

**First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 25-0033.01 Conrad Imel x2313

SENATE BILL 25-044

SENATE SPONSORSHIP

Pelton B.,

HOUSE SPONSORSHIP

Armagost,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING CRIMINAL PENALTIES INVOLVING A CONTROLLED**
102 **SUBSTANCE THAT INCLUDES CERTAIN SYNTHETIC OPIATES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes it a level 1 drug felony if a person manufactures, dispenses, sells, or distributes, or possesses with intent to do the same, (manufactures or distributes) any material, compound, mixture, or preparation that contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof (qualifying controlled substance). Because manufacture or distribution of any amount of a qualifying controlled substance is a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

level 1 drug felony under the bill, the bill repeals penalty level provisions involving manufacture or distribution of a qualifying controlled substance that are weight- or circumstance-dependent, and related immunity and sentencing requirements.

Effective July 1, 2025, the bill makes the possession of a qualifying controlled substance a level 4 drug felony. The bill repeals the following provisions of law related to the penalties for possessing a qualifying controlled substance:

- A provision that reduces the penalty if the fact finder in the case finds that the possessor made a reasonable mistake of fact and did not know that the material, compound, mixture, or preparation contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof; and
- A provision that requires a court to vacate the drug felony conviction and enter a conviction for a level 1 drug misdemeanor upon the defendant's successful completion of a community-based sentence to probation or to a community corrections program.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-18-405, **amend**
3 (2) introductory portion, (2)(a)(I)(D), (2)(b)(I)(B), (2)(b)(I)(C), (2)(c)(III),
4 (2)(c)(IV), (8) introductory portion, and (8)(a); and **repeal** (2)(a)(III),
5 (2)(b)(I)(D), and (2)(c)(V) as follows:

6 **18-18-405. Unlawful distribution, manufacturing, dispensing,**
7 **or sale.** (2) Except as otherwise provided for an offense concerning
8 marijuana and marijuana concentrate in section 18-18-406 and for special
9 offenders as provided in section 18-18-407, ~~any~~ A person who violates
10 any of the provisions of subsection (1) of this section:

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

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

15 (D) ~~More than fifty grams~~ ANY AMOUNT and contains fentanyl,

1 carfentanil, benzimidazole opiate, or an analog thereof as described in
2 section 18-18-204 (2)(g); or

3 ~~(III) (A) Except as provided in section 18-1-711 (3)(i), the~~
4 ~~defendant committed a violation of subsection (2)(a)(I)(D), (2)(b)(I)(D),~~
5 ~~or (2)(c)(V) of this section, and the actions in violation of subsection~~
6 ~~(2)(a)(I)(D), (2)(b)(I)(D), or (2)(c)(V) of this section are the proximate~~
7 ~~cause of the death of another person who used or consumed the material,~~
8 ~~compound, mixture, or preparation that contained fentanyl, carfentanil,~~
9 ~~benzimidazole opiate, or an analog thereof as described in section~~
10 ~~18-18-204 (2)(g).~~

11 ~~(B) Notwithstanding subsection (2)(a)(III)(A) of this section, a~~
12 ~~defendant who committed a violation of subsection (2)(c)(V) of this~~
13 ~~section, and the actions in violation of subsection (2)(c)(V) of this section~~
14 ~~are the proximate cause of the death of another person who used or~~
15 ~~consumed the material, compound, mixture, or preparation that contained~~
16 ~~fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as~~
17 ~~described in section 18-18-204 (2)(g), is not subject to the mandatory~~
18 ~~sentencing requirement as described in section 18-1.3-401.5 (7).~~

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

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

22 (B) More than seven grams, but not more than one hundred twelve
23 grams, and contains methamphetamine, heroin, ketamine, or cathinones;

24 OR

25 (C) More than ten milligrams, but not more than fifty milligrams,
26 and contains flunitrazepam; or

27 ~~(D) More than four grams, but not more than fifty grams, and~~

1 contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof
2 as described in section 18-18-204 (2)(g);

3 (c) Except as provided in subsection (8) of this section, commits
4 a level 3 drug felony if the violation involves any material, compound,
5 mixture, or preparation that weighs:

6 (III) Not more than ten milligrams and contains flunitrazepam; OR

7 (IV) More than four grams and contains a schedule III or schedule
8 IV controlled substance. ~~or~~

9 (V) ~~Not more than four grams and contains fentanyl, carfentanil,
10 benzimidazole opiate, or an analog thereof as described in section
11 18-18-204 (2)(g).~~

12 (8) Except for a prosecution for manufacturing, a person commits
13 a level 1 drug misdemeanor for a violation of subsection (2)(c)(I),
14 (2)(c)(II), ~~(2)(c)(V)~~, or (2)(d) of this section if:

15 (a) The distribution, dispensing, transfer, or sale involves a
16 material, compound, mixture, or preparation that weighs not more than
17 four grams and contains any amount of a controlled substance identified
18 in subsection (2)(c)(I), (2)(c)(II), ~~(2)(c)(V)~~, or (2)(d) of this section;

19 **SECTION 2.** In Colorado Revised Statutes, 18-1-711, **amend**
20 (3)(h); and **repeal** (3)(i) as follows:

21 **18-1-711. Immunity for persons who suffer or report an**
22 **emergency drug or alcohol overdose event - definitions - repeal.**

23 (3) The immunity described in subsection (1) of this section applies to
24 the following criminal offenses:

25 (h) Illegal possession or consumption of ethyl alcohol or
26 marijuana by an underage person or illegal possession of marijuana
27 paraphernalia by an underage person, as described in section 18-13-122;

1 AND

2 (i) ~~A violation of section 18-18-405 (2)(a)(III)(A), if the unlawful~~
3 ~~distribution, manufacturing, dispensing, or sale of the material,~~
4 ~~compound, mixture, or preparation weighs not more than four grams and~~
5 ~~contains any amount of fentanyl, carfentanil, benzimidazole opiate, or an~~
6 ~~analog thereof as described in section 18-18-204 (2)(g); and~~

7 **SECTION 3.** In Colorado Revised Statutes, 18-1.3-401.5, **amend**
8 (7), (10)(a)(III.5), and (10)(a)(IV); and **repeal** (10)(a)(V) as follows:

9 **18-1.3-401.5. Drug felonies classified - presumptive and**
10 **aggravated penalties - legislative intent.** (7) ~~Except as provided in~~
11 ~~section 18-18-405 (2)(a)(III)(B);~~ Notwithstanding any provision of this
12 section to the contrary, if the defendant is convicted of a level 1 drug
13 felony, the court shall sentence the defendant to a term of incarceration
14 in the department of corrections of at least eight years but not more than
15 thirty-two years. The presence of one or more of the aggravating
16 circumstances provided in subsection (10)(a) of this section or in section
17 18-18-407 (1) requires the court to sentence a defendant convicted of a
18 level 1 drug felony to a term of incarceration in the department of
19 corrections of at least twelve years but ~~no~~ NOT more than thirty-two years.
20 The court may impose a fine in addition to imprisonment.

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

27 (III.5) The defendant was on appeal bond following ~~his or her~~ THE

1 DEFENDANT'S conviction for a previous felony; OR

2 (IV) The defendant was on probation for or on bond while
3 awaiting sentencing following revocation of probation for a delinquent
4 act that would have constituted a felony if committed by an adult. ~~or~~

5 (V) ~~The defendant committed a violation of section 18-18-405~~
6 ~~(2)(a)(III)(A), and the unlawful distribution, manufacturing, dispensing,~~
7 ~~or sale of the material, compound, mixture, or preparation weighed more~~
8 ~~than fifty grams and contained fentanyl, carfentanil, benzimidazole~~
9 ~~opiate, or an analog thereof as described in section 18-18-204 (2)(g).~~

10 **SECTION 4.** In Colorado Revised Statutes, 18-18-407, **amend**
11 (1)(h) as follows:

12 **18-18-407. Special offender - definitions.** (1) A person who
13 commits a felony offense pursuant to this part 4 under any one or more of
14 the following aggravating circumstances commits a level 1 drug felony
15 and is a special offender:

16 (h) The defendant committed a violation of section 18-18-405
17 (2)(a)(I)(D) ~~(2)(b)(I)(D), or (2)(c)(V)~~, and the defendant possessed pill or
18 tablet manufacturing equipment with the intent to use the equipment in
19 the manufacture of a controlled substance.

