructors, Graduate Assistants (GAs), and administrative staff members. All crimes reported to campus officials are also included in the campus’s crime statistics and are also reviewed for compliance with the timely warning policies listed below.

### Timely Warnings Policy Statement

The Campus Director collects, assembles and maintains the yearly crime statistics presented at the end of this Report, and is also charged with providing timely warnings to students and staff members with respect to criminal activity. While the School undertakes diligent efforts towards providing a safe and secure campus, occasional incidents may occur on campus or in the immediate vicinity of the campus which are considered potentially threatening (or the School learns of activity in the immediate area of the School from local law enforcement). When the school is made aware of such information, the Campus Director (or if the Campus Director is absent, the Campus Education Director or Coordinator) will make the campus aware of the situation by various means, including but not limited to making an announcement over the school's paging system, dispatching staff members to convey information in person to each class, or in some circumstances notifying campus stakeholders via cell phone or text. **If any student or staff member knows of a crime or other serious incident, they should report the matter as soon as possible to the Campus Director or dialing 911 (or 9-911 from a campus telephone) so that a timely warning may be issued.**

### Emergency Response and Evacuation

Upon confirmation to the Campus Director or senior administrative staff member present of an imminent threat to health or safety (tornado, individual carrying a firearm, hazardous material spill, etc.), that individual will provide an emergency notification immediately by using the School's paging system, directly addressing pending classes, or other means to provide immediate communication with those within the campus facility. When notified via the paging system or other method, students and staff members will be given immediate instructions as to the action to be taken to ensure health and safety (e.g. directions on where to seek shelter inside the building, to evacuate the building, or to remain in place pending further instructions). Other emergency notification methods may include the posting of flyers and use of text messaging or cellular phone calls.

More specific Emergency Response and Evacuation instructions are contained in the School's Campus Emergency Plan, available in the Campus Director's office and in the Learning Resource Center. The Campus Emergency Plan is regularly updated to reflect best practices and new information.

### Access to the Campus

The School's building is secured and locked at the conclusion of each day's classes and student activities. Where campus facilities require access via key card, if any, appropriate key cards will be provided to staff and students. All students must leave campus at the conclusion of the day's activities. When closed, the campus is protected by wired and wireless motion and glass break sensors, door and window triggers, and monitoring via the School's CCTV system. Students are not permitted on campus unless staff members are also present. Other than prospective students visiting campus, only students and staff members are permitted to be on campus. Neither students nor staff members may have family or friends accompany them without first receiving approval from the Campus Director.

### Basic Crime Prevention Steps

Crime prevention is the responsibility of all students and staff members. Taking the time to think about vulnerabilities will allow us to take simple steps to reduce the risk of being the victim of a crime. Common sense steps can make a big difference:

- Keep your car locked, and do not leave valuables in plain sight within your car
- Mark valuable possessions (headphones, tablet computers, etc.) with identifying information such as your driver's license number
- Never leave your purse or other valuables unattended in a classroom, studio or the LRC
- Let a staff member know if you desire an escort to your car when leaving at night
- Report all crimes and suspicious activities to School authorities
- If you witness an immediate threat, call 911 immediately (or 9-911 from an on campus phone).

### Substance Abuse Policy

The School maintains a Drug Free Policy which is distributed to all students and staff at time of employment or enrollment, and at least annually thereafter. The School prohibits the possession, use, manufacture or distribution of illegal substances (regardless of quantity) or drug paraphernalia of any kind. The use of alcohol while on campus is also strictly prohibited by this Policy. Students or staff who violate the Drug Free Policy are subject to disciplinary action, including dismissal from the School, and also face prosecution under local, state and federal laws.

A copy of the School's Drug Free Policy is appended to this Report along with the School's crime statistics.

### Substance Abuse Assistance

Any student or staff member seeking help with a substance abuse problem, or obtaining assistance for someone they know who has a substance abuse problem, can bring these concerns to the Campus Director (for employees) or the Student Services Coordinator (for students) to receive a timely referral. In addition, help with substance abuse problems can also be obtained by contacting the following local agencies:

- Freedom Center, 870 Kipling St. Suite B, Lakewood, CO 80215; (720) 330-3743
- Noeticus Counseling Center & Training Inst., 190 E. 9<sup>th</sup> Ave. Suite 290, Denver, CO 80203; (303) 399-9988
- Center For Recovery, Inc., 2121 S. Oneida St. Suite 412, Denver, CO 80224; (303) 578-3528
- STAR-Colorado, Inc., Colorado Springs, CO 80903; (719) 966-0907
- Quiet River Addiction Center, 2500 Arapahoe St., Denver, CO 80205; (720) 457-9032
- Grace Counseling, 7921 Southpark Plaza, Suite 204, Littleton, CO 80120; (720) 408-2502

### Sexual Misconduct & Dating Violence

The School makes consistent efforts to assure that campus is free of sexual misconduct (including sexual harassment and sexual assault/rape) and all forms of sexual intimidation, exploitation and dating violence including stalking and domestic violence. The School's policies regarding sexual misconduct and dating violence are outlined below. Sexual misconduct will not be tolerated at the Ohio Center for Broadcasting, and students, staff, and visitors should expect the School to be an environment free of sexual misconduct. Such misconduct is not only a violation of the School's policy, but also can be criminal conduct and discrimination under Title VII of the Federal Civil Rights Act of 1964 (as amended).

The following definitions apply to the identification and investigation of sexual misconduct:

- *Consent* – the voluntary, positive agreement between participants to engage in a specific sexual activity.
- *Dating Violence* – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of this type of relationship is determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the people involved.
- *Domestic Violence* – a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic or psychological actions or threats that influence the other person. This includes behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, blames, hurts, injures, or wounds someone.
- *Stalking* – a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear for his/her safety or for the safety of those around them, or suffer substantial emotional distress.
- *Sexual Assault/Rape* – the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- *Sexual Harassment* –unwanted sexual attention such as staring, leering, ogling, sexual teasing, jokes, gestures, inappropriate touching, pressures for a date or sex, forced sexual relations or suggestions that sex can be exchanged for academic achievement or promotion. While women are more commonly victims of sexual harassment, it can happen to both men and women.

Sexual harassment may occur when a person in a position of power, control or influence over the other person's academic career, grades, or job uses this authority and power to gain sexual advantages and threatens or punishes the victim for refusal to engage in certain activities. Sexual harassment may also occur between peers (such as student to student, or staff member to staff member) if similar conditions as noted above are present.

**An individual who feels he or she is the victim of sexual misconduct should immediately report the incident to the Campus Director or any other administrative staff member with whom the victim is comfortable.** Formal charges may also be made directly to local law enforcement, and in either case, staff will assist in the investigation of the incident.

If any staff member or student observes or is made aware of an incidence of dating violence, domestic violence, sexual assault, or stalking occurring on campus, this matter should be immediately reported to the Campus Director. Individuals immediately witnessing such an incident and believing that immediate police intervention is needed should call 911 (or 9-911 from a campus phone). Other safe intervention options for the observer include the following:

- Notify a School staff member immediately
- Be honest and direct in attempting to diffuse the situation – do not use violence
- Recruit the assistance of those nearby
- Keep oneself safely away from the incident

**If you are sexually assaulted, it is extremely important that any physical evidence be preserved.** The following are recommended steps:

- Find a safe place sufficiently away from the attacker and call 911 (or 9-911 from a campus phone) immediately! If possible, ask a trusted friend to stay with you until help arrives.
- As soon as possible, write down everything you can remember about the incident including the details of what happened and the physical description of the assailant. Take photos of any physical evidence, including any visible injuries.
- If the incident occurs on the School's campus, immediately dial 911 and seek staff member assistance. Staff members will provide immediate assistance including contacting law enforcement on your behalf.
- You should immediately seek medical attention, even if you do not believe that you have been injured. It will still be important to test for sexually transmitted diseases and/or pregnancy. Hospitals should be asked to conduct a "rape exam," and also to obtain a urine or blood sample if you believe that you may have been drugged.
- Contact an agency for counseling and support, including:
  - The Blue Bench (24 Hour Rape Hotline): 303-322-7273
  - National Sexual Assault Hotline: 800-656-4673
  - National Domestic Violence Hotline: 800-799-7233
  - National Dating Abuse Helpline: 866-331-9474

### **Institutional Protective Measures**

The school will assist victims of sexual misconduct and dating violence to avoid potential contact with the perpetrators to the fullest extent possible, by reassigning staff members or altering student class sessions or schedules. The School will also assist in enforcing any On-Campus No Contact Order that is issued, prohibiting communication among involved parties (this includes contacts that are in person, via telephone, text message, social media, etc.).

#### Disciplinary Process (Code of Conduct)

In addition to the Conduct and Behavior provisions published in the School catalog applicable to Students and the provisions of the Employee Handbook applicable to staff members, the School also follows the following procedures:

- Complaints that allege violations of the School's Policies are to be reported to the School (typically to the Campus Director) no more than two weeks after the party bringing the allegation becomes aware of the alleged offense.
- Campus management, including the Campus Director and other senior school officials, will immediately begin an investigation of the matter.
- Any disciplinary meetings will be conducted as soon as possible after the conclusion of the investigation and appropriate action taken. In such meetings, the school will utilize a "preponderance of the evidence" standard of review.
- In any meetings in which the accuser will be present, that person may bring a person of their choice with them to the meeting to provide support.
- The person accused of the offense will also have the opportunity to appear and answer the charges, and may also bring a person of their choosing to the meeting.
- Both accuser and accused will be treated with professionalism and dignity in such meetings.
- Any staff member or student found in violation of the School's policies or other applicable law will be subject to disciplinary sanctions including suspension, probation, dismissal, expulsion, termination and prosecution, each as stated in the School Catalog with respect to students, and the Employee Handbook with respect to staff members.

## CAMPUS CRIME AND SECURITY

In compliance with Federal laws, The Colorado Media School makes the following information available to all students, staff and applicants.

### **Reporting of Criminal Activities and Emergencies:**

Any criminal activity or emergency on school property is to be reported immediately to the Campus Director, or any other staff member. School officials will immediately notify the appropriate local law enforcement officials or authority.

### **Campus Criminal Activity**

Campus Security Authorities and/or local police agencies have received the following reports on criminal activities on campus within the last three (3) years:

<u>Criminal Offense</u>	<u>Total occurrences on-campus</u>		
	<u>2011</u>	<u>2012</u>	<u>2013</u>
a. Murder/Non-negligent manslaughter	0	0	0
b. Forcible sex offenses (including forcible rape)	0	0	0
c. Non-forcible sex offenses	0	0	0
d. Robbery	0	0	0
e. Aggravated assault	0	0	0
f. Burglary	0	0	0
g. Motor vehicle theft	0	0	0
h. Arson	0	0	0
i. Negligent manslaughter	0	0	0
j. Hate Crimes	0	0	0
k. Domestic Violence	-	-	0
l. Dating Violence	-	-	0
m. Stalking	-	-	0

### **Arrests- On-campus**

<u>Crime</u>	<u>Number of Arrests</u>		
	<u>2011</u>	<u>2012</u>	<u>2013</u>
a. Liquor law violations	0	0	0
b. Drug abuse violations	0	0	0
c. Weapons possession	0	0	0

### **Disciplinary Actions/Judicial Referrals**

<u>Crime</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
a. Liquor law violations	0	0	0
b. Drug abuse violations	0	0	0
c. Weapons possession	0	0	0



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professional broadcasters  
Robert Mills, President

## **Colorado Media School Drug free policy**

Dear Employee/Student,

Federal Regulations require that, as a condition of the Colorado Media School receiving any form of financial assistance under any federal programs, the school must certify to the Federal Government that it has implemented a drug prevention program which will include:

- A) The annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit regardless of the length of the student's program of study,
- B) A copy of the Colorado Media School's Drug Free Program to prevent the illicit use of drugs and the abuse of alcohol by students and employees and Crime Awareness and Campus Security Policies and Statistics.

It is imperative that each employee and student acknowledge and agree to the terms and conditions of the Colorado Media School's Drug Free Policy.

Read through the following carefully and sign the attached certification.

Sincerely,

Robert Mills  
President



## **Drug Free Policy**

All employees and students are hereby notified that the unlawful manufacture, distribution, dispensing, possession or use of illegal drugs is prohibited at the Colorado Media School.

For conditions of this statement, the Colorado Media School includes:

- A) 404 S Upham Street and surrounding parking areas

For conditions of this statement, the Colorado Media School includes:

- |                  |  |
|------------------|--|
| A) NARCOTICS     | Opium, Heroin, Morphine and synthetic substances.        |
| B) DEPRESSANTS   | Chloralhydrate, Barbiturate, and Methaqualone.           |
| C) STIMULANTS    | Cocaine (and derivatives such as crack) and Amphetamines |
| D) HALLUCINOGENS | LSD, Mescaline, PCP, Peyote, Psilocybin and MDMA.        |
| E) CANNABIS      | Marijuana and Hashish                                    |

## **INSTITUTIONAL SANCTIONS**

- 1) For any violation of the codes of conduct, the Colorado Media School will require appropriate sanctions on students or employees including:
  - A) Expulsion or Termination and referral to the proper authorities for prosecution when appropriate, or
  - B) Required such employee or student to participate satisfactorily in an alcohol and/or drug abuse rehabilitation program approved for such purpose by Federal, State or Health, Law Enforcement or other appropriate agency.
- 2) For any second violation of the codes of conduct the employee or student will be immediately terminated and referred to the proper authorities.
- 3) Extreme cases may be treated differently and will be judged strictly on an individual basis, solely up to the discretion of the director.

Refusal to abide by institutional sanctions will result in termination of student or employee and referral to the proper authorities.

A description of the health risks associated with the use of illicit drugs and the abuse of alcohol must be read through, from the following Appendix B.

## **ALCOHOL EFFECTS**

### **1) Doses**

Low	Impaired judgment, significantly decreasing the ability to drive a car making it a greater likelihood to get into a accident.
Low to Moderate	Increased aggressiveness, including spouse and child abuse.
Moderate to High	Impairment in higher functions affecting memory and learning abilities.
Very High	Death

### **2) REPEATED USE**

A) Suddenly Stop Drinking – Withdraw Symptoms-Severe anxiety, tremors, hallucinations, and convulsions.

B) Long Term Consumptions – Could lead o permanent damage of vital organs such as the brain and liver.

Legal sanction for unlawful possession, use, distribution of alcohol and/or drugs can range from fines to imprisonment or both, depending on the seriousness of the offense. Any individual found violating an offense on the Colorado Media School grounds will be prosecuted to the fullest extent of the law.

When deemed necessary for a student or employee to seek treatment for their particular alcohol or drug disease, the Colorado Media School will assist when possible in recommending options for counseling, treatment or rehabilitation programs. Employees or students can see the Director for further guidance.

Students that are convicted for any offense, during a period of enrollment for which the student was receiving TitleIV, HEA program funds, under any federal or state law involving the possession of sale of illegal drugs will result in the loss of eligibility for any Title IV, HEA grand, loan, or work-study, study assistance (HEA Sec.484®(1)); (20 U.S.C. 1091®(1))

COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed  
at the Second Regular and First Extraordinary Sessions  
of the Sixty-Eighth General Assembly of the State of Colorado 2012  
and Constitutional and Statutory amendments approved at the General Election on November 6, 2012  
\*\*\*

TITLE 18. CRIMINAL CODE  
ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992  
PART 1. DEFINITIONS

C.R.S. 18-18-101 (2012)

18-18-101. Short title

This article shall be known and may be cited as the "Uniform Controlled Substances Act of 1992".

