

Fentanyl – 2 tier, [#62, with repeal and reenact]

*Be it Enacted by the People of the state of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 18-18-102, **add** (35.5) as follows:

**18-18-102. Definitions.**

As used in this article 18:

(35.5) “LEVEL 4 TREATMENT-MANDATED DRUG FELONY” MEANS A LEVEL 4 DRUG FELONY THAT IS ELIGIBLE TO BE VACATED FOLLOWING SUCCESSFUL COMPLETION OF COURT-ORDERED TREATMENT FOR DRUG REHABILITATION ACCORDING TO THE PROVISIONS OF SECTION 18-1.3-103.5.

**SECTION 2.** In Colorado Revised Statutes, **repeal and reenact, with amendments**, 18-18-405 as follows:

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

(1)(a) EXCEPT AS AUTHORIZED BY PART 1 OF ARTICLE 280 OF TITLE 12, PART 2 OF ARTICLE 80 OF TITLE 27, PART 2 OR 3 OF THIS ARTICLE 18, SECTION 18-18-434, ARTICLE 170 OF TITLE 12, OR ARTICLE 50 OF TITLE 44, 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 12-280-103 (23).

(2) EXCEPT AS OTHERWISE PROVIDED FOR AN OFFENSE CONCERNING MARIJUANA AND MARIJUANA CONCENTRATE IN SECTION 18-18-406 AND FOR SPECIAL OFFENDERS AS PROVIDED IN SECTION 18-18-407, A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION:

(a) COMMITS A LEVEL 1 DRUG FELONY AND IS SUBJECT TO THE MANDATORY SENTENCING PROVISIONS IN SECTION 18-1.3-401.5 (7) IF:

(I) THE VIOLATION INVOLVES ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS:

(A) MORE THAN TWO HUNDRED TWENTY-FIVE GRAMS AND CONTAINS A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE; OR

(B) MORE THAN ONE HUNDRED TWELVE GRAMS AND CONTAINS METHAMPHETAMINE, HEROIN, KETAMINE, OR CATHINONES; OR

(C) MORE THAN FIFTY MILLIGRAMS AND CONTAINS FLUNITRAZEPAM; OR

(D) ANY AMOUNT AND CONTAINS FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g); OR

(II) AN ADULT SELLS, DISPENSES, DISTRIBUTES, OR OTHERWISE TRANSFERS ANY QUANTITY OF A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE OR ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY AMOUNT OF A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE, OTHER THAN MARIJUANA OR MARIJUANA CONCENTRATE, TO A MINOR AND THE ADULT IS AT LEAST TWO YEARS OLDER THAN THE MINOR;

(III) EXCEPT AS PROVIDED IN SECTION 18-1-711 (3)(i), THE DEFENDANT COMMITTED A VIOLATION OF SUBSECTION (2)(a)(I)(D) OF THIS SECTION, AND THE ACTIONS IN VIOLATION OF SUBSECTION (2)(a)(I)(D) OF THIS SECTION ARE THE PROXIMATE CAUSE OF THE DEATH OF ANOTHER PERSON WHO

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USED OR CONSUMED THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINED FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g).

(b) COMMITS A LEVEL 2 DRUG FELONY IF:

(I) THE VIOLATION INVOLVES ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS:

(A) MORE THAN FOURTEEN GRAMS, BUT NOT MORE THAN TWO HUNDRED TWENTY-FIVE GRAMS, AND CONTAINS A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE;

(B) MORE THAN SEVEN GRAMS, BUT NOT MORE THAN ONE HUNDRED TWELVE GRAMS, AND CONTAINS METHAMPHETAMINE, HEROIN, KETAMINE, OR CATHINONES; OR

(C) MORE THAN TEN MILLIGRAMS, BUT NOT MORE THAN FIFTY MILLIGRAMS, AND CONTAINS FLUNITRAZEPAM;