20 **SECTION 5.** In Colorado Revised Statutes, 18-18-403.5, **amend**
21 (2.5) as follows:

22 **18-18-403.5. Unlawful possession of a controlled substance -**
23 **notice to revisor of statutes - repeal.** (2.5) (a) Notwithstanding
24 ~~subsection (2)(c)~~ SUBSECTION (2) of this section, on or after July 1, 2022
25 JULY 1, 2025, a person who violates subsection (1) of this section by
26 ~~knowingly~~ possessing ANY MATERIAL, COMPOUND, MIXTURE, OR
27 PREPARATION THAT CONTAINS ANY QUANTITY OF FENTANYL,

1 CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF, AS
2 DESCRIBED IN SECTION 18-18-204 (2)(g), COMMITS A LEVEL 4 DRUG
3 FELONY.

4 ~~(I) Any material, compound, mixture, or preparation that weighs~~
5 ~~more than one gram and not more than four grams and contains any~~
6 ~~quantity of fentanyl, carfentanil, benzimidazole opiate, or an analog~~
7 ~~thereof as described in section 18-18-204 (2)(g), commits a level 4 drug~~
8 ~~felony;~~

9 ~~(H) Any material, compound, mixture, or preparation that weighs~~
10 ~~not more than one gram and contains any quantity of fentanyl, carfentanil,~~
11 ~~benzimidazole opiate, or an analog thereof as described in section~~
12 ~~18-18-204 (2)(g), commits a level 1 drug misdemeanor; except that a~~
13 ~~fourth or subsequent offense for a violation of this subsection (2.5)(a)(H)~~
14 ~~is a level 4 drug felony.~~

15 ~~(b) Notwithstanding the provisions of section 18-18-403.5~~
16 ~~(2.5)(a)(I) of this section, when a defendant shows supporting evidence~~
17 ~~to establish that he or she made a reasonable mistake of fact and did not~~
18 ~~know that the controlled substance he or she possessed contained~~
19 ~~fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as~~
20 ~~described in section 18-18-204 (2)(g), the matter shall be submitted to the~~
21 ~~finder of fact in the form of an interrogatory included in the verdict form.~~
22 ~~Should the finder of fact determine the defendant made such a reasonable~~
23 ~~mistake of fact, the defendant commits a level 1 drug misdemeanor.~~

24 **SECTION 6.** In Colorado Revised Statutes, 18-1.3-103.5, **amend**
25 **(2)(a), (3)(c), and (3)(d); and repeal (3)(e) as follows:**

26 **18-1.3-103.5. Felony convictions - vacate and enter conviction**
27 **on misdemeanor after successful completion.** (2) (a) In a case in which

1 the defendant enters a plea of guilty or is found guilty by the court or a
2 jury for a crime listed in subsection (3) of this section, the court shall
3 order, upon successful completion of any community-based sentence to
4 probation or to a community corrections program, the drug felony
5 conviction vacated and shall enter a conviction for a level 1 drug
6 misdemeanor offense of possession of a controlled substance pursuant to
7 section 18-18-403.5. Upon entry of the judgment of conviction pursuant
8 to section 18-18-403.5, OTHER THAN SECTION 18-18-403.5 (2.5)(a), the
9 court shall indicate in its order that the judgment of conviction is entered
10 pursuant to ~~the provisions of this section.~~

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

12 (c) Possession of more than twelve ounces of marijuana or more
13 than three ounces of marijuana concentrate; OR

14 (d) A violation of section 18-18-415. ~~or~~

15 (e) ~~A violation of section 18-18-403.5 (2.5)(a).~~

16 **SECTION 7. Effective date - applicability.** This act takes effect
17 upon passage and applies to offenses committed on or after said date;
18 except that section 5 of this act takes effect July 1, 2025, and applies to
19 offenses committed on or after said date.

20 **SECTION 8. Safety clause.** The general assembly finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, or safety or for appropriations for
23 the support and maintenance of the departments of the state and state
24 institutions.