**HISTORY:** Source: L. 92: Entire article R&RE, p. 324, § 1, effective July 1.

Editor's note: This title was numbered as chapter 40, C.R.S. 1963. The substantive provisions of this title were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. For a detailed comparison of this title, see the comparative tables located in the back of the index.

Editor's note: This article was added in 1981. This article was repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

ANNOTATION

The Uniform Controlled Substances Act is intended to control the illegal manufacture and distribution of substances that may have legitimate medical purposes but are subject to abuse and have a detrimental effect. Drugs are divided into schedules based on their common characteristics. *People v. Moran*, 983 P.2d 143 (Colo. App. 1999); *People v. Frantz*, 114 P.3d 34 (Colo. App. 2004).





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## TITLE 18. CRIMINAL CODE

## ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992

## PART 1. DEFINITIONS

## C.R.S. 18-18-102 (2012)

## 18-18-102. Definitions

As used in this article:

(1) "Administer", unless the context otherwise requires, means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(a) A practitioner (or, in the practitioner's presence, by the practitioner's authorized agent); or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a person licensed or otherwise authorized under this article or under part 2 of article 80 of title 27, C.R.S. "Agent" does not include a common or contract carrier, a public warehouseman, or an employee of a carrier or warehouseman.

(3) (a) "Anabolic steroid" means any material, drug, hormonal compound, salt, isomer or salts of isomers of testosterone, or synthetic or natural derivatives of testosterone having pronounced anabolic properties which is used primarily to promote growth of muscle tissue, which includes, but is not limited to, any of the following:

(I) Boldenone;

(II) Chlorotestosterone;

(III) Clostebol;

(IV) Dehydrochlormethyltestosterone;

(V) Dihydrotestosterone;

(VI) Drostanolone;

(VII) Ethylestrenol;  
(VIII) Fluoxymesterone;  
(IX) Formebolone;  
(X) Human chorionic gonadotropin;  
(XI) Human growth hormone;  
(XII) Mesterolone;  
(XIII) Methandienone;  
(XIV) Methandranone;  
(XV) Methandriol;  
(XVI) Methandrostenolone;  
(XVII) Methenolone;  
(XVIII) Methyltestosterone;  
(XIX) Mibolerone;  
(XX) Nandrolone;  
(XXI) Norethandrolone;  
(XXII) Oxandrolone;  
(XXIII) Oxymesterone;  
(XXIV) Oxymetholone;  
(XXV) Stanolone;  
(XXVI) Stanozolol;  
(XXVII) Testolactone;  
(XXVIII) Testosterone;  
(XXIX) Trenbolone;

(XXX) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph (a) if that salt, ester, or isomer promotes muscle growth.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration.

(II) If any person prescribes, dispenses, or distributes a steroid described in subparagraph (I) of this paragraph (b) for human use, such person shall be considered to have prescribed, dispensed, or

distributed an anabolic steroid within the meaning of paragraph (a) of this subsection (3).

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

(I) alpha-Phthalimidopropiophenone;

(II) N, N-Dimethylcathinone (Metamfepramone);

(III) N-Ethylcathinone (Ethcathinone);

(IV) alpha-Pyrrolidinopropiophenone (agr;-PPP);

(V) 2-Methylamino-1-phenylbutan-1-one (Buphedrone);

(VI) alpha-Pyrrolidinobutiophenone (agr;-PBP);

(VII) alpha-Pyrrolidinovalerophenone (agr;-PVP, PVP);

(VIII) 4-Methylmethcathinone (4-MMC, Mephedrone);

(IX) 4'-Methyl-alpha-pyrrolidinopropiophenone (MPPP);

(X) 4'-Methyl-alpha-pyrrolidinobutiophenone (MPBP);

(XI) 4'-Methyl-alpha-pyrrolidinohexiophenone (MPHP);

(XII) 4-Methoxymethcathinone (PMMC, Methedrone, bk-PMMA);

(XIII) 4'-Methoxy-alpha-pyrrolidinopropiophenone (MOPPP);

(XIV) Fluoromethcathinone (4-FMC, Flephedrone, 3-FMC);

(XV) 3,4-Methylenedioxymethcathinone (methyldone, bk-MDMA);

(XVI) 3,4-Methylenedioxyethcathinone (Ethylone, bk-MDEA);

(XVII) 3',4'-Methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP);

(XVIII) 2-Methylamino-1-(3,4-methylenedioxyphenyl)-1-butanone (Butylone, bk-MDBD);

(XIX) 3',4'-Methylenedioxy-alpha-pyrrolidinobutiophenone (MDPBP);

(XX) 2-Methylamino-1-(3,4-methylenedioxyphenyl)-1-pentanone (bk-MBDP);

(XXI) 3,4-Methylenedioxyprovalerone (MDPV);

(XXII) Naphthylpyrovalerone (Naphyrone);

(XXIII) 2-(Methylamino)-1-phenyl-1-pentanone (Pentedrone); and

(XXIV) N-methylethcathinone (4-MEC).

(b) "Cathinones" does not include diethylpropion or bupropion.

(c) As used in this subsection (3.5), "analog" means any chemical that is substantially similar in chemical structure to the chemical structure of any cathinones.

(4) "Cocaine" means coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this subsection (4).

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

(6) (a) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in or added to schedule I or II and:

(I) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or

(II) With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II.

(b) The term does not include:

(I) A controlled substance;

(II) A substance for which there is an approved drug application, so long as such substance is in its intended and unconverted form;

(III) A substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the "Federal Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(IV) Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(7) "Deliver" or "delivery", unless the context otherwise requires, means to transfer or attempt to transfer a substance, actually or constructively, from one person to another, whether or not there is an agency relationship.

(8) "Department" means the department of human services.

(9) "Dispense" means to deliver a controlled substance to an ultimate user, patient, or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a controlled substance, with or without remuneration.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(I) Substances recognized as drugs in the official United States pharmacopoeia, national formulary, or the official homeopathic pharmacopoeia of the United States, or any supplement to any of them;

(II) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

(III) Substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and

(IV) Substances intended for use as a component of any substance specified in subparagraph (I), (II), or (III) of this paragraph (a).

(b) The term does not include devices or their components, parts, or accessories.

(14) "Drug enforcement administration" means the drug enforcement administration in the United States department of justice, or its successor agency.

(15) "Immediate precursor" means a substance which is a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) "Isomer" means an optical isomer, but in paragraph (e) of subsection (20) of this section and [sections 18-18-203 \(2\) \(a\) \(XII\)](#) and (2) (a) (XXXIV) and [18-18-204 \(2\) \(a\) \(IV\)](#) the term includes a geometric isomer; in [sections 18-18-203 \(2\) \(a\) \(VIII\)](#) and (2) (a) (XLII) and [18-18-206 \(2\) \(c\)](#) the term includes a positional isomer; and in [sections 18-18-206 \(2\) \(b\) \(XXXV\)](#) and (2) (c) and [18-18-205 \(2\) \(a\)](#) the term includes any positional or geometric isomer.

(17) "Manufacture" means to produce, prepare, propagate, compound, convert, or process a controlled substance, directly or indirectly, by extraction from substances of natural origin, chemical synthesis, or a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(a) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(b) By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

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

(19) "Marijuana concentrate" means hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinols.

(20) "Narcotic drug" means any of the following, however manufactured:

(a) Opium, opium derivative, and any derivative of either including any salts, isomers, and salts of isomers of them that are theoretically possible within the specific chemical designation, but not isoquinoline alkaloids of opium;



- (b) Synthetic opiate and any derivative of synthetic opiate, including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, of them that are theoretically possible within the specific chemical designation;
- (c) Poppy straw and concentrate of poppy straw;
- (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
- (e) Cocaine, or any salt, isomer, or salt of isomer of cocaine;
- (f) Cocaine base;
- (g) Ecgonine, or any derivative, salt, isomer, or salt of isomer of ecgonine;
- (h) Any compound, mixture, or preparation containing any quantity of a substance listed in this subsection (20).
- (21) "Opiate" means a substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, opium derivatives, and synthetic opiates. The term does not include, unless specifically scheduled as a controlled substance under [section 18-18-201](#), the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.
- (22) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.
- (23) "Order" means:
- (a) A prescription order which is any order, other than a chart order, authorizing the dispensing of drugs or devices that is written, mechanically produced, computer generated, transmitted electronically or by facsimile, or produced by other means of communication by a practitioner and that includes the name or identification of the patient, the date, the symptom or purpose for which the drug is being prescribed, if included by the practitioner at the patient's authorization, and sufficient information for compounding, dispensing, and labeling; or
- (b) A chart order which is an order for inpatient drugs or medications to be dispensed by a pharmacist, or pharmacy intern under the direct supervision of a pharmacist, which is to be administered by an authorized person only during the patient's stay in a hospital facility. It shall contain the name of the patient and of the medicine ordered and such directions as the practitioner may prescribe concerning strength, dosage, frequency, and route of administration.
- (24) "Peace officer" shall have the same meaning as set forth in [section 16-2.5-101](#), C.R.S.
- (25) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government or governmental subdivision or agency, or any other legal or commercial entity.
- (26) "Peyote" means all parts of the plant presently classified botanically as *lophophora williamsii* lemaire, whether growing or not, the seeds thereof, any extraction from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or extracts.
- (27) "Pharmacy" means a prescription drug outlet as defined in [section 12-42.5-102 \(35\)](#), C.R.S.
- (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(29) "Practitioner" means a physician, podiatrist, dentist, optometrist, veterinarian, researcher, pharmacist, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by this state, to distribute, dispense, conduct research with respect to, administer, or to use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(30) "Production", unless the context otherwise requires, includes the manufacturing of a controlled substance and the planting, cultivating, growing, or harvesting of a plant from which a controlled substance is derived.

(31) "Remuneration" means anything of value, including money, real property, tangible and intangible personal property, contract rights, choses in action, services, and any rights of use or employment or promises or agreements connected therewith.

(32) "Researcher" means any person licensed by the department pursuant to this article to experiment with, study, or test any controlled substance within this state and includes analytical laboratories.

(33) "Sale" means a barter, an exchange, or a gift, or an offer therefor, and each such transaction made by any person, whether as the principal, proprietor, agent, servant, or employee.

(33.5) "Salvia divinorum" means salvia divinorum, salvinorin A, and any part of the plant classified as salvia divinorum, whether growing or not, including the seeds thereof, any extract from any part of the plant, and any compound, manufacture, salts, derivative, mixture, or preparation of the plant, its seeds, or its extracts.

(34) "State", unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(34.5) (a) "Synthetic cannabinoid" means any chemical compound that is chemically synthesized and either:

(I) Has been demonstrated to have binding activity at one or more cannabinoid receptors; or

(II) Is a chemical analog or isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoid receptors.

(b) "Synthetic cannabinoid" includes but is not limited to the following substances:

(I) HU-210: (6aR, 10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo c chromen-1-ol;

(II) HU-211: dexanabinol, (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2- methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo c chromen-1-ol;

(III) JWH-018: 1-pentyl-3-(1-naphthoyl)indole;

(IV) JWH-073: 1-butyl-3-(1-naphthoyl)indole;

(V) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4- methoxynapthalen-1-yl-(1-pentylindol-3-yl)methanone;

(VI) JWH-200: 1- 2-(4-morpholinyl)ethyl -3-(1-naphthoyl)indole;

(VII) JWH-250: 1-pentyl-3-(2-methoxyphenylacetyl)indole, also known as 2-(2- methoxyphenyl)-1-(1-petylindol-3-yl)ethanone; and

(VIII) CP 47, 497, and homologues: 2- (1R, 3S)-3-hydroxycyclohexyl -5-(2- methyloctan-2-yl)phenol.

(c) "Synthetic cannabinoid" does not mean:

(I) Any tetrahydrocannabinols, as defined in subsection (35) of this section; or

(II) Nabilone.

(d) As used in this subsection (34.5), "analog" means any chemical that is substantially similar in chemical structure to a chemical compound that has been determined to have binding activity at one or more cannabinoid receptors.

(35) (a) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of, cannabis, sp., or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as the following:

(I) sup1;Cis or trans tetrahydrocannabinol, and their optical isomers;

(II) 6Cis or trans tetrahydrocannabinol, and their optical isomers;

(III) 3,4Cis or trans tetrahydrocannabinol, and their optical isomers.

(b) Since the nomenclature of the substances listed in paragraph (a) of this subsection (35) is not internationally standardized, compounds of these structures, regardless of the numerical designation of atomic positions, are included in this definition.

(36) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

**HISTORY:** Source: . L. 92: Entire article R&RE, p. 324, § 1, effective July 1.L. 93: (16) amended, p. 1776, § 39, effective June 6.L. 94: (8) amended, p. 2736, § 361, effective July 1.L. 96: (23)(a) amended, p. 1426, § 15, effective July 1.L. 2002: (8) amended, p. 664, § 5, effective May 28.L. 2003: (23)(a) amended, p. 764, § 3, effective March 25; (24) amended, p. 1616, § 16, effective August 6.L. 2010: (5), (18), and (19) amended, (HB 10-1352), ch. 259, p. 1173, § 18, effective August 11.L. 2011: (5) amended and (33.5) and (34.5) added, (SB 11-134), ch. 261, p. 1138, § 1, effective July 1.L. 2012: (3.5) added and (5) amended, (HB 12-1310), ch. 268, p. 1404, § 29, effective June 7; (2) and (27) amended, (HB 12-1311), ch. 281, p. 1621, § 51, effective July 1.

Editor's note: This section is similar to former § § 12-22-102 and 12-22-303 as they existed prior to 1992.

#### ANNOTATION

Crime of simple possession is lesser included offense of the crime of possession with the intent to distribute. *People v. Gilmore*, 97 P.3d 123 (Colo. App. 2003).

The definition of "controlled substance analog" as applied to pseudoephedrine is not unconstitutionally vague. *People v. Frantz*, 114 P.3d 34 (Colo. App. 2004).

The definition of "cocaine" in subsection (4), by its plain language, includes a mixture that includes any amount of cocaine. Therefore, the amount of cocaine involved in a transaction is determined by the total amount of the mixture containing the cocaine, not just the amount of cocaine in the mixture. *People v. Esquivel-Alaniz*, 985 P.2d 22 (Colo. App. 1999).

It is evident that one who "manufactures" a controlled substance also possesses the substance in the course of manufacturing it. Patton v. People, 35 P.3d 124 (Colo. 2001).

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## COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed  
at the Second Regular and First Extraordinary Sessions  
of the Sixty-Eighth General Assembly of the State of Colorado 2012  
and Constitutional and Statutory amendments approved at the General Election on November 6, 2012  
\*\*\*

## TITLE 18. CRIMINAL CODE

## ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992

## PART 4. OFFENSES AND PENALTIES

## C.R.S. 18-18-403.5 (2012)

## 18-18-403.5. Unlawful possession of a controlled substance

(1) Except as authorized by part 1 or 3 of article 42.5 of title 12, C.R.S., part 2 of article 80 of title 27, C.R.S., [section 18-1-711](#), or part 2 or 3 of this article, it is unlawful for a person knowingly to possess a controlled substance.

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

(a) (I) Any material, compound, mixture, or preparation weighing four grams or less that contains any quantity of flunitrazepam, ketamine, or a controlled substance listed in schedule I or II of part 2 of this article except methamphetamine commits a class 6 felony.

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

(b) (I) Any material, compound, mixture, or preparation weighing two grams or less that contains any quantity of methamphetamine commits a class 6 felony.

(II) Any material, compound, mixture, or preparation weighing more than two grams that contains any quantity of methamphetamine commits a class 4 felony.

(c) Any material, compound, mixture, or preparation that contains any quantity of a controlled substance listed in schedule III, IV, or V of part 2 of this article except flunitrazepam or ketamine commits a class 1 misdemeanor.