(II) AN ADULT SELLS, DISPENSES, DISTRIBUTES, OR OTHERWISE TRANSFERS ANY QUANTITY OF A SCHEDULE III OR SCHEDULE IV CONTROLLED SUBSTANCE OR ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF A SCHEDULE III OR SCHEDULE IV CONTROLLED SUBSTANCE TO A MINOR AND THE ADULT IS AT LEAST TWO YEARS OLDER THAN THE MINOR;

(c) EXCEPT AS PROVIDED IN SUBSECTION (8) OF THIS SECTION, COMMITS A LEVEL 3 DRUG FELONY IF THE VIOLATION INVOLVES ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS:

(I) NOT MORE THAN FOURTEEN GRAMS AND CONTAINS A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE;

(II) NOT MORE THAN SEVEN GRAMS AND CONTAINS METHAMPHETAMINE, HEROIN, KETAMINE, OR CATHINONES;

(III) NOT MORE THAN TEN MILLIGRAMS AND CONTAINS FLUNITRAZEPAM; OR

(IV) MORE THAN FOUR GRAMS AND CONTAINS A SCHEDULE III OR SCHEDULE IV CONTROLLED SUBSTANCE.

(d) EXCEPT AS PROVIDED IN SUBSECTION (8) OF THIS SECTION OR SECTION 18-1-711 (3)(j), COMMITS A LEVEL 4 DRUG FELONY IF:

(I) THE VIOLATION INVOLVES ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS NOT MORE THAN FOUR GRAMS AND CONTAINS A SCHEDULE III OR SCHEDULE IV CONTROLLED SUBSTANCE; OR

(II) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (c) OF THIS SUBSECTION (2), THE VIOLATION INVOLVES DISTRIBUTION OR TRANSFER OF THE CONTROLLED SUBSTANCE FOR THE PURPOSE OF CONSUMING ALL OF THE CONTROLLED SUBSTANCE WITH ANOTHER PERSON OR PERSONS AT A TIME SUBSTANTIALLY CONTEMPORANEOUS WITH THE TRANSFER; EXCEPT THAT THIS SUBPARAGRAPH (II) APPLIES ONLY IF THE DISTRIBUTION OR TRANSFER INVOLVES NOT MORE THAN FOUR GRAMS OF A SCHEDULE I OR II CONTROLLED SUBSTANCE OR NOT MORE THAN TWO GRAMS OF METHAMPHETAMINE, HEROIN, KETAMINE, OR CATHINONES;

(e) COMMITS A LEVEL 1 DRUG MISDEMEANOR IF THE VIOLATION INVOLVES:

(I) A SCHEDULE V CONTROLLED SUBSTANCE; OR

(II) A TRANSFER WITH NO REMUNERATION OF NOT MORE THAN FOUR GRAMS OF A SCHEDULE III OR SCHEDULE IV CONTROLLED SUBSTANCE.

(3) 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, KETAMINE, OR CATHINONES, OR CONSPIRES WITH ONE OR MORE PERSONS TO COMMIT THE OFFENSE, 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, THE AGGREGATE AMOUNT OF THE SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE, FLUNITRAZEPAM, KETAMINE, OR CATHINONES INVOLVED MAY BE USED TO DETERMINE THE LEVEL OF DRUG OFFENSE.

(4) EXCEPT FOR A PROSECUTION FOR MANUFACTURING, A PERSON COMMITS A LEVEL 1 DRUG MISDEMEANOR FOR A VIOLATION OF SUBSECTION (2)(c)(I), (2)(c)(II), OR (2)(d) OF THIS SECTION IF:

(a) THE DISTRIBUTION, DISPENSING, TRANSFER, OR SALE INVOLVES A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS NOT MORE THAN FOUR GRAMS AND CONTAINS ANY AMOUNT OF A CONTROLLED SUBSTANCE IDENTIFIED IN SUBSECTION (2)(c)(I), (2)(c)(II), OR (2)(d) OF THIS SECTION;

(b) THE DEFENDANT REPORTS IN GOOD FAITH AN EMERGENCY DRUG OVERDOSE EVENT TO A LAW ENFORCEMENT OFFICER, TO THE 911 SYSTEM, OR TO A MEDICAL PROVIDER, OR THE DEFENDANT AIDS OR SEEKS AID FOR THE PERSON WHO SUFFERED THE EMERGENCY DRUG OVERDOSE;