**HISTORY:** Source: . L. 2010: Entire section added, ([HB 10-1352](#)), ch. 259, p. 1165, § 4, effective August 11. L. 2012: (1) amended, ([SB 12-020](#)), ch. 225, p. 988, § 4, effective May 29; (1) amended, ([HB-1311](#)), ch. 281, p. 1622, § 54, effective July 1.

Editor's note: Amendments to subsection (1) by House Bill 12-1311 and Senate Bill 12-020 were

harmonized.

Cross references: For the legislative declaration in the 2012 act amending subsection (1), see section 1 of chapter 225, Session Laws of Colorado 2012.

#### ANNOTATION

There is no double jeopardy violation when a conviction for possession of a controlled substance and a conviction for distribution of a controlled substance were each based on a different quantum of drugs. People v. Davis, 2012 COA 1, -- P.3d --.

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## COLORADO REVISED STATUTES

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## TITLE 18. CRIMINAL CODE

## ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992

## PART 4. OFFENSES AND PENALTIES

## C.R.S. 18-18-404 (2012)

## 18-18-404. Unlawful use of a controlled substance

(1) (a) Except as is otherwise provided for offenses concerning marijuana and marijuana concentrate in [sections 18-18-406](#) and [18-18-406.5](#), and as described by [section 18-1-711](#), a person who uses any controlled substance, except when it is dispensed by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense the controlled substance for bona fide medical needs, commits a class 2 misdemeanor.

(b) Repealed.

(1.1) Repealed.

(2) and (3) (Deleted by amendment, L. 2010, [\(HB 10-1352\)](#), [ch. 259](#), [p. 1163](#), [§ 2](#), effective August 11, 2010.)

(4) Repealed.

**HISTORY:** Source: L. 92: Entire article R&RE, p. 354, § 1, effective July 1. L. 98: (4) added, p. 1435, § 4, effective July 1. L. 99: IP(1) amended, p. 799, § 17, effective July 1. L. 2000: (4) amended, p. 1359, § 41, effective July 1, 2001. L. 2002: (4) amended, p. 1583, § 12, effective July 1. L. 2003: (1) amended and (1.1) added, p. 2681, § 2, effective July 1; (3) amended, p. 2429, § 2, effective July 1. L. 2007: (1) (b) and (1.1) repealed, p. 1689, § 10, effective July 1. L. 2009: (4) repealed, [\(HB 09-1266\)](#), [ch. 347](#), [p. 1815](#), [§ 4](#), effective August 5. L. 2010: (1)(a), (2), and (3) amended, [\(HB 10-1352\)](#), [ch. 259](#), [p. 1163](#), [§ 2](#), effective August 11. L. 2012: (1)(a) amended, [\(SB 12-020\)](#), [ch. 225](#), [p. 988](#), [§ 5](#), effective May 29.

Editor's note: This section is similar to former § 18-18-104 as it existed prior to 1992.

Cross references: For the legislative intent contained in the 2003 act amending subsection (1) and enacting subsection (1.1), see section 1 of chapter 424, Session Laws of Colorado 2003. For the legislative declaration in the 2012 act amending subsection (1)(a), see section 1 of chapter 225, Session Laws of Colorado 2012.

## ANNOTATION

Law reviews. For article, "Felony Sentencing in Colorado", see 18 Colo. Law. 1689 (1989).

Equal protection is not violated when a defendant is charged for the same conduct under both this section and [§ 18-18-405\(1\)\(a\)](#) because unlawful use and unlawful possession are distinct offenses that each require proof of at least one fact that the other does not. *People v. District Ct. of 11th Jud. Dist.*, 964 P.2d 498 (Colo. 1998).

This section and [§ 18-18-405](#) do not contain identical elements for purposes of an equal protection analysis. The general assembly's choice to classify possession as a graver offense than use is reasonably related to the general purposes of the criminal legislation. *Campbell v. People*, 73 P.3d 11 (Colo. 2003).

As written, this section is clear and unambiguous in exempting [§ 18-18-406.5](#) from its provisions, including the treatment option. *People v. Goodale*, 78 P.3d 1103 (Colo. 2003).

By intentionally omitting marihuana from the treatment option available under this section, the general assembly explicitly chose to offer the treatment option only to those addicted to other substances. Such a classification has a rational basis based upon real in fact differences between the substances and is not completely arbitrary or irrational. *People v. Goodale*, 78 P.3d 1103 (Colo. 2003).

Under [§ 18-18-404 \(3\)](#), defendant's guilty plea is tantamount to a conviction in that it establishes guilt. *People v. Roberts*, 865 P.2d 938 (Colo. App. 1993).

Trial court exceeded its jurisdiction by applying sentencing alternative under subsection (3) applicable to unlawful "use" of controlled substance offenses to resentencing of probationer convicted of "possession" of a controlled substance under [§ 18-18-405](#). *People v. Hutchings*, 881 P.2d 466 (Colo. App. 1994).

Court order to surrender a driver's license and pay certain victim's fees and a drug surcharge fee was not erroneous where the defendant pled guilty to the charge and where the statute authorizes the court to impose "reasonable conditions." *People v. Roberts*, 865 P.2d 938 (Colo. App. 1993).

While an individual may unlawfully possess a controlled substance without voluntarily using it, it is simply not feasible for an individual to voluntarily use a controlled substance without also possessing it. *People v. Villapando*, 984 P.2d 51 (Colo. 1999).

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## TITLE 18. CRIMINAL CODE

## ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992

## PART 4. OFFENSES AND PENALTIES

## C.R.S. 18-18-405 (2012)

## 18-18-405. Unlawful distribution, manufacturing, dispensing, or sale

(1) (a) Except as authorized by part 1 of article 42.5 of title 12, C.R.S., part 2 of article 80 of title 27, C.R.S., or part 2 or 3 of this article, it is unlawful for any person knowingly to manufacture, dispense, sell, or distribute, or to possess with intent to manufacture, dispense, sell, or distribute, a controlled substance; or induce, attempt to induce, or conspire with one or more other persons, to manufacture, dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute, a controlled substance; or possess one or more chemicals or supplies or equipment with intent to manufacture a controlled substance.

(b) As used in this subsection (1), "dispense" does not include labeling, as defined in [section 12-42.5-102 \(18\)](#), C.R.S.

(2) (a) Except as is otherwise provided for offenses concerning marijuana and marijuana concentrate in [section 18-18-406](#) and for offenses involving minors in [section 18-18-407 \(1\) \(g\)](#), any person who violates any of the provisions of subsection (1) of this section:

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

(A) A class 3 felony; or

(B) A class 2 felony, if the violation is committed subsequent to a prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which this subparagraph (I) applies or would apply if convicted in this state;

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

(A) A class 4 felony; or

(B) A class 3 felony, if the violation is committed subsequent to any prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which subparagraph (I) of this paragraph (a) or this subparagraph (II) applies or would apply if convicted in this state;

(III) In the case of a controlled substance listed in schedule IV of part 2 of this article, commits:

(A) A class 5 felony; or

(B) A class 4 felony, if the violation is committed subsequent to a prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which subparagraph (I) or (II) of this paragraph (a) or this subparagraph (III) applies or would apply if convicted in this state;

(IV) In the case of a controlled substance listed in schedule V of part 2 of this article, commits:

(A) A class 1 misdemeanor; or

(B) A class 5 felony, if the violation is committed subsequent to any prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which subparagraph (I), (II), or (III) of this paragraph (a) or this subparagraph (IV) applies or would apply if convicted in this state.

(b) Repealed.

(2.1) Repealed.

(2.3) (a) (Deleted by amendment, L. 2010, [\(HB 10-1352\)](#), ch. 259, p. 1163, § 3, effective August 11, 2010.)

(b) Repealed.

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

(b) Any person convicted of violating the provisions of subsection (1) of this section with regard to flunitrazepam or ketamine shall be subject to the mandatory sentencing provisions of subsection (3) of this section.

(c) Repealed.

(2.6) Repealed.

(3) (a) Unless a greater sentence is required pursuant to the provisions of another statute, any person convicted pursuant to subparagraph (I) of paragraph (a) of subsection (2) of this section for knowingly manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute, or inducing, attempting to induce, or conspiring with one or more other persons, to manufacture, dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute an amount that is or has been represented to be:

(I) At least twenty-five grams or one ounce but less than four hundred fifty grams of any material, compound, mixture, or preparation that contains a schedule I or schedule II controlled substance as listed in [section 18-18-203](#) or [18-18-204](#) shall be sentenced to the department of corrections for at least the minimum term of incarceration in the presumptive range provided for such offense in [section 18-1.3-401 \(1\) \(a\)](#) with regard to offenses other than manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute, and for at least the minimum term

of incarceration in the presumptive range provided for such offense in [section 18-1.3-401 \(1\) \(a\)](#) as modified pursuant to [section 18-1.3-401 \(10\)](#) with regard to manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute;

(II) At least four hundred fifty grams or one pound but less than one thousand grams of any material, compound, mixture, or preparation that contains a schedule I or schedule II controlled substance as listed in [section 18-18-203](#) or [18-18-204](#) shall be sentenced to the department of corrections for a term of at least the midpoint of the presumptive range but not more than twice the maximum presumptive range provided for such offense in [section 18-1.3-401 \(1\) \(a\)](#) with regard to offenses other than manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute, and for a term of at least the midpoint of the presumptive range but not more than twice the maximum presumptive range provided for such offense in [section 18-1.3-401 \(1\) \(a\)](#) as modified pursuant to [section 18-1.3-401 \(10\)](#) with regard to manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute;

(III) One thousand grams or one kilogram or more of any material, compound, mixture, or preparation that contains a schedule I or schedule II controlled substance as listed in [section 18-18-203](#) or [18-18-204](#) shall be sentenced to the department of corrections for a term greater than the maximum presumptive range but not more than twice the maximum presumptive range provided for such offense in [section 18-1.3-401 \(1\) \(a\)](#) with regard to offenses other than manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute, and for a term greater than the maximum presumptive range but not more than twice the maximum presumptive range provided for such offense in [section 18-1.3-401 \(1\) \(a\)](#) as modified pursuant to [section 18-1.3-401 \(10\)](#) with regard to manufacturing, dispensing, selling, distributing, or possessing with intent to manufacture, dispense, sell, or distribute.

(b) In addition to any other penalty imposed under this subsection (3), upon conviction, a person who violates this subsection (3) shall be fined not less than one thousand dollars but not more than five hundred thousand dollars. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in [section 18-1.3-401 \(1\) \(a\) \(III\)](#).

(3.5) The felony offense of unlawfully manufacturing, dispensing, selling, distributing, or possessing with intent to unlawfully manufacture, dispense, sell, or distribute a controlled substance is an extraordinary risk crime that is subject to the modified presumptive sentencing range specified in [section 18-1.3-401 \(10\)](#).

(4) Repealed.

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

(6) Repealed.

(7) Notwithstanding the provisions of subsection (2) of this section, and except as otherwise provided in sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (2) or paragraph (a) of subsection (2.5) of this section, a person who violates subsection (1) of this section by selling, dispensing, or distributing a controlled substance other than marijuana or marijuana concentrate to a minor under eighteen years of age and who is at least eighteen years of age and at least two years older than the minor commits a class 3 felony and, unless a greater sentence is provided under any other statute, shall be sentenced to the department of corrections for a term of at least the minimum, but not more than twice the maximum, of the presumptive range provided for such offense in [section](#)

[18-1.3-401 \(1\) \(a\)](#) as modified pursuant to [section 18-1.3-401 \(10\)](#).

**HISTORY:** Source: . L. 92: Entire article R&RE, p. 356, § 1, effective July 1.L. 93: (4) amended, p. 972, § 2, effective July 1.L. 94: (2)(a)(I) and (4)(a) amended, p. 1723, § 24, effective July 1.L. 97: (2)(a)(I) and (3)(a) amended and (4) repealed, pp. 1542, 1543, § § 9,10, effective July 1.L. 98: (5) amended and (6) added, pp. 1443, 1435, § § 30, 5, effective July 1.L. 99: (2.5) added and (5) amended, pp. 795, 796, § § 6, 8, effective July 1.L. 2000: (6) amended, p. 1360, § 42, effective July 1, 2001.L. 2002: (1)(a) amended, p. 1270, § 1, effective July 1; (2)(a)(II), (2)(b)(II), (2)(c)(II), (2)(d)(II), (2.5)(a), and (6) amended, pp. 1579, 1583, § § 4, 13, effective July 1; (3)(a)(I), (3)(a)(II), (3)(a)(III), and (3)(b) amended, p. 1518, § 212, effective October 1.L. 2003: IP(3)(a) amended, p. 1424, § 2, effective April 29; (2), (2.5), and IP(3)(a) amended and (2.1), (2.3), and (2.6) added, p. 2682, § 3, effective July 1.L. 2004: (3)(a) amended and (3.5) added, p. 636, § 12, effective August 4.L. 2007: (2)(b), (2.1), (2.3) (b), (2.5)(c), and (2.6) repealed, p. 1689, § 10, effective July 1.L. 2009: (6) repealed, ([HB 09-1266](#)), [ch. 347, p. 1815, § 5](#), effective August 5.L. 2010: (1)(a), IP(2)(a), (2)(a)(I)(A), (2.3)(a), (2.5)(a), (2.5) (b), IP(3)(a), and (5) amended and (7) added, ([HB 10-1352](#)), [ch. 259, pp. 1163, 1166, § § 3, 5](#), effective August 11.L. 2012: (1) amended, ([HB 12-1311](#)), [ch. 281, p. 1622, § 55](#), effective July 1.

Editor's note: (1) This section is similar to former § 18-18-105 as it existed prior to 1992.

(2) Amendments to the introductory portion to subsection (3)(a) by House Bill 03-1236 and Senate Bill 03-318 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (3)(a) (I), (3)(a)(II), (3)(a)(III), and (3)(b), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative intent contained in the 2003 act amending subsections (2) and (2.5) and the introductory portion to subsection (3)(a) and enacting subsections (2.1), (2.3), and (2.6), see section 1 of chapter 424, Session Laws of Colorado 2003.

#### ANNOTATION

Annotator's note. Since [§ 18-18-405](#) is similar to § 18-18-105 as it existed prior to the repeal and reenactment of this article in 1992, relevant cases construing that provision have been included in the annotations to this section.

Provision of this section classifying conspiracy to distribute a schedule II controlled substance as a class three felony does not violate equal protection even though distribution of a schedule II controlled substance is itself a class three felony and [§ 18-2-206](#) generally classifies any conspiracy to commit a class three felony as a class four felony. The general assembly could reasonably determine that conspiracies to distribute drugs have greater social impact and consequences than other conspiracies and should carry harsher penalties. *People v. Thurman*, 948 P.2d 69 (Colo. App. 1997).

Defendant's felony conviction under this statute did not violate equal protection when compared with § 12-22-314, which punishes cocaine possession as a misdemeanor, in that practitioners are engaged in an occupation which regularly requires administration, dispensation, and possession of controlled substance. *People v. Unruh*, 713 P.2d 370 (Colo.), cert. denied, 479 U.S. 1171, 106 S. Ct. 2894, 90 L. Ed.2d 981 (Colo. 1986).

Equal protection is not violated when a defendant is charged for the same conduct under both this section and [§ 18-18-404\(1\)\(a\)](#) because unlawful use and unlawful possession are distinct offenses that each require proof of at least one fact that the other does not. *People v. District Ct. of 11th Jud. Dist.*, 964 P.2d 498 (Colo. 1998).

Prohibiting possession of controlled substances under this section does not violate equal protection when compared with § 18-18-104, which punishes use of the same controlled substances less harshly, because punishing possession more harshly than use is justified to control distribution of controlled

substances. *People v. Cagle*, 751 P.2d 614 (Colo. 1988), appeal dismissed for want of a substantial federal question, 486 U.S. 1028, 108 S. Ct. 2009, 100 L. Ed 2d 597 (1988); *People v. Warren*, 55 P.3d 809 (Colo. App. 2002); *People v. Campbell*, 58 P.3d 1080 (Colo. App. 2002), *aff'd* on other grounds, 73 P.3d 11 (Colo. 2003).

This section and § 18-18-404 do not contain identical elements for purposes of an equal protection analysis. The general assembly's choice to classify possession as a graver offense than use is reasonably related to the general purposes of the criminal legislation. *Campbell v. People*, 73 P.3d 11 (Colo. 2003).

Conduct proscribed under this statute different than conduct proscribed by more general criminal attempt and conspiracy statutes; therefore, this statute's harsher penalty does not violate equal protection. *People v. Roy*, 723 P.2d 1345 (Colo. 1986).

Defendant's due process rights not violated when the amount of cocaine was included in the information and jury instructions. The instructions correctly charged the jury to determine the substantive offense: Possession with intent to sell the controlled substance. *People v. Martinez*, 36 P.3d 201 (Colo. App. 2001) (decided under law in effect prior to 1997 amendment).

There is no double jeopardy violation when a conviction for possession of a controlled substance and a conviction for distribution of a controlled substance were each based on a different quantum of drugs. *People v. Davis*, 2012 COA 1, -- P.3d --.

The general assembly has chosen to make drug possession a crime requiring only a general intent: if one knowingly possesses the substance, he has violated the statute. *People v. Barry*, 888 P.2d 327 (Colo. App. 1994).

"Knowing" element. This section requires only that a person know that he or she possesses a controlled substance, and not that he or she know the precise controlled substance possessed. *People v. Perea*, 126 P.3d 241 (Colo. App. 2005).

"Knowingly" requirement does not apply to the amount of controlled substance. "Knowingly" appears only in subsection (1)(a) and applies only to the elements of the crime. The amount of controlled substance in subsection (2) operates as a sentence enhancer and does not contain a mens rea. *People v. Scheffer*, 224 P.3d 279 (Colo. App. 2009).

To sustain a conviction for possession of a controlled substance, the prosecution must show that defendant had knowledge that he or she was in possession of a narcotic drug and that he or she knowingly intended to possess the drug. This element may be established circumstantially: If the defendant has exclusive possession of the premises in which drugs are found, the jury may infer knowledge from the fact of possession. Similarly, knowledge can be inferred from the fact that defendant was the driver and sole occupant of a vehicle, irrespective of whether he or she was also the vehicle's owner. *People v. Baca*, 109 P.3d 1005 (Colo. App. 2004).

A conviction for unlawful possession of a controlled substance may be predicated on circumstantial evidence. The controlled substance need not be found on the person of the defendant as long as it is found in a place under his or her dominion and control. Whenever a person is not in exclusive possession of the premises where the drugs are found, such an inference may not be drawn unless there are statements or circumstances tending to buttress the inference of possession. *People v. Atencio*, 140 P.3d 73 (Colo. App. 2005).

In this case, there are four pieces of circumstantial evidence that buttress the inference: (1) The defendant fled from officers; (2) the baggies were found in the place where defendant's flight was interrupted; (3) the baggies were warmer than the night air; and (4) the baggies had not been in the location of the yard prior to apprehension of the defendant. *People v. Atencio*, 140 P.3d 73 (Colo. App. 2005).

"Knowingly" element of this section is applied in *People v. Romero*, 689 P.2d 692 (Colo. App. 1984).

In light of all the indications suggesting a legislative intent to create a single, unitary offense, as well as the absence of evidence to the contrary, the acts enumerated in subsection (1)(a) all represent stages in the commission of one crime. *People v. Abiodun*, 111 P.3d 462 (Colo. 2005).

The statutory language of the Uniform Controlled Substance Act of 1992 does not convey an intention by the Colorado general assembly to limit its application solely to designer drugs. Thus, the argument that pseudoephedrine is not a designer drug and therefore outside the jurisdiction of this act is invalid. *People v. Frantz*, 114 P.3d 34 (Colo. App. 2004).

Legislature did not intend to limit representations regarding the amount to those made during the transaction. The statute is intended to target offenders whose level of involvement is that of an "ounce dealer", and all representations made by a defendant regarding the amount are indicative of an offender's level of involvement in a transaction. *People v. Abiodun*, 87 P.3d 164 (Colo. App. 2003), *aff'd* on other grounds, 111 P.3d 462 (Colo. 2005).

Quantity not an element. Subsection (3)(a) does not create an additional element of quantity for the underlying substantive offense; rather, it defines circumstances that, if proven beyond a reasonable doubt, may require a sentence greater than the presumptive minimum contained in [§ 18-1.3-401 \(1\)\(a\)](#). *Whitaker v. People*, 48 P.3d 555 (Colo. 2002); *People v. Hinojos-Mendoza*, 140 P.3d 30 (Colo. App. 2005), *aff'd* in part and *rev'd* in part on other grounds, 169 P.3d 662 (Colo. 2007).

Nevertheless, quantity still must be proved beyond a reasonable doubt. *People v. Hinojos-Mendoza*, 140 P.3d 30 (Colo. App. 2005), *aff'd* in part and *rev'd* in part on other grounds, 169 P.3d 662 (Colo. 2007).

The provision in subsection (2.3)(a) applies to possession of one gram or less of a compound, mixture, or preparation that contains any quantity of a controlled substance not to the weight of the controlled substance itself. *People v. Reeves*, 252 P.3d 1137 (Colo. App. 2010).

Where the quantity of a drug is so minute that it amounts to only a trace, there is no basis, from that fact alone, for any logical or reasonable inference that the defendant had knowledgeable possession. *People v. Theel*, 505 P.2d 964 (Colo. 1973).

When the amount of contraband is less than a usable quantity, other evidence may be necessary to establish knowing possession. *People v. Theel*, 505 P.2d 964 (Colo. 1973); *People v. Ceja*, 904 P.2d 1308 (Colo. 1995); *Richardson v. People*, 25 P.3d 54 (Colo. 2001).

The absence of a usable quantity does not constitute evidence that the defendant did not know that he possessed the drug. Rather, evidence of a usable quantity alone is sufficient evidence of knowledge to permit the case to go to a jury. Where there is not evidence of a usable quantity, the People must present other evidence regarding the defendant's knowledge to justify the jury's consideration of the element. *Richardson v. People*, 25 P.3d 54 (Colo. 2001).

Evidence sufficient to uphold conviction. The jury could infer that defendant was at the scene to sell drugs based on the evidence that an informant had arranged a drug deal for \$ 300, defendant was one of two people at the location of the drug deal, and there was \$ 300 worth of drugs under defendant's car seat. *People v. Robinson*, 226 P.3d 1145 (Colo. App. 2009).

Whether defendant had been previously convicted of possession of a controlled substance was not required to be proven beyond a reasonable doubt since previous conviction related to sentence enhancement statutory provision, properly deemed so by the trial court. *People v. Whitley*, 998 P.2d 31 (Colo. App. 1999).

When sentence enhancement provision increases punishment based on a defendant's criminal history but requires no statutory burden of proof or hearing procedure applicable to determination of the prior criminal conduct, due process is satisfied as long as the defendant receives reasonable notice of the potential for an increased sentence and the prosecution meets its burden of proving the prior criminal



conduct by a preponderance of the evidence. *People v. Whitley*, 998 P.2d 31 (Colo. App. 1999).

A positive field test result is not a prerequisite for a warrantless arrest of a defendant for a drug-related offense if sufficient other factors are present to support probable cause for such an arrest. *People v. Rayford*, 725 P.2d 1142 (Colo. 1986).

Presence at defendant's laboratory of phenylacetoacetonitrile, which can be combined with other substances to produce a schedule II controlled substance, was insufficient to support conviction of attempted manufacture and possession of schedule II controlled substance against defendant. *People v. Noland*, 739 P.2d 906 (Colo. App. 1987).

Taking delivery of a controlled substance by purchase is inevitably incident to the criminal conduct of one who delivers it; therefore, the person who purchases the controlled substance is exempt from liability as a complicitor for the crime of distribution committed by the person delivering the controlled substance. *People v. Hart*, 787 P.2d 186 (Colo. App. 1989).

Adoption of the rule that "transitory" handling of a drug may not constitute "possession" would provide no defense to defendant since jurisdictions with such rule have held that the rule is inapplicable in a case in which the defendant had flushed an alleged narcotic down the toilet when police raided the residence. *People v. Barry*, 888 P.2d 327 (Colo. App. 1994).

The prescription exception referenced in subsection (1)(a) of this section and appearing in [§ 18-18-302 \(3\)\(c\)](#) is an affirmative defense, notwithstanding the fact that the general assembly did not label it as such. Thus, the trial court erred by refusing to instruct the jury that it was the prosecution's burden to disprove, beyond a reasonable doubt, evidence that defendant attempted to gain possession of the controlled substance pursuant to a lawful order of a practitioner. *People v. Whaley*, 159 P.3d 757 (Colo. App. 2006).

While subsection (1)(a) uses both the words "sale" and "distribute" to define methods by which the statute may be violated, those words no longer have distinct legal meaning or effect as they had prior to the enactment of the Colorado Controlled Substances Act. Both are words used to describe an exchange involving the unauthorized delivery of a controlled substance. *People v. Farris*, 812 P.2d 654 (Colo. 1991).

Where the information charged the defendant with "sale and distribution" of a controlled substance, and although the verdict found that he "sold or distributed" such a substance, thereby charging and sustaining only one offense, the trial court properly instructed the jury as to the elements of the crime of sale or distribution of cocaine and as to the pertinent definition of distribution, its refusal to instruct on the "procuring agent" defense was not error. *People v. Farris*, 812 P.2d 654 (Colo. 1991).

With the exception of simple possession, the general assembly intended the drug-related crimes proscribed in subsection (1), including possession with intent to distribute, to be punished as class 3 felonies. *People v. Pierrie*, 30 P.3d 816 (Colo. App. 2001).

Crime of simple possession is lesser included offense of the crime of possession with the intent to distribute. *People v. Gilmore*, 97 P.3d 123 (Colo. App. 2003).

While an individual may unlawfully possess a controlled substance without voluntarily using it, it is simply not feasible for an individual to voluntarily use a controlled substance without also possessing it. *People v. Villapando*, 984 P.2d 51 (Colo. 1999).

A type of possession is a lesser-included offense of the crime of manufacture. It is evident that one who manufactures a controlled substance also possesses the substance in the course of manufacturing it; possession requires immediate and knowing control over the substance. *Patton v. People*, 35 P.3d 124 (Colo. 2001).

Possession is incidental and necessary to distribution, and convictions for possession must merge with

the convictions for distribution. *People v. Abiodun*, 87 P.3d 164 (Colo. App. 2003), *aff'd* on other grounds, 111 P.3d 462 (Colo. 2005).

Manufacturing a controlled substance is a lesser included offense of child abuse based on manufacturing a controlled substance. *People v. Laurent*, 194 P.3d 1053 (Colo. App. 2008) (decided under law in effect prior to 2006 amendment to [§ 18-6-401 \(1\)\(c\)](#)).

No conflict between this section and [§ 18-1.3-401](#). In this section, the general assembly defined the elements of the crime of possession with intent to distribute and incorporated the presumptive range found in [§ 18-1.3-401 \(1\)\(a\)](#). This section does not preclude the finding that an offense is an extraordinary risk crime and does not preclude the application of [§ 18-1.3-401 \(10\)](#) to increase the presumptive range found in subsection (1)(a). *People v. Hinojos-Mendoza*, 140 P.3d 30 (Colo. App. 2005), *aff'd* in part and *rev'd* in part on other grounds, 169 P.3d 662 (Colo. 2007).

Conspiracy to distribute a controlled substance is not an extraordinary risk crime. A plain reading of the statute does not include inchoate crimes. *People v. Valenzuela*, 216 P.3d 588 (Colo. 2009).

Subsection (3)(a) requires that, when a defendant is convicted pursuant to subsection (3)(a) and another drug offense with a different sentencing regimen, the court shall apply the regimen producing the greater sentence. In this case, defendant was convicted as a special offender under this section and convicted of possession with intent to distribute under [§ 18-18-407](#). Under the regimen in [§ 18-18-407](#), the sentencing range was eight to 48 years, under the regimen for this section, the court was required to impose a sentence of at least 16 years and one day, so the court correctly sentenced the defendant pursuant to the regimen of this section. *People v. Montalvo-Lopez*, 215 P.3d 1139 (Colo. App. 2008).

For the sentence enhancer in subsection (3), a finding of the defendant's knowledge of the precise amount possessed is not required whether the person is a principal or a complicitor. Once a determination of guilt has been made, then if the amount is 28 grams or more, the court is required to sentence the defendant to a minimum presumptive sentence. *People v. Ramirez*, 997 P.2d 1200 (Colo. App. 1999), *aff'd*, 43 P.3d 611 (Colo. 2001).

Under subsection (3), defendant is not entitled to credit against sentence for time served in a supervised, nonresidential community corrections program rather than in incarceration in the department of corrections. *People v. Winters*, 789 P.2d 1120 (Colo. App. 1990).

Trial court exceeded its jurisdiction in applying sentencing alternative available under [§ 18-18-404 \(3\)](#) to probationer who was convicted under this section. *People v. Hutchings*, 881 P.2d 466 (Colo. App. 1994).

A reviewing court's decision whether to address a challenge to multiple punishments by first comparing the acts for which punishment was separately imposed, or by first assessing whether the acts constitute separate offenses, is largely a matter of preference, based on the circumstances of each case and the extent to which one or the other analysis is likely to completely resolve the question. *People v. Abiodun*, 111 P.3d 462 (Colo. 2005).

As long as each legally distinct offense has been charged with sufficient specificity to distinguish it from other offenses and evidence at trial is sufficient to support convictions of each charge, general verdicts of guilt will be adequate to support multiple convictions. *People v. Abiodun*, 111 P.3d 462 (Colo. 2005).

Convictions for possession of a controlled substance and possession of manufacturing chemicals or supplies were based on factually distinct conduct and do not violate double jeopardy. *People v. Crespi*, 155 P.3d 570 (Colo. App. 2006).

This section as it existed prior to its amendment in 1987 mandated sentencing defendants convicted of cocaine offenses involving more than 28 grams to the department of corrections and did not permit sentencing of such defendants to community corrections. *People v. Winters*, 765 P.2d 1010 (Colo. 1988).



To obtain a conviction for possession of cocaine, subsection (1)(a) does not require the prosecution to prove that the defendant knowingly possessed a usable quantity of cocaine. Rather, the prosecution must prove that the defendant knowingly possessed some quantity of a controlled substance. *People v. Ceja*, 904 P.2d 1308 (Colo. 1995) (decided under former § 18-18-105 (1)(a) as it existed prior to the 1992 repeal and reenactment of the "Uniform Controlled Substances Act of 1992", article 18 of title 18); *People v. Richardson*, 8 P.3d 562 (Colo. App. 2000), *aff'd*, 25 P.3d 54 (Colo. 2001).

Subsection (3)(a) was not intended to create a separate offense for possessing more than 25 grams of a schedule I or schedule II controlled substance, but instead was merely intended to be a mandatory sentencing provision. Therefore, defendant's conviction and sentence for possession of 28 grams or more of cocaine must be vacated. *People v. Salcedo*, 985 P.2d 7 (Colo. App. 1998), *rev'd on other grounds*, 999 P.2d 833 (Colo. 2000); *People v. Tafoya*, 985 P.2d 26 (Colo. App. 1999).