(c) THE DEFENDANT REMAINS AT THE SCENE OF THE EVENT UNTIL A LAW ENFORCEMENT OFFICER OR AN EMERGENCY MEDICAL RESPONDER ARRIVES OR THE DEFENDANT REMAINS AT THE FACILITIES OF THE MEDICAL PROVIDER UNTIL A LAW ENFORCEMENT OFFICER ARRIVES;

(d) THE DEFENDANT IDENTIFIES HIMSELF OR HERSELF AND COOPERATES WITH THE LAW ENFORCEMENT OFFICER, EMERGENCY MEDICAL RESPONDER, OR MEDICAL PROVIDER; AND

(e) THE OFFENSE ARISES FROM THE SAME COURSE OF EVENTS FROM WHICH THE EMERGENCY OVERDOSE EVENT AROSE.

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

**18-1.3-401.5. Drug felonies classified - presumptive and aggravated penalties - legislative intent.**

(7) ~~Except as provided in section 18-18-405 (2)(a)(III)(B), notwithstanding~~ NOTWITHSTANDING any provision of this section to the contrary, if the defendant is convicted of a level 1 drug felony, the court shall sentence the defendant to a term of incarceration in the department of corrections of at least eight years but not more than thirty-two years. The presence of one or more of the aggravating circumstances provided in subsection (10)(a) of this section or in section 18-18-407 (1) requires the court to sentence a defendant convicted of a level 1 drug felony to a term of incarceration in the department of corrections of at least twelve years but no more than thirty-two years. The court may impose a fine in addition to imprisonment.

(10)(a) Except for a level 1 drug felony, the presence of one or more of the following aggravating circumstances at the time of the commission of a drug felony offense requires the court, if it sentences the defendant to incarceration, to sentence the defendant to a term of at least the midpoint in the presumptive range but not more than the maximum term of the aggravated range: (III.5) The defendant was on appeal bond following ~~his or her~~ THE DEFENDANT'S conviction for a previous felony;

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

**18-18-407. Special offender - definitions.**

(1) A person who commits a felony offense pursuant to this part 4 under any one or more of the following aggravating circumstances commits a level 1 drug felony and is a special offender:

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

**SECTION 5.** In Colorado Revised Statutes, **repeal and reenact** 18-18-403.5 as follows:

**18-18-403.5. Unlawful possession of a controlled substance - notice to revisor of statutes - repeal.**

(1) EXCEPT AS AUTHORIZED BY PART 1 OR 3 OF ARTICLE 280 OF TITLE 12, PART 2 OF ARTICLE 80 OF TITLE 27, SECTION 18-1-711, SECTION 18-18-428 (1)(b), PART 2 OR 3 OF THIS ARTICLE 18, SECTION 18-18-434, ARTICLE 170 OF TITLE 12, OR ARTICLE 50 OF TITLE 44, IT IS UNLAWFUL FOR A PERSON KNOWINGLY TO POSSESS A CONTROLLED SUBSTANCE.

(2) ON OR AFTER MARCH 1, 2020, A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION BY POSSESSING:

(a) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS ANY QUANTITY OF FLUNITRAZEPAM; KETAMINE; GAMMA HYDROXYBUTYRATE, INCLUDING ITS SALTS, ISOMERS, AND SALTS OF ISOMERS; CATHINONES; OR MORE THAN FOUR GRAMS OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II OF PART 2 OF THIS ARTICLE 18 COMMITS A LEVEL 4 DRUG FELONY.

(b) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS NOT MORE THAN FOUR GRAMS OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE I OR II OF PART 2 OF THIS ARTICLE 18 OR ANY QUANTITY OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE III, IV, OR V OF PART 2 OF THIS ARTICLE 18 EXCEPT FLUNITRAZEPAM, GAMMA HYDROXYBUTYRATE, OR KETAMINE COMMITS A LEVEL 1 DRUG MISDEMEANOR; EXCEPT THAT A FOURTH OR SUBSEQUENT OFFENSE FOR A VIOLATION OF THIS SUBSECTION (2)(c) IS A LEVEL 4 DRUG FELONY.