The language in the introductory paragraph of subsection (3)(a) stating "except as otherwise provided in § 18-18-407 relating to special offenders" gives the court discretion in special offender cases to impose a minimum sentence less than the minimum sentence otherwise required by subsection (3)(a). *People v. Coleman*, 55 P.3d 817 (Colo. App. 2002).

The definition of "cocaine" in § 18-18-102 (4), by its plain language, includes a mixture that includes any amount of cocaine. Therefore, the amount of cocaine involved in a transaction is determined by the total amount of the mixture containing the cocaine, not just the amount of cocaine in the mixture. *People v. Esquivel-Alaniz*, 985 P.2d 22 (Colo. App. 1999).

Possession of 28 grams or more of cocaine is not a separate offense, but rather triggers a mandatory sentencing provision. *People v. Ramirez*, 1 P.3d 233 (Colo. App. 1999) (decided under law in effect prior to 1997 amendment).

Possession of more than 25 grams of cocaine is an element that increases the length of sentence, not a separate offense. However, where defendant's sentence reflected the appropriate application of this section to the sentence imposed for his conviction of other charges under this section, his sentence did not need to be changed. Only the mittimus need be changed to reflect two convictions rather than three. *People v. Esquivel-Alaniz*, 985 P.2d 22 (Colo. App. 1999).

The general assembly intended to punish as a class 3 felony possession with intent to distribute a schedule II controlled substance when the amount possessed does not trigger the enhanced sentencing provisions of subsection (3). *People v. Perry*, 68 P.3d 472 (Colo. App. 2002).

Defendant's conviction and sentence for possession with intent to sell greater than 28 grams of a controlled substance must be vacated when defendant's conviction had already been enhanced by § 18-18-407; and may not be applied as a sentence enhancer to either defendant's possession conviction or his conspiracy conviction because the charge of which defendant had notice in the charging document only allowed for the 28 grams or more of a controlled substance to be applied to the possession with intent to sell conviction. *People v. Pineda-Eriza*, 49 P.3d 329 (Colo. App. 2001).

Sufficient evidence to support crime of possession with intent to distribute. *People v. Gilmore*, 97 P.3d 123 (Colo. App. 2003).

Repeat offender penalty enhancer does not have to be considered by the jury. The fact of a prior conviction does not have to be proved a jury. *People v. Gilmore*, 97 P.3d 123 (Colo. App. 2003).

Court required to apply both § 18-1.3-801 and this section. A second violation of this section for unlawful distribution and sale of a schedule II controlled substance increases the offense to a class 2 felony. If defendant has been convicted of three previous felonies, § 18-1.3-801 (2) requires court to sentence defendant to four times the maximum of the presumptive range for a class 2 felony. *People v. Cordova*, 199 P.3d 1 (Colo. App. 2007).

Applied in *People v. Donald*, 637 P.2d 392 (Colo. 1981); *People v. Nunez*, 658 P.2d 879 (Colo. 1983); *People v. Clements*, 661 P.2d 267 (Colo. 1983); *Holmes v. District Court*, 668 P.2d 11 (Colo. 1983); *People v. Sprow*, 718 P.2d 524 (Colo. 1986); *People v. Holmberg*, 992 P.2d 705 (Colo. App. 1999).

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## COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed  
at the Second Regular and First Extraordinary Sessions  
of the Sixty-Eighth General Assembly of the State of Colorado 2012  
and Constitutional and Statutory amendments approved at the General Election on November 6, 2012  
\*\*\*

## TITLE 18. CRIMINAL CODE

## ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992

## PART 4. OFFENSES AND PENALTIES

## C.R.S. 18-18-406 (2012)

## 18-18-406. Offenses relating to marijuana and marijuana concentrate

(1) Except as described in [section 18-1-711](#), a person who possesses two ounces or less of marijuana commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(2) Whenever a person is arrested or detained for a violation of subsection (1) of this section, the arresting or detaining officer shall prepare a written notice or summons for such person to appear in court. The written notice or summons shall contain the name and address of such arrested or detained person, the date, time, and place where such person shall appear, and a place for the signature of such person indicating the person's written promise to appear on the date and at the time and place indicated on the notice or summons. One copy of said notice or summons shall be given to the person arrested or detained, one copy shall be sent to the court where the arrested or detained person is to appear, and such other copies as may be required by the law enforcement agency employing the arresting or detaining officer shall be sent to the places designated by such law enforcement agency. The date specified in the notice or summons to appear shall be at least seven days after such arrest or detention unless the person arrested or detained demands an earlier hearing. The place specified in the notice or summons to appear shall be before a judge having jurisdiction of such class 2 petty offense within the county in which the class 2 petty offense charged is alleged to have been committed. The arrested or detained person, in order to secure release from arrest or detention, shall promise in writing to appear in court by signing the notice or summons prepared by the arresting or detaining officer. Any person who does not honor such written promise to appear commits a class 3 misdemeanor.

(3) (a) (I) Except as described in [section 18-1-711](#), a person who openly and publicly displays, consumes, or uses two ounces or less of marijuana commits a class 2 petty offense and, upon conviction thereof, shall be punished, at a minimum, by a fine of not less than one hundred dollars or, at a maximum, by a fine of not more than one hundred dollars and, notwithstanding the provisions of [section 18-1.3-503](#), by fifteen days in the county jail.

(II) Open and public display, consumption, or use of more than two ounces of marijuana or any amount of marijuana concentrate shall be deemed possession thereof, and violations shall be punished as provided for in subsection (4) of this section.

(b) Except as is otherwise provided for in paragraph (a) of this subsection (3), consumption or use of marijuana or marijuana concentrate shall be deemed possession thereof, and violations shall be punished as provided for in subsections (1), (2), and (4) of this section.

(4) (a) Any person who possesses more than two ounces of marijuana but no more than six ounces of marijuana commits:

(I) A class 2 misdemeanor.

(II) (Deleted by amendment, L. 2010, ([HB 10-1352](#)), [ch. 259](#), [p. 1166](#), [§ 6](#), effective August 11, 2010.)

(b) Any person who possesses more than six ounces of marijuana but no more than twelve ounces of marijuana or three ounces or less of marijuana concentrate commits:

(I) A class 1 misdemeanor.

(II) (Deleted by amendment, L. 2010, ([HB 10-1352](#)), [ch. 259](#), [p. 1166](#), [§ 6](#), effective August 11, 2010.)

(c) Any person who possesses more than twelve ounces of marijuana or more than three ounces of marijuana concentrate commits a class 6 felony.

(5) Transferring or dispensing two ounces or less of marijuana from one person to another for no consideration is a class 2 petty offense and shall not be deemed dispensing or sale thereof.

(6) (a) (I) A person shall not knowingly process or manufacture any marijuana or marijuana concentrate or knowingly allow to be processed or manufactured on land owned, occupied, or controlled by him or her any marijuana or marijuana concentrate except as authorized pursuant to part 1 of article 42.5 of title 12, C.R.S., or part 2 of article 80 of title 27, C.R.S.

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

(A) A class 4 felony; or

(B) A class 3 felony if the violation is committed subsequent to a prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which subparagraph (I) of this paragraph (a) applies or would apply if committed in this state.

(b) (I) Except as is otherwise provided in subsection (7) of this section and except as authorized by part 1 of article 42.5 of title 12, C.R.S., part 2 of article 80 of title 27, C.R.S., or part 2 or 3 of this article, it is unlawful for any person knowingly to dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute marijuana or marijuana concentrate; or attempt, induce, attempt to induce, or conspire with one or more other persons, to dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute marijuana or marijuana concentrate.

(II) As used in subparagraph (I) of this paragraph (b), "dispense" does not include labeling, as defined in [section 12-42.5-102 \(18\)](#), C.R.S.

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

(A) A class 5 felony if the amount of marijuana is less than five pounds or the amount of marijuana concentrate is less than one pound;

(B) A class 4 felony if the amount of marijuana is at least five pounds but not more than one hundred pounds or the amount of marijuana concentrate is at least one pound but not more than one hundred pounds;

(C) A class 3 felony if the amount of marijuana or marijuana concentrate is more than one hundred

pounds; or

(D) A class 3 felony if the violation is committed subsequent to any prior conviction in this or any other state, the United States, or any territory subject to the jurisdiction of the United States of a violation to which subparagraph (I) of this paragraph (b) applies or would apply if committed in this state.

(7) (a) Any provision of this article to the contrary notwithstanding, any person eighteen years of age or older who sells, transfers, or dispenses more than two ounces but less than five pounds of marijuana for consideration to any person under eighteen years of age but at least fifteen years of age or less than one pound of marijuana concentrate, with or without consideration, to another person under eighteen years of age commits a class 4 felony and, in addition to the punishment prescribed in [section 18-1.3-401](#), shall be punished by a fine of not more than five thousand dollars. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in [section 18-1.3-401 \(1\) \(a\) \(III\)](#).

(b) The sale, transfer, or dispensing of five or more pounds of marijuana or one pound or more of marijuana concentrate to a person under eighteen years of age but at least fifteen years of age is a class 3 felony.

(c) Any person eighteen years of age or older who sells, transfers, or dispenses any amount of marijuana or marijuana concentrate, with or without consideration, to any person under fifteen years of age commits a class 3 felony, and the court shall be required to sentence the defendant to the department of corrections for a term that is at least the minimum in the presumptive range but no more than the maximum term authorized for the punishment of a class 3 felony. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in [section 18-1.3-401 \(1\) \(a\) \(III\)](#).

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

(7.5) Except for a person who lawfully cultivates medical marijuana pursuant to the authority granted in [section 14 of article XVIII of the state constitution](#), a person shall not knowingly cultivate, grow, or produce a marijuana plant or knowingly allow a marijuana plant to be cultivated, grown, or produced on land that the person owns, occupies, or controls. A person who violates the provisions of this subsection (7.5) commits:

(a) A class 1 misdemeanor, if the offense involves six or fewer plants; or

(b) A class 5 felony if the offense involves more than six but fewer than thirty plants; or

(c) A class 4 felony if the offense involves thirty or more plants.

(8) (Deleted by amendment, L. 2010, [\(HB 10-1352\)](#), [ch. 259](#), [p. 1166](#), [§ 6](#), effective August 11, 2010.)

(9) (Deleted by amendment, L. 2003, p. 1428, [§ 12](#), effective April 29, 2003.)

(10) The provisions of this section shall not apply to any person who possesses, uses, prescribes, dispenses, or administers any drug classified under group C guidelines of the national cancer institute, as amended, approved by the federal food and drug administration.

(11) The provisions of this section shall not apply to any person who possesses, uses, prescribes, dispenses, or administers dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule

in a federal food and drug administration approved drug product, pursuant to part 1 of article 42.5 of title 12, C.R.S., or part 2 of article 80 of title 27, C.R.S.

(12) Repealed.

**HISTORY:** Source: . L. 92: Entire article R&RE, p. 358, § 1, effective July 1. L. 95: (10) amended, p. 206, § 21, effective April 13. L. 98: (12) added, p. 1436, § 6, effective July 1. L. 2000: (12) amended, p. 1360, § 43, effective July 1, 2001. L. 2002: (4)(a)(II), (4)(b)(II), (7)(c), (8)(a)(II)(B), (8)(b)(III)(B), and (12) amended, pp. 1580, 1583, § § 5, 14, effective July 1; (3)(a)(I), (7)(a), (7)(b), and (7)(c) amended, p. 1519, § 213, effective October 1. L. 2003: (7)(c) and (9) amended, p. 1428, § 12, effective April 29. L. 2009: (12) repealed, ([HB 09-1266](#)), [ch. 347](#), [p. 1815](#), [§ 6](#), effective August 5. L. 2010: (1), (3), (4), (5), (6), (7), and (8) amended and (7.5) added, ([HB 10-1352](#)), [ch. 259](#), [p. 1166](#), [§ 6](#), effective August 11. L. 2011: (3)(a)(II) and (3)(b) amended, ([HB 11-1303](#)), [ch. 264](#), [p. 1157](#), [§ 35](#), effective August 10. L. 2012: (1) and (3)(a)(I) amended, ([SB 12-020](#)), [ch. 225](#), [p. 988](#), [§ 6](#), effective May 29; (2) amended, ([SB-175](#)), [ch. 208](#), [p. 874](#), [§ 133](#), effective July 1; (6)(a)(I), (6)(b)(I), (6)(b)(II), and (11) amended, ([HB-1311](#)), [ch. 281](#), [p. 1622](#), [§ 56](#), effective July 1.

Editor's note: (1) This section is similar to former § 18-18-106 as it existed prior to 1992.

(2) Amendments to subsection (7)(c) by House Bill 02-1237 and House Bill 02-1046 were harmonized.

(3) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsection (2) applies to specified time intervals. For more information, see page 896 of Session Laws of Colorado 2012.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (3)(a)(I), (7)(a), (7)(b), and (7)(c), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration in the 2012 act amending subsections (1) and (3)(a)(I), see section 1 of chapter 225, Session Laws of Colorado 2012.

#### ANNOTATION

Annotator's note. Since [§ 18-18-406](#) is similar to § 18-18-106 as it existed prior to the repeal and reenactment of this article in 1992, relevant cases construing that provision have been included in the annotations to this section.

Double jeopardy. The elements of the offense of possession of eight or more ounces of marihuana and the offense of cultivation of marihuana are not identical; therefore, conviction of both offenses does not violate constitutional protections against double jeopardy. *People v. Benson*, 124 P.3d 851 (Colo. App. 2005).

Possession of hashish constitutionally treated differently. Because hashish is readily distinguishable from and potentially more intoxicating than marijuana, the general assembly may constitutionally treat possession of those substances differently, subsection (1) and (4)(b)(I), even though hashish falls into the statutory definition of marijuana in § 12-22-303 (17). *People v. Velasquez*, 666 P.2d 567 (Colo. 1983), appeal dismissed for want of substantial federal question, 465 U.S. 1001, 104 S. Ct. 989, 79 L. Ed.2d 223 (1984).

As is possession of hash oil. Since the active ingredient in hash oil is THC and occurs in greater concentrations in hash oil than in hashish, statute providing for more severe punishment for possession of hashish and hash oil is based upon reasonable classification and does not deny equal protection. *People v. Siwierka*, 683 P.2d 356 (Colo. 1984).

Penalty scheme does not violate equal protection even though lesser penalties for criminal conspiracy are established under [§ 18-2-206](#). *People v. Finnessey*, 747 P.2d 673 (Colo. 1987).



The phrase "intent to distribute" is not unconstitutionally vague. The phrase is a term that a person of ordinary intelligence can understand. The quantity required to permit the fact finder to infer that the possessor intended to distribute a controlled substance is evidentiary in nature and necessarily depends upon all the facts and circumstances of the case. *People v. Clendenin*, 232 P.3d 210 (Colo. App. 2009) (decided prior to 2010 amendment).

The distinction between marihuana and marihuana concentrate as set forth in § 12-22-303(17) and 12-22-303(18) complies with both the equal protection and due process requirements of the Colorado and United States constitutions. *People v. Rickstrew*, 712 P.2d 1008 (Colo. 1986).

Subsection (5) does not state an element of felony distribution and the language used demonstrates a deliberate choice by the general assembly to differentiate the crime of possession from the crime of dispensing or sale under subsection (8)(b)(I) and the circumstances giving rise to the crime of possession. *People v. Torres*, 812 P.2d 672 (Colo. App. 1990) (decided prior to 2010 amendment).