(3)(a) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, ON OR AFTER JANUARY 1, 2027, A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION BY KNOWINGLY POSSESSING:

(I) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS MORE THAN ONE GRAM AND NOT MORE THAN FOUR GRAMS AND CONTAINS ANY QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), COMMITS A LEVEL 3 DRUG FELONY;

(II) ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT WEIGHS NOT MORE THAN ONE GRAM AND CONTAINS ANY QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), COMMITS A LEVEL 4 TREATMENT-MANDATED DRUG FELONY AND SUCH DEFENDANT IS ELIGIBLE FOR COURT-ORDERED TREATMENT FOR DRUG REHABILITATION.

(4)(a) A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION BY POSSESSING ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS A QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), THAT IS MORE THAN SIXTY PERCENT OF THE TOTAL COMPOSITION OF THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION, COMMITS A LEVEL 2 DRUG FELONY.

(b)(I) THIS SUBSECTION (2.7) TAKES EFFECT AT 12:01 A.M. THIRTY DAYS AFTER THE DATE IDENTIFIED IN THE NOTICE PROVIDED TO THE REVISOR OF STATUTES BY THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION THAT THE COLORADO BUREAU OF INVESTIGATION HAS THE RESOURCES TO DETERMINE THE QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), COMPARED TO THE TOTAL COMPOSITION OF THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION, OR ON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES IF THE NOTICE DOES NOT SPECIFY A DIFFERENT DATE.

(II) THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING WHEN THE CONDITION SPECIFIED IN SUBSECTION (2.7)(b)(I) OF THIS SECTION HAS OCCURRED BY E-MAILING THE NOTICE TO REVISOROFSTATUTES.GA@COLEG.GOV.

(III) CONCURRENT WITH THE NOTICE REQUIRED IN SUBSECTION (2.7)(b)(II) OF THIS SECTION, THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION SHALL NOTIFY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE, THE CHIEF JUSTICE OF THE SUPREME COURT, THE GOVERNOR, THE ATTORNEY GENERAL, THE STATE PUBLIC DEFENDER, AND EACH DISTRICT ATTORNEY IN THE STATE, THAT THE COLORADO BUREAU OF INVESTIGATION HAS THE RESOURCES TO DETERMINE THE QUANTITY OF FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), COMPARED TO THE TOTAL COMPOSITION OF THE MATERIAL, COMPOUND, MIXTURE, OR PREPARATION.

(IV) THIS SUBSECTION (2.7)(b) IS REPEALED, EFFECTIVE ONE YEAR AFTER NOTICE TO THE REVISOR OF STATUTES PURSUANT TO SUBSECTION (2.7)(b)(II) OF THIS SECTION.

(5) IF THE CIRCUMSTANCES DESCRIBED IN SECTION 18-18-428 (1)(b) OCCUR, THE PEACE OFFICER SHALL NOT ARREST THE PERSON PURSUANT TO THIS SECTION FOR ANY MINUSCULE, RESIDUAL CONTROLLED SUBSTANCE THAT MAY BE PRESENT IN THE USED HYPODERMIC NEEDLE OR SYRINGE, AND THE DISTRICT ATTORNEY SHALL NOT CHARGE OR PROSECUTE THE PERSON PURSUANT TO THIS SECTION FOR ANY MINUSCULE, RESIDUAL CONTROLLED SUBSTANCE THAT MAY BE PRESENT IN A USED HYPODERMIC NEEDLE OR SYRINGE. THE CIRCUMSTANCES DESCRIBED IN SECTION 18-18-428 (1)(b) MAY BE USED AS A FACTOR IN A PROBABLE CAUSE OR REASONABLE SUSPICION DETERMINATION OF ANY CRIMINAL OFFENSE IF THE ORIGINAL STOP OR SEARCH WAS LAWFUL.