The absence of the phrase "a ny provision of this article to the contrary notwithstanding" in subsection (7)(b) does not indicate that any statutory provisions of article 18 of title 18 that are "to the contrary" of that subsection are not overridden by it, nor does the absence of this phrase require a court to instruct a jury in accordance with subsection (5). *People v. Graybeal*, 155 P.3d 614 (Colo. App. 2007).

The 1982 addition of subsection (8)(b)(I) makes clear that subsections (8)(b)(I) and (5) are independent of one another, define distinctly different crimes, and effectuate different legislative goals. *People v. Torres*, 812 P.2d 672 (Colo. App. 1990).

Multiple drug convictions sustainable if factually distinct. Both of the defendant's marihuana convictions are sustainable because the facts suggest one package of marihuana was intended for personal use and the other package was intended for distribution. *People v. Valencia*, 169 P.3d 212 (Colo. App. 2007).

There was no basis for a jury to have acquitted defendant on felony distribution charge under subsection (8)(b)(I) and at the same time find him guilty of possession under subsection (5) because the transactions involved consideration and the fact that defendant's motive was a desire to develop a friendship and sexual relationship with the detective rather than profit did not change the character of the transaction. *People v. Torres*, 812 P.2d 672 (Colo. App. 1990).

Possession of eight ounces of marijuana or more is a lesser included offense of possession with the intent to distribute marijuana. Each element of the possession offense is included in the offense of possession with intent to distribute except the quantity; however, the quantity is a sentence enhancer, not an essential element of the offense. *People v. Garcia*, 251 P.3d 1152 (Colo. App. 2010).

Possession of marijuana is not a lesser included offense of transferring marijuana under subsection (7) (b) or contributing to the delinquency of a minor under § 18-6-701. *People v. Graybeal*, 155 P.3d 614 (Colo. App. 2007).

Possession not lesser included offense to crime of introducing contraband. Because proof of possession is not an essential element to the crime of introducing contraband (§ 18-8-203), the crime of possession of cannabis cannot be a lesser included offense thereof. *People v. Etchells*, 646 P.2d 950 (Colo. App. 1982).

Probable cause to believe defendant committed the crime of possession of contraband under § 18-8-204.1 where defendant tested positive for marijuana and was in the custody of the department of corrections on the date of the offense and evidence of use assumes possession. *People v. Smith*, 984 P.2d 50 (Colo. 1999).

A person may not be subject to a custodial arrest for violating this section. The plain meaning of this section is that a peace officer may issue a summons and complaint and may subject a person only to a non-custodial arrest, under which circumstances a peace officer may conduct only a pat-down search for

weapons and search for instrumentalities or evidence of the specific crime for which the officer had probable cause to make an arrest. *People v. Bland*, 884 P.2d 312 (Colo. 1994).

"Arrest and detention", as used in subsection (2), are synonymous terms; both refer to "noncustodial" arrests. *People v. Bland*, 884 P.2d 312 (Colo. 1994).

Even though a person may not be subject to a custodial arrest for possessing one ounce or less of marihuana in violation of this section, the non-custodial arrest of such a person may permit not only a search for weapons, but also an extensive search for the instrumentalities of the crime. *People v. Bland*, 884 P.2d 312 (Colo. 1994).

Lawful possession of marihuana under subsection (10) is an affirmative defense to charges of unlawful possession with intent to distribute marihuana and unlawful possession of eight or more ounces of marihuana. The provision provides a legal justification to what would otherwise be criminally culpable behavior. *People v. Reed*, 932 P.2d 842 (Colo. App. 1996).

Question of the validity of [§ 42-2-124](#) was ripe for determination where court stayed its surrender of defendant's license pending appeal after convicting defendant of drug use under this section. *People v. Smith*, 944 P.2d 639 (Colo. App. 1997).

Subsection (10) does not preclude a finding of probable cause to conduct a search based upon the smell of burning marihuana. *People v. Mendez*, 948 P.2d 105 (Colo. App. 1997), *aff'd* on other grounds, 986 P.2d 275 (Colo. 1999).

Applied in *People v. Root*, 650 P.2d 562 (Colo. 1982); *Corr v. District Court*, 661 P.2d 668 (Colo. 1983); *People v. Hazelhurst*, 662 P.2d 1081 (Colo. 1983).

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## COLORADO REVISED STATUTES

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of the Sixty-Eighth General Assembly of the State of Colorado 2012  
and Constitutional and Statutory amendments approved at the General Election on November 6, 2012  
\*\*\*

## TITLE 18. CRIMINAL CODE

## ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992

## PART 4. OFFENSES AND PENALTIES

C.R.S. 18-18-406.1 (2012)

18-18-406.1. Unlawful use or possession of synthetic cannabinoids or salvia divinorum

(1) On and after January 1, 2012, it is unlawful for any person to use or possess any amount of any synthetic cannabinoid or salvia divinorum.

(2) A person who violates any provision of subsection (1) of this section commits a class 2 misdemeanor.

**HISTORY:** Source: L. 2011: Entire section added, ([SB 11-134](#)), ch. 261, p. 1139, § 2, effective July 1.

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## TITLE 18. CRIMINAL CODE

## ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992

## PART 4. OFFENSES AND PENALTIES

## C.R.S. 18-18-406.2 (2012)

18-18-406.2. Unlawful distribution, manufacturing, dispensing, sale, or cultivation of synthetic cannabinoids or salvia divinorum

(1) It is unlawful for any person knowingly to:

(a) Manufacture, dispense, sell, or distribute, or to possess with intent to manufacture, dispense, sell, or distribute, any amount of any synthetic cannabinoid or salvia divinorum;

(b) Induce, attempt to induce, or conspire with one or more other persons, to manufacture, dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute, any amount of any synthetic cannabinoid or salvia divinorum; or

(c) Cultivate salvia divinorum with intent to dispense, sell, or distribute any amount of the salvia divinorum.

(2) A person who violates any provision of subsection (1) of this section commits a class 5 felony.

(3) Notwithstanding the provisions of subsection (2) of this section, a person who violates any provision of subsection (1) of this section by dispensing, selling, or distributing any amount of any synthetic cannabinoid or salvia divinorum commits a class 4 felony if the person:

(a) Dispenses, sells, or distributes the synthetic cannabinoid or salvia divinorum to a minor who is less than eighteen years of age; and

(b) Is at least eighteen years of age and at least two years older than said minor.

(4) As used in this section, "dispense" does not include labeling, as defined in [section 12-42.5-102 \(18\)](#), C.R.S.

**HISTORY:** Source: . L. 2011: Entire section added, ([SB 11-134](#)), ch. 261, p. 1139, § 2, effective July 1. L. 2012: (4) amended, ([HB 12-1311](#)), ch. 281, p. 1623, § 57, effective July 1.



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## TITLE 18. CRIMINAL CODE

## ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992

## PART 4. OFFENSES AND PENALTIES

## C.R.S. 18-18-406.3 (2012)

18-18-406.3. Medical use of marijuana by persons diagnosed with debilitating medical conditions -  
unlawful acts - penalty - medical marijuana program cash fund

(1) The general assembly hereby finds and declares that:

- (a) [Section 14 of article XVIII of the state constitution](#) was approved by the registered electors of this state at the 2000 general election;
- (b) [Section 14 of article XVIII of the state constitution](#) creates limited exceptions to the criminal laws of this state for patients, primary care givers, and physicians concerning the medical use of marijuana by a patient to alleviate an appropriately diagnosed debilitating medical condition;
- (c) [Section 14 of article XVIII of the state constitution](#) requires a state health agency designated by the governor to establish and maintain a confidential registry of patients authorized to engage in the medical use of marijuana;
- (d) The governor, in accordance with paragraph (h) of subsection (1) of [section 14 of article XVIII of the state constitution](#), has designated the department of public health and environment, referred to in this section as the department, to be the state health agency responsible for the administration of the medical marijuana program;
- (e) [Section 14 of article XVIII of the state constitution](#) requires the department to process the applications of patients who wish to qualify for and be placed on the confidential registry for the medical use of marijuana, and to issue registry identification cards to patients who qualify for placement on the registry;
- (f) [Section 14 of article XVIII of the state constitution](#) sets forth the lawful limits on the medical use of marijuana;
- (g) [Section 14 of article XVIII of the state constitution](#) requires the general assembly to determine and enact criminal penalties for specific acts described in the constitutional provision;
- (h) In interpreting the provisions of [section 14 of article XVIII of the state constitution](#), the general

assembly has applied the definitions contained in subsection (1) of the constitutional provision and has attempted to give the remaining words of the constitutional provision their plain meaning;

(i) This section reflects the considered judgment of the general assembly regarding the meaning and implementation of the provisions of [section 14 of article XVIII of the state constitution](#).

(2) (a) Any person who fraudulently represents a medical condition to a physician, the department, or a state or local law enforcement official for the purpose of falsely obtaining a marijuana registry identification card from the department, or for the purpose of avoiding arrest and prosecution for a marijuana-related offense, commits a class 1 misdemeanor.

(b) If an officer or employee of the department receives information that causes such officer or employee reasonably to believe that fraudulent representation, as described in paragraph (a) of this subsection (2), has occurred, such officer or employee shall report the information to either the district attorney of the county in which the applicant for the marijuana registry identification card resides, or to the attorney general.

(3) The fraudulent use or theft of any person's marijuana registry identification card, including, but not limited to, any card that is required to be returned to the department pursuant to [section 14 of article XVIII of the state constitution](#), is a class 1 misdemeanor.

(4) The fraudulent production or counterfeiting of, or tampering with, one or more marijuana registry identification cards is a class 1 misdemeanor.

(5) Any person including, but not limited to, any officer, employee, or agent of the department, or any officer, employee, or agent of any state or local law enforcement agency, who releases or makes public any confidential record or any confidential information contained in any such record that is provided to or by the marijuana registry of the department without the written authorization of the marijuana registry patient commits a class 1 misdemeanor.

(6) The use, possession, manufacturing, dispensing, selling, or distribution of a synthetic cannabinoid, as defined in [section 18-18-102 \(34.5\)](#), shall not be considered an exception to the criminal laws of this state for the purposes of this section or of [section 14 of article XVIII of the state constitution](#).

(7) An owner, officer, or employee of a business licensed pursuant to article 43.3 of title 12, C.R.S., or an employee of the state medical marijuana licensing authority, a local medical marijuana licensing authority, or the department of public health and environment, who releases or makes public a patient's medical record or any confidential information contained in any such record that is provided to or by the business licensed pursuant to article 43.3 of title 12, C.R.S., without the written authorization of the patient commits a class 1 misdemeanor; except that the owner, officer, or employee shall release the records or information upon request by the state or local medical marijuana licensing authority. The records or information produced for review by the state or local licensing authority shall not become public records by virtue of the disclosure and may be used only for a purpose authorized by article 43.3 of title 12, C.R.S., or for another state or local law enforcement purpose. The records or information shall constitute medical data as defined by [section 24-72-204 \(3\) \(a\) \(I\)](#), C.R.S. The state or local medical marijuana licensing authority may disclose any records or information so obtained only to those persons directly involved with any investigation or proceeding authorized by article 43.3 of title 12, C.R.S., or for any state or local law enforcement purpose.

**HISTORY:** Source: L. 2001: Entire section added, p. 471, § 1, effective April 27. L. 2011: (6) added, [\(SB 11-134\)](#), ch. 261, p. 1140, § 3, effective July 1; (7) added, [\(HB 11-1043\)](#), ch. 266, p. 1215, § 28, effective July 1.

Editor's note: Subsection (7) was numbered as subsection (6) in House Bill 11-1043 but was renumbered on revision for ease of location.

## RECENT ANNOTATIONS

Written waiver requirement of subsection (5) of this section is inapplicable where defendant raised affirmative defense of medical use. Physician's rebuttal testimony concerning his conversations with defendant was a lawful disclosure under [§ 13-90-107 \(1\)\(d\)](#) rather than an unlawful disclosure of defendant's confidential medical marijuana patient registry information. *People v. Sexton*, 2012 COA 26, -- P.3d -- published February 16, 2012 .

## ANNOTATION

Primary care-giver must do more than merely supply a patient with marijuana for medical use in order to meet the constitutional requirement of having a significant responsibility for managing the well-being of a patient who has a debilitating medical condition. *People v. Clendenin*, 232 P.3d 210 (Colo. App. 2009).

Primary care-giver affirmative defense does not apply where the provision of marijuana is itself the substance of the relationship. *People v. Clendenin*, 232 P.3d 210 (Colo. App. 2009).

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# **Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws**

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**Congressional Research Service**

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## Summary

This is a chart of the maximum fines and terms of imprisonment that may be imposed as a consequence of conviction for violation of the federal Controlled Substances Act (CSA) and other drug supply and drug demand related laws.

It lists the penalties for: heroin, cocaine, crack, PCP, LSD, marihuana (marijuana), amphetamine, methamphetamine, listed (precursor) chemicals, paraphernalia, date rape drugs, rave drugs, designer drugs, ecstasy, drug kingpins, as well as the other substances including narcotics and opiates assigned to Schedule I, Schedule II, Schedule III, Schedule IV, and Schedule V of the Controlled Substances Act and the Controlled Substances Import and Export Act (Title II and Title III of the Comprehensive Drug Abuse and Control Act).

It maps the penalty structure for violations of 21 U.S.C. 841 (drug trafficking), 21 U.S.C. 841(b)(5) (cultivation on federal property), 21 U.S.C. 841(b)(6) (environmental damage from illegal manufacturing), 21 U.S.C. 841(b)(7) (crime of violence), 21 U.S.C. 841(c) (offenses involving listed chemicals), 21 U.S.C. 841(d) (booby traps on federal lands), 21 U.S.C. 841(f) (distribution/possession of listed chemicals), 21 U.S.C. 841(g) (Internet sales of date rape drugs), 21 U.S.C. 841(h) (dispensing controlled substances that are prescription drugs by means of the Internet), 21 U.S.C. 842 (regulatory offenses), 21 U.S.C. 843 (communications-related offenses), 21 U.S.C. 844 (simple possession), 21 U.S.C. 846, 963 (attempt and conspiracy), 21 U.S.C. 849 (drug dealing at truck stops), 21 U.S.C. 848 (continuing criminal enterprises (CCE)), 21 U.S.C. 854, 855 (investment of illicit drug profits), 21 U.S.C. 856 (establishing manufacturing operations), 21 U.S.C. 858 (endangering human life), 21 U.S.C. 859 (distribution to infants, minors, children, juveniles, and those under 18 years of age), 21 U.S.C. 860 (distribution in school zones), 21 U.S.C. 861 (distribution to pregnant women), 21 U.S.C. 863 (trafficking in drug paraphernalia), 21 U.S.C. 864 (theft of anhydrous ammonia, or transportation of stolen anhydrous ammonia), 21 U.S.C. 865 (smuggling methamphetamine into the United States), 21 U.S.C. 960 (illicit drug import and export), 21 U.S.C. 960a (narco-terrorism), 21 U.S.C. 962 (recalcitrant drug smugglers), 21 U.S.C. 1906 (financial transactions with designated foreign narcotics traffickers), 18 U.S.C. 545 (smuggling goods into the United States), 18 U.S.C. 546 (smuggling goods into foreign countries), 18 U.S.C. 924(c) (firearms and armor piercing ammunition in connection to drug trafficking crime), 18 U.S.C. 924(e) (armed career criminals), 18 U.S.C. 1952 (Travel Act), 18 U.S.C. 1956 (money laundering), 18 U.S.C. 1957 (monetary transactions in property derived from unlawful activity), 18 U.S.C. 1959 (compensated crime of violence in aid of racketeering), 18 U.S.C. 1963 (racketeering (RICO)), 18 U.S.C. 2118 (robberies and burglaries involving controlled substances), 18 U.S.C. 3559(c) (three strikes), 19 U.S.C. 1590 (aviation smuggling), 26 U.S.C. 7201 (tax evasion), 26 U.S.C. 7203 (failure to file required returns), 26 U.S.C. 7206 (fraud and false statements), 31 U.S.C. 5322 (currency transaction reporting (smurfing)), 31 U.S.C. 5332 (bulk cash smuggling into or out of the United States), 46 U.S.C. 70506 (maritime drug law enforcement).

This report reflects amendments to the Controlled Substances Act made by the Fair Sentencing Act of 2010 (P.L. 111-220) that increased the quantities of crack cocaine necessary to trigger certain penalties and also increased the fine amounts for major drug traffickers.



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## Trafficking

**Unlawful distribution, possession with intent to distribute, manufacture, importation and exportation, etc. (21 U.S.C. 841, 960, 962, and 46 U.S.C. 70506)<sup>1</sup>**

1<sup>st</sup> offense

<i>Substance</i>	<i>Amount</i>	<i>Fine</i>	<i>Imprisonment</i>
Heroin			
	1 kilogram <sup>2</sup> or more	\$10/50 million	10 years to life
	100 to 999 grams	\$5/25 million	5 to 40 years
	Less than 100 grams	\$1/5 million	Up to 20 years
Coca leaf and derivatives			
	5 kilograms or more	\$10/50 million	10 years to life
	500 to 4999 grams	\$5/25 million	5 to 40 years
	Less than 500 grams	\$1/5 million	Up to 20 years
Ecgonine (a cocaine precursor)			
	5 kilograms or more	\$10/50 million	10 years to life
	500 to 4999 grams	\$5/25 million	5 to 40 years
	Less than 500 grams	\$1/5 million	Up to 20 years
Coca leaves, cocaine, or ecgonine containing cocaine base ("Crack," etc.)			
	280 grams or more	\$10/50 million	10 years to life
	28 to 279 grams	\$5/25 million	5 to 40 years
	Less than 28 grams	\$1/5 million	Up to 20 years
PCP (phencyclidine)			
	100 grams or more	\$10/50 million	10 years to life

<sup>1</sup> All trafficking offenses involving Schedule I and II substances (and gamma hydrobutyric acid and flunitrazepam) are subject to the same imprisonment penalty—20 years to life—if death or serious bodily injury results from the use of the substance involved. Unless otherwise indicated, weights apply to any mixture containing a detectable amount of the substance regardless of the weight of the substance in the mixture.

A reference to a fine of "\$5/25 million" means a fine of no more than \$5 million for an individual and no more than \$25 million for a defendant other than an individual. A reference to "10 years to life" means a term of imprisonment of not less than 10 years nor more than life.

The Synthetic Drug Abuse Prevention Act of 2012—Subtitle D of Title XI of the Food and Drug Administration Safety and Innovation Act (P.L. 112-144)—added "cannabimimetic agents" to Schedule I of the Controlled Substances Act and defined such term to mean one of five structural classes of synthetic cannabinoids (and their analogues). Synthetic cannabinoid products are sometimes referred to as "synthetic marijuana," "Spice," or "K2." The act also added 11 synthetic stimulants and hallucinogens to Schedule I, including methylenedioxypyrovalerone (MDPV), a chemical ingredient found in designer drugs commonly referred to as "bath salts." The criminal penalties applicable to unlawful trafficking of these synthetic drugs are the same as those described below the "Any other Schedule I substance" table rows. In addition, any offense listed in this report that refers to "all substances" now encompasses these synthetic drugs. Finally, because these particular synthetic drugs are now regulated as controlled substances, the simple possession statute and its associated penalties, 21 U.S.C. 844, applies to them.

<sup>2</sup> 1 kilogram is equal to 35.27 ounces; 1 gram is equal to 0.04 ounces.

10 to 99 grams	\$5/25 million	5 to 40 years
Less than 10 grams	\$1/5 million	Up to 20 years
Mixture or substance containing detectable amount of PCP		
1 kilogram or more	\$10/50 million	10 years to life
100 to 999 grams	\$5/25 million	5 to 40 years
Less than 100 grams	\$1/5 million	Up to 20 years
LSD (lysergic acid diethylamide)		
10 grams or more	\$10/50 million	10 years to life
1 to 9 grams	\$5/25 million	5 to 40 years
Less than 1 gram	\$1/5 million	Up to 20 years
N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide (Fentanyl, i.e., "synthetic heroin")		
400 grams or more (or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of it)	\$10/50 million	10 years to life
40 to 399 grams (or 10-99 grams of a mixture containing a detectable amount of any analogue of it)	\$5/25 million	5 to 40 years
Less than 40 grams	\$1/5 million	Up to 20 years
Marihuana		
1000 kilograms or more or 1000 or more plants <sup>3</sup>	\$10/50 million	10 years to life
100 to 999 kilograms or 100 to 999 plants	\$5/25 million	5 to 40 years
50 to 99 kilograms or 50 to 99 plants	\$1/5 million	Up to 20 years
Under 50 kilograms <sup>4</sup> , 10 kilograms of hashish, 1 kilogram of hashish oil, or 1 to 49 plants	\$250,000/\$1 million	Up to 5 years
Methamphetamine		
50 grams or more or 500 grams or more of a mixture	\$10/50 million	10 years to life
5 to 49 grams or 50 to 499 grams of a mixture	\$5/25 million	5 to 40 years
Less than 5 grams or less than 50 grams of a mixture	\$1/5 million	Up to 20 years
Gamma hydroxybutyric acid		
any weight	\$1/5 million	Up to 20 years
Flunitrazepam <sup>5</sup>		

<sup>3</sup> Unlike the penalties for manufacturing, distribution, dispensing, or possession, those for importation or exportation do not distinguish between quantities of marihuana plants in excess of 100. Importation or exportation of any marihuana plants in excess of 100 is subject to higher penalties than those for less than 50 kilograms of marihuana, etc.

<sup>4</sup> Except in the case of 50 or more marihuana plants regardless of weight, and except that under section 841(b)(4) distribution of a small amount of marihuana for no remuneration is treated as a simple possession offense and punished under section 844, *infra*.

<sup>5</sup> Importation or exportation of any quantity of flunitrazepam is subject to a fine of \$1/5 million and up to 20 years imprisonment.

I gram	\$1/5 million	Up to 20 years
Less than 1 gram	\$250,000/\$1 million	Up to 5 years
Any other Schedule I or II substance		
any weight	\$1/5 million	Up to 20 years
Any other Schedule III substance		
any weight	\$500,000/\$2.5 million	Up to 15 years <sup>6</sup>
Any other Schedule IV substance		
any weight	\$250,000/\$1 million	Up to 5 years <sup>7</sup>
Any Schedule V substance		
any weight	\$100,000/\$250,000	Up to 1 year
<b>2<sup>nd</sup> offense<sup>8</sup></b>		
Heroin		
1 kilogram or more	\$20/75 million	20 years to life
100 to 999 grams	\$8/50 million	10 years to life
Less than 100 grams	\$2/10 million	Up to 30 years
Coca leaf and derivatives		
5 kilograms or more	\$20/75 million	20 years to life
500 to 4999 grams	\$8/50 million	10 years to life
Less than 500 grams	\$2/10 million	Up to 30 years
Ecgonine (a cocaine precursor)		
5 kilograms or more	\$20/75 million	20 years to life
500 to 4999 grams	\$8/50 million	10 years to life
Less than 500 grams	\$2/10 million	Up to 30 years
Coca leaves, cocaine, or ecgonine containing cocaine base ("Crack," etc.)		
280 grams or more	\$20/75 million	20 years to life
28 to 279 grams	\$8/50 million	10 years to life
Less than 28 grams	\$2/10 million	Up to 30 years
PCP (phencyclidine)		
100 grams or more	\$20/75 million	20 years to life
10 to 99 grams	\$8/50 million	10 years to life
Less than 10 grams	\$2/10 million	Up to 30 years

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> A second offense is one committed after a prior conviction for a felony drug offense has become final.

Mixture or substance containing detectable amount of PCP		
1 kilogram or more	\$20/75 million	20 years to life
100 to 999 grams	\$8/50 million	10 years to life
Less than 100 grams	\$2/10 million	Up to 30 years
LSD(lysergic acid diethylamide)		
10 grams or more	\$20/75 million	20 years to life
1 to 9 grams	\$8/50 million	10 years to life
Less than 1 gram	\$2/10 million	Up to 30 years
N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide (Fentanyl, i.e., "synthetic heroin") 400 grams or more (or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of it)		
	\$20/75 million	20 years to life
40 to 399 grams (or 10-99 grams of a mixture containing a detectable amount of any analogue of it)	\$8/50 million	10 years to life
Less than 40 grams	\$2/10 million	Up to 30 years
Marihuana		
1000 kilograms or more or 1000 or more plants)	\$20/75 million	20 years to life
100 to 999 kilograms or 100 to 999 plants)	\$8/50 million	10 years to life
50 to 99 kilograms or 50 to 99 plants <sup>9</sup>	\$2/10 million	Up to 30 years
Less than 50 kilograms, <sup>10</sup> 10 kilograms of hashish, 1 kilogram of hashish oil, or 1 to 49 plants	\$500,000/\$2 million	Up to 10 years
Methamphetamine		
50 grams or more	\$20/75 million	20 years to life
5 to 49 grams	\$8/50 million	10 years to life
Less than 5 grams	\$2/10 million	Up to 30 years
Gamma hydroxybutyric acid		
any weight	\$2/10 million	Up to 30 years
Flunitrazepam <sup>11</sup>		
1 gram	\$2/10 million	Up to 30 years
Less than 1 gram	\$500,000/\$2 million	Up to 10 years
Any other Schedule I or II substance		
any weight	\$2/10 million	Up to 30 years
Any other Schedule III substance		
any weight	\$1 million/\$5 million	Up to 30 years

<sup>9</sup> See *supra* note 3.

<sup>10</sup> Except in the case of 50 or more marihuana plants regardless of weight and except that distribution of a small amount of marihuana is punishable as simple possession under section 844, *infra*.

<sup>11</sup> See *supra* note 5.

<b>Any other Schedule IV substance</b>		
any weight	\$500,000/\$2 million	Up to 10 years
<b>Any Schedule V substance</b>		
any weight	\$200,000/\$500,000	Up to 4 years
<b>3<sup>rd</sup> offense</b>		
A Schedule I or II substance singled out for special penalty treatment (as indicated above) in amounts constituting a top level offense	Same as 2 <sup>nd</sup> offense	Life
<b>Cultivation on Federal property (21 U.S.C. 841(b)(5))</b>		
<b>Any offense</b>		
All substances/all weights	Greater of \$500,000/\$1 million or the maximum fine for distribution of the substance involved	Maximum term for distribution of the substance involved
<b>Environmental damage on Federal property resulting from controlled substance manufacturing or distribution (21 U.S.C. 841(b)(6))</b>		
<b>Any offense<sup>12</sup></b>		
All substances	Up to \$250,000	Up to 5 years
<b>Offenses involving essential (listed) chemicals, generally (21 U.S.C. 841(c))</b>		
<b>Any offense<sup>13</sup></b>		
List I chemicals [under 21 U.S.C. 802(34)]	Up to \$250,000	Up to 20 years
List II chemicals [under 21 U.S.C. 802(35)]	Up to \$250,000	Up to 10 years
<b>Wrongful distribution or possession of essential (listed) chemicals (21 U.S.C. 841(f))</b>		
<b>Knowing unlawful distribution</b>		
Listed chemicals [under 21 U.S.C. 802 (33)]	Up to \$250,000	Up to 5 years
<b>Knowing possession of unreported listed chemicals</b>		
Listed chemicals [under 21 U.S.C. 802 (33)]	Up to \$100,000	Up to 1 year

<sup>12</sup> Creating a serious hazard to human or animal life, or harming the environment, or causing water pollution as a result of using poisons, chemicals or other hazardous substances on Federal property while in the course of unlawfully manufacturing or otherwise distributing a controlled substance

<sup>13</sup> Possession with intent to use for unauthorized manufacture of a controlled substance; possession or distribution knowing that the chemical will be used for unauthorized manufacture of a controlled substance; or, with intent of causing evasion of the record-keeping or reporting requirements of 21 U.S.C. 830 (or regulations pursuant thereto), receipt or distribution of a reportable amount in units small enough so that the making of records or filing of reports is not required.

<b>Internet Sales of Date Rape Drugs (21 U.S.C. 841(g))</b>		
Knowingly using the Internet to distribute a date rape drug <sup>14</sup>	Up to \$250,000	Up to 20 years
<b>Dispensing Controlled Substances by Means of the Internet (21 U.S.C. 841(h))</b>		
Knowingly or intentionally using the Internet to deliver, distribute, or dispense a controlled substance without a valid prescription <sup>15</sup> (or aiding or abetting such activity)	Sentences determined according to the penalties authorized under 21 U.S.C. 841(b) <sup>16</sup>	
<b>Regulatory offenses &amp; use of communications to facilitate distribution (21 U.S.C. 842, 843)</b>		
1 <sup>st</sup> offense		
Generally <sup>17</sup>	Up to \$100,000	Up to 1 year
Deception offenses, etc. <sup>18</sup>	Up to \$250,000	Up to 4 years
Methamphetamine equipment offenses	Up to \$250,000	Up to 10 years
Advertisement offenses <sup>19</sup>	Up to \$250,000	Up to 4 years
2 <sup>nd</sup> offense		
Generally	Up to \$250,000	Up to 2 years

<sup>14</sup> “Date rape drug” means gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol; ketamine; flunitrazepam; or any substance which the Attorney General designates, through a rulemaking proceeding, to be used in committing rape or sexual assault. 21 U.S.C. 841(g)(2)(A).

<sup>15</sup> Examples of prohibited activities include knowingly or intentionally: (1) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with the Drug Enforcement Administration (DEA); (2) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet; (3) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in such distribution; (4) offering to fill a prescription for a controlled substance based solely on a consumer’s completion of an online medical questionnaire; and (5) making a material false, fictitious, or fraudulent statement or representation on the homepage of Internet sites operated by an online pharmacy regarding the pharmacy’s compliance with federal and state controlled substance laws. 21 U.S.C. 841(h)(2).

<sup>16</sup> See pages 1-5 of this report for these penalties, which vary by type of substance, weight or other factual circumstances, and repeat offender status. 21 U.S.C. 841(h)(4).

<sup>17</sup> Knowingly distributing a controlled substance to an unauthorized person by a registrant, removing required labels, unlawful use of information acquired during a controlled substance inspection, failing to keep required records, etc. For more information about these federal requirements pertaining to the lawful handling of controlled substances, see CRS Report RL34635, *The Controlled Substances Act: Regulatory Requirements*, by James E. Nichols and Brian T. Yeh.

<sup>18</sup> To knowingly: use fictitious, revoked, suspended or expired registration number; obtain a controlled substance by fraud, forgery, or other form of deceit; provide false information; use labels and other markings to render a drug a counterfeit substance; unlawfully possess certain controlled substance manufacturing equipment; being a registrant, unlawfully distribute a controlled substance in the course of legitimate business; create or receive a mixture containing listed chemicals to evade regulatory requirements.