(6) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, ON OR AFTER MARCH 1, 2020, A DISTRICT ATTORNEY SHALL NOT CHARGE OR PROSECUTE A PERSON PURSUANT TO THIS SECTION FOR ANY MINUSCULE, RESIDUAL, OR UNUSABLE AMOUNT OF A CONTROLLED SUBSTANCE THAT MAY BE PRESENT IN A USED HYPODERMIC NEEDLE OR SYRINGE, OR OTHER DRUG PARAPHERNALIA, AS DEFINED IN SECTION 18-18-426. THE CIRCUMSTANCES DESCRIBED IN THIS SUBSECTION (4) MAY BE USED AS A FACTOR IN A PROBABLE CAUSE OR REASONABLE SUSPICION DETERMINATION OF ANY CRIMINAL OFFENSE IF THE ORIGINAL STOP OR SEARCH WAS LAWFUL.

(7) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, A PERSON MAY BE CHARGED WITH ANY OTHER OFFENSE IN THIS ARTICLE 18, INCLUDING UNLAWFUL DISTRIBUTION, MANUFACTURING, DISPENSING, OR SALE OF A CONTROLLED SUBSTANCE, OR POSSESSION WITH INTENT TO DO THE SAME, PURSUANT TO SECTION 18-18-405, WHEN THERE IS EVIDENCE FOR THE PERSON TO BE SO CHARGED. SUCH EVIDENCE MAY INCLUDE, BUT IS NOT LIMITED TO, THE AMOUNT OF THE CONTROLLED SUBSTANCE THAT THE PERSON POSSESSES.

(8) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION TO THE CONTRARY, A PEACE OFFICER SHALL NOT ARREST AND A DISTRICT ATTORNEY SHALL NOT CHARGE OR PROSECUTE AN EMPLOYEE, AGENT, OR VOLUNTEER OF AN ENTITY DESCRIBED IN SECTION 12-30-110 (1)(a) WHO, IN THE

PERFORMANCE OF THE PERSON’S DUTIES, IS IN POSSESSION OF A CONTROLLED SUBSTANCE, INCLUDING FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), FOR THE PURPOSE OF SAFE DISPOSAL OF THE CONTROLLED SUBSTANCE, INCLUDING FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), IN ACCORDANCE WITH APPLICABLE LAW. AS USED IN THIS SUBSECTION (6), “SAFE DISPOSAL” MEANS THE PROCEDURE AND PROCESS FOR DEPOSITING THE CONTROLLED SUBSTANCE, INCLUDING FENTANYL, CARFENTANIL, BENZIMIDAZOLE OPIATE, OR AN ANALOG THEREOF AS DESCRIBED IN SECTION 18-18-204 (2)(g), IN A SECURE CONTAINER FOR LAW ENFORCEMENT TO SUBSEQUENTLY ACCESS AND DISPOSE OF.

**SECTION 6.** In Colorado Revised Statutes, 18-1.3-103.5, **amend** (3)(e) as follows:  
18-1.3-103.5. **Felony convictions - vacate and enter conviction on misdemeanor after successful completion.**

- (3) This section applies to convictions for the following offenses:
- (e) A violation of section ~~18-18-403.5 (2.5)(a)~~ 18-18-403.5(2.5)(a)(II).

**SECTION 7.** In Colorado Revised Statutes, 18-1.3-801, **amend** (2)(a)(I); and **repeal** (2)(c) as follows:

**18-1.3-801. Punishment for habitual criminals.**

(2)(a)(I) Except as otherwise provided in subsections (2)(b), ~~(2)(e)~~, and (5) of this section, every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall be adjudged an habitual criminal and shall be punished:

~~(2)(c) The provisions of subsection (2)(a) of this section do not apply to a conviction for a level 4 drug felony committed on or after July 1, 2022, pursuant to section 18-18-403.5 (2.5), or a conviction for a level 4 drug felony committed on or after July 1, 2022, for attempt or conspiracy to commit unlawful possession of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, as described in section 18-18-403.5 (2.5), even if the person has been previously convicted of three or more qualifying felony convictions.~~

**SECTION 8.** Effective Date.

This measure is effective January 1, 2027.