<sup>19</sup> Knowingly placing in any newspaper, magazine, handbill, or other publications, any written advertisement that has the purpose of seeking or offering illegally to receive, buy, or distribute a schedule I controlled substance. 21 U.S.C. 843(c). However, this offense does not include any advertisement that merely advocates the use of a schedule I controlled substance and does not attempt to propose or facilitate an actual transaction in a schedule I controlled substance. Id. The Ryan Haight Online Pharmacy Consumer Protection Act of 2008, P.L. 110-425, creates an additional advertisement offense, new subsection 21 U.S.C. 843(c)(2): knowingly or intentionally using the Internet to advertise the sale of, or to offer to sell, distribute, or dispense a controlled substance in a manner that is not authorized by federal controlled substances law, including directing prospective buyers to online pharmacies that are not registered with the DEA. The penalties for the offense are the same as those for advertising in printed publications.

Deception offenses, etc.	Up to \$250,000	Up to 8 years
Methamphetamine equipment offenses	Up to \$60,000	Up to 20 years
Advertisement offenses	Up to \$250,000	Up to 8 years
<b>Manufacturing or Distributing Controlled Substances Within 1000 Feet of a Truck Stop or Highway Rest Area (21 U.S.C. 849)</b>		
1 <sup>st</sup> offense		
All substances	Up to twice the penalties otherwise authorized	
2 <sup>nd</sup> offense		
All substances	Up to three times the penalties otherwise authorized	
<b>Distribution to persons under age 21 by those age 18 or older (21 U.S.C. 859)</b>		
1 <sup>st</sup> offense		
All substances	Up to twice the penalties otherwise authorized <sup>20</sup>	
2 <sup>nd</sup> offense		
All substances	Up to three times the penalties otherwise authorized	
<b>Distribution or manufacturing in or near schools, colleges, or certain youth-centered recreational facilities (21 U.S.C. 860, 860a)<sup>21</sup></b>		
1 <sup>st</sup> offense		
All substances (except methamphetamine)	Up to twice the penalties otherwise authorized for distribution or manufacture but at least 1 year in prison <sup>22</sup>	
2 <sup>nd</sup> offense		
All substances (except methamphetamine)	Up to three times the penalties otherwise authorized for distribution or manufacture but at least 3 years in prison	
Any offense involving methamphetamine	Other sentence as imposed plus imprisonment for no more than 20 years	
<b>Trafficking in drug paraphernalia (21 U.S.C. 863)</b>		
Interstate or foreign sale and transportation of, or use of the mails to sell, drug paraphernalia	Up to \$250,000	Up to 3 years

<sup>20</sup> Except that violation carries a mandatory minimum of no less than one year unless the offense involves marihuana in an amount of 5 grams or less.

<sup>21</sup> The offense includes distribution or manufacturing in or on, or within 1,000 feet of the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility.

<sup>22</sup> Also, at least twice any term of supervised released otherwise authorized for a first offense. An exception to the mandatory 1-year minimum is provided with respect to an offense involving 5 grams or less of marihuana. Where the statute provides for a different mandatory penalty, the higher prevails.



## Possession

### Simple possession (21 U.S.C. 844)<sup>23</sup>

1 <sup>st</sup> offense	Not less than \$1,000	Up to 1 year
2 <sup>nd</sup> offense <sup>24</sup>	Not less than \$2,500	15 days to 2 years
3 <sup>rd</sup> offense	Not less than \$5,000	90 days to 3 years
Any offense		
Flunitrazepam	Up to \$250,000	Up to 3 years

## Controlled Substance Violations and Other Crimes/Activity

### Attempt and conspiracy (21 U.S.C. 846, 963)

#### Any offense

All substances	Same as penalties for the underlying offense	
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### Use of a controlled substance to commit a crime of violence (21 U.S.C. 841(b)(7))

#### Any offense<sup>25</sup>

All substances	Up to \$250,000	Up to 20 years
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### Boobytraps on Federal property (21 U.S.C. 841(d))<sup>26</sup>

1 <sup>st</sup> offense	Up to \$250,000	Up to 10 years
2 <sup>nd</sup> offense	Up to \$250,000	Up to 20 years

### Continuing Criminal Enterprise (CCE) (“kingpin”) (21 U.S.C. 848)<sup>27</sup>

#### 1<sup>st</sup> offense

All substances	Up to \$2 million	20 years to life
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#### 2<sup>nd</sup> offense

All substances	Up to \$4 million	30 years to life
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#### Any offense, if the offender is a major participant, involving an enterprise

<sup>23</sup> If convicted of a simple possession offense, the defendant is required, if able, to pay the “reasonable costs” of the investigation and prosecution of the offense. Penalties for simple possession are also applicable to distribution of a “small amount” of marihuana for no remuneration.

<sup>24</sup> For purposes of the section under which the possession penalties are imposed, a prior conviction includes conviction of *any* offense under the Controlled Substances Act or the Controlled Substances Import and Export Act and any drug or narcotic offense chargeable under state law.

<sup>25</sup> Distributing a controlled substance to another with the intent to commit a crime of violence upon the victim.

<sup>26</sup> Assembly, maintenance, or placement—in connection with the manufacture, distribution, or dispensing of a controlled substance.

<sup>27</sup> Under the statute, a person is considered to be engaged in a continuing criminal enterprise if (1) he commits any felony violation of the Controlled Substances Act or the Controlled Substances Import and Export Act, (2) the violation is a part of a continuing series of violations of those statutes (A) which are undertaken by the person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and (B) from which such person obtains substantial income or resources.

Note that some violations carry the death penalty as discussed *supra*.

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that grosses \$10 million a year or more or involving 300 times<sup>28</sup> the amount of controlled substances required to trigger the most severe distribution penalties of 21 U.S.C. 841

All substances	Up to \$4 million	life
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**Establishing manufacturing operations (21 U.S.C. 856)**

Opening, maintaining, financing or making available a place for unlawful manufacture, distribution or use of controlled substances

All substances	Up to \$500,000	Up to 20 years
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**Endangering human life while illegally manufacturing a controlled substance (21 U.S.C. 858)**

Any offense

All substances	Up to \$250,000	Up to 10 years
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**Employment of persons under 18 years of age (for violation of the CSA) or unauthorized distribution to a pregnant individual (21 U.S.C. 861)**

1<sup>st</sup> offense

Generally	Up to twice the penalties otherwise authorized for the underlying offense but at least 1 year in prison <sup>29</sup>	
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2<sup>nd</sup> offense

Generally	Up to three times the penalties otherwise authorized for the underlying offense but at least 1 year in prison <sup>30</sup>	
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Any offense

Use of person under 14 or distribution to a person under 18	Up to \$50,000	Up to 5 years
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**Narco-Terrorism (21 U.S.C. 960a)**

Engaging in prohibited drug activity knowing or intending to provide anything of pecuniary value to terrorists

Up to \$250,000	At least twice the minimum punishment authorized under 21 U.S.C. 841(b)(1)
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**Theft of anhydrous ammonia, or transportation of stolen anhydrous ammonia with intent or knowledge that such will be used to manufacture a controlled substance (21 U.S.C. 864)**

1 <sup>st</sup> offense	Up to \$250,000	Up to 4 years
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2 <sup>nd</sup> offense	Up to \$250,000	Up to 8 years
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**Violation of regulations proscribing financial transactions with significant foreign narcotics traffickers (21 U.S.C. 1906)**

Any offense (individual)	Up to \$250,000	Up to 10 years
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<sup>28</sup> Except in the case of methamphetamine, where these provisions apply to any enterprise that grosses \$5 million or more a year, or involves 200 times of the amount of controlled substances required under 21 U.S.C. 841.

<sup>29</sup> Also, at least twice any term of supervised release otherwise authorized for a first offense. Any higher mandatory penalty otherwise authorized for the offense would prevail.

<sup>30</sup> Also, at least three times any term of supervised release otherwise authorized for a first offense. Penalties for third and subsequent offenses are governed by 21 U.S.C. 841(b)(1)(A).

Any offense (organization)	Up to \$10,000,000	
Any offense (organization officer or agent)	Up to \$5,000,000	Up to 30 years
<b>Travel Act: use of interstate facilities in aid of a racketeering enterprise involving controlled substances (18 U.S.C. 1952)</b>		
Any substance and the intent to commit the following act:		
A crime of violence in furtherance of the racketeering enterprise	Up to \$250,000	Up to 20 years, or any term of years or life if death results
Distributing the proceeds from the racketeering enterprise	Up to \$250,000	Up to 5 years
Promotion or facilitation of the racketeering enterprise	Up to \$250,000	Up to 5 years
<b>Use or possession of firearms or armor piercing ammunition in connection to a drug trafficking crime (18 U.S.C. 924(c))<sup>31</sup></b>		
1 <sup>st</sup> offense involving a firearm		
Generally		Not less than 5 years
If a firearm is brandished		Not less than 7 years
If a firearm is discharged		Not less than 10 years
If firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon		Not less than 10 years
If firearm is a machinegun or destructive device, or equipped with a silencer/muffler		Not less than 30 years
2 <sup>nd</sup> or subsequent offense involving a firearm		
Generally		Not less than 25 years
If firearm is a machinegun or destructive device, or equipped with a silencer/muffler		life
Any offense involving armor piercing ammunition		
Use or possession		Not less than 15 years
If such ammunition is used for murder		Any term of years or life
If such ammunition is used for manslaughter	Up to \$250,000	Up to 10 years
If such ammunition is used for manslaughter	Up to \$250,000	Up to 6 years
<b>Robberies Involving Controlled Substances (18 U.S.C. 2118(a))</b>		
Any offense		
Any quantity of a controlled substance in the care, custody, control, or possession of a DEA registrant, if (1) the replacement cost of such material is not less than \$500, (2) the robber (or person who attempted	Up to \$250,000	Up to 20 years

<sup>31</sup> The penalties listed for this offense apply *in addition* to the punishment provided for the drug trafficking crime.

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to rob the substance) traveled in interstate or foreign commerce or used any facility in interstate/foreign commerce to facilitate such unlawful taking, or (3) another person was killed or suffered significant bodily injury due to the robbery or attempted robbery

If the person committing this offense assaults any person (or jeopardizes the life of any person) by using a dangerous weapon

Up to \$250,000      Up to 25 years

If the person committing this offense kills any person

Up to \$250,000      Any term of years or life

**Burglaries Involving Controlled Substances (18 U.S.C. 2118(b))**

Any offense

Any quantity of a controlled substance in the business premises or property of a DEA registrant, if (1) the replacement cost of such material is not less than \$500, (2) the burglar (or person who attempted to burglarize the premises) traveled in interstate or foreign commerce or used any facility in interstate/foreign commerce to facilitate such unlawful entry, or (3) another person was killed or suffered significant bodily injury due to the burglary or attempted burglary

Up to \$250,000      Up to 20 years

If the person committing this offense assaults any person (or jeopardizes the life of any person) by using a dangerous weapon

Up to \$250,000      Up to 25 years

If the person committing this offense kills any person

Up to \$250,000      Any term of years or life

**Conspiracy to Commit Robbery or Burglary Involving Controlled Substances (18 U.S.C. 2118(d))**

Any offense

If two or more persons conspire to violate 18 U.S.C. 2118(a) or 2118(b), and one or more of such persons performs any overt act to effect the object of the conspiracy

Up to \$250,000      Up to 10 years

**Armed career criminal: possession of a firearm by a convicted felon or other disqualified person with 3 or more prior serious controlled substance convictions (drug crimes punishable by imprisonment for 10 years or more) or prior violent crime convictions (18 U.S.C. 924(e))**

Any offense

All substances

Up to \$250,000      Not less than 15 years

**Three strikes: commission of a serious violent felony by an individual with a prior serious controlled substance conviction (drug kingpin or most seriously punished trafficking offense) and a prior serious violent felony conviction or 2 or more prior serious violent felony convictions (18 U.S.C. 3559(c))**

Any offense

All substances

Up to \$250,000      life

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## Racketeering

### Commission of a pattern of racketeering activity including one or more narcotic or dangerous drug felony to invest in, acquire, operate or participate in the affairs of an interstate enterprise ((RICO)(18 U.S.C. 1963))

Any offense

Narcotic and dangerous drugs	Up to \$250,000	Up to 20 years or life if the maximum for the predicate is life
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### Compensated crime of violence in aid of RICO (18 U.S.C. 1959)

Any offense involving any substance and the following criminal act:

Murder	Up to \$250,000	life
Kidnapping	Up to \$250,000	Up to life in prison
Maiming	Up to \$250,000	Up to 30 years
Serious injury	Up to \$250,000	Up to 20 years
Threats	Up to \$250,000	Up to 5 years
Attempt or conspiracy to murder or kidnap	Up to \$250,000	Up to 10 years
Attempt or conspiracy to maim or commit a serious assault	Up to \$250,000	Up to 3 years

## Smuggling

### Smuggling Goods into the United States (18 U.S.C. 545)

Any offense

All substances	Up to \$250,000	Up to 20 years
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### Smuggling Goods into Foreign Countries (18 U.S.C. 546)

Any offense

All substances	Up to \$250,000	Up to 2 years
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### Smuggling methamphetamine or methamphetamine precursor chemicals into the United States while using facilitated entry programs (21 U.S.C. 865)

Any offense

Imprisonment Sentence for Methamphetamine Offense Enhanced By Up to 15 years

### Smuggling a controlled substance by using an aircraft to transport it (19 U.S.C. 1590)<sup>32</sup>

Any offense

<sup>32</sup> The Ultralight Aircraft Smuggling Prevention Act of 2012, P.L. 112-93, expanded the liability for this offense to include anyone who attempts or conspires to commit aviation smuggling, thus subjecting them to the same penalties as those who commit the crime. In addition, this law added a definition of “aircraft” to include ultralight vehicles which meet the characteristics described in 14 C.F.R. 103.1. Such ultralight vehicles (operated by a single occupant and weighing less than 254 pounds) have reportedly been used by drug traffickers to cross the Mexico-U.S. border in their effort to smuggle the drugs into the United States. See Aaron Cooper, *Gabrielle Giffords’ Anti-Drug Legislation Signed into Law*, Feb. 10, 2012, CNN, at [http://articles.cnn.com/2012-02-10/politics/politics\\_giffords-ultralight-law\\_1\\_ultralights-traffickers-gabrielle-giffords?\\_s=PM:POLITICS](http://articles.cnn.com/2012-02-10/politics/politics_giffords-ultralight-law_1_ultralights-traffickers-gabrielle-giffords?_s=PM:POLITICS).

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All substances	Up to \$250,000	Up to 20 years
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## **Laundering Money from Controlled Substance Violations**

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### **Laundering (18 U.S.C. 1956)**

Any offense

All substances	Up to greater of \$500,000 or 2X the amount of \$ laundered	Up to 20 years
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### **Monetary traffic in property derived from unlawful activity (18 U.S.C. 1957)**

Any offense

All substances	Up to greater of \$250,000 or 2X the amount of \$ laundered	Up to 10 years
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### **Currency transaction and transportation reporting (31 U.S.C. 5322)**

1<sup>st</sup> offense

All substances	Up to \$250,000	Up to 5 years
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2<sup>nd</sup> offense

All substances	Up to \$500,000	Up to 10 years
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### **Bulk cash smuggling into or out of the United States (31 U.S.C. 5332)**

Knowingly concealing more than \$ 10,000 across a U.S. border

Up to 5 years

### **Investment of illicit drug profits (21 U.S.C. 854, 855)**

Any offense

All substances	Up to the greater of 2X profit/proceeds or \$50,000	Up to 10 years
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## **Tax Offenses**

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### **Attempted evasion [concerning income from controlled substance violations] (26 U.S.C. 7201)**

Any offense

All substances	Up to \$250,000	Up to 5 years
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### **Willful failure to file return [concerning income for such violations] (26 U.S.C. 7203)**

Any offense

All substances	Up to \$250,000	Up to 5 years
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### **Fraud and false statements [concerning income from such violations] (26 U.S.C. 7206)**

Any offense

All substances	Up to \$250,000	Up to 3 years
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