

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 18. CRIMINAL CODE
ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992
PART 4. OFFENSES AND PENALTIES

C.R.S. 18-18-406 (2013)

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

(1) (a) The sale, transfer, or dispensing of more than two and one-half pounds of **marijuana** or more than one pound of **marijuana** concentrate to a minor if the person is an adult and two years older than the minor is a level 1 drug felony subject to the mandatory sentencing provision in section 18-1.3-401.5 (7).

(b) The sale, transfer, or dispensing of more than six ounces, but not more than two and one-half pounds of **marijuana** or more than three ounces, but not more than one pound of **marijuana** concentrate to a minor if the person is an adult and two years older than the minor is a level 2 drug felony.

(c) The sale, transfer, or dispensing of more than one ounce, but not more than six ounces of **marijuana** or more than one-half ounce, but not more than three ounces, of **marijuana** concentrate to a minor if the person is an adult and two years older than the minor is a level 3 drug felony.

(d) The sale, transfer, or dispensing of not more than one ounce of **marijuana** or not more than one-half ounce of **marijuana** concentrate to a minor if the person is an adult and two years older than the minor is a level 4 drug felony.

(2) (a) (I) It is unlawful for a person to 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) A person who violates the provisions of subparagraph (I) of this paragraph (a) commits a level 3 drug felony.

(b) (I) Except as 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 a person to knowingly 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) A person who violates any of the provisions of subparagraph (I) of this paragraph (b) commits:

(A) A level 1 drug felony and is subject to the mandatory sentencing provision in section 18-1.3-401.5 (7) if the amount of **marijuana** is more than fifty pounds or the amount of **marijuana** concentrate is more than twenty-five pounds;

(B) A level 2 drug felony if the amount of **marijuana** is more than five pounds but not more than fifty pounds or the amount of **marijuana** concentrate is more than two and one-half pounds but not more than twenty-five pounds;

(C) A level 3 drug felony if the amount is more than twelve ounces but not more than five pounds of **marijuana** or more than six ounces but not more than two and one-half pounds of **marijuana** concentrate;

(D) A level 4 drug felony if the amount is more than four ounces, but not more than twelve ounces of **marijuana** or more than two ounces but not more than six ounces of **marijuana** concentrate; or

(E) A level 1 drug misdemeanor if the amount is not more than four ounces of **marijuana** or not more than two ounces of **marijuana** concentrate.

(3) It is unlawful for a person to 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 (3) commits:

(a) A level 3 drug felony if the offense involves more than thirty plants;

(b) A level 4 drug felony if the offense involves more than six but not more than thirty plants; or

(c) A level 1 drug misdemeanor if the offense involves not more than six plants.

(4) (a) A person who possesses more than twelve ounces of **marijuana** or more than three ounces of **marijuana** concentrate commits a level 4 drug felony.

(b) A person who possesses more than six ounces of **marijuana** but not more than twelve ounces of **marijuana** or not more than three ounces of **marijuana** concentrate commits a level 1 drug misdemeanor.

(c) A person who possesses more than two ounces of **marijuana** but not more than six ounces of **marijuana** commits a level 2 drug misdemeanor.

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

(II) Whenever a person is arrested or detained for a violation of subparagraph (I) of this paragraph (a), the arresting or detaining officer shall prepare a written notice or summons for the person to appear in court. The written notice or summons must contain the name and address of the arrested or detained person, the date, time, and place where such person shall appear, and a place for the signature of the 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 the notice or summons must be given to the person arrested or detained, one copy must 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 must be sent to the places designated by such law enforcement agency. The date specified in the notice or summons to appear must be at least seven days after the arrest or detention unless the person arrested or detained demands an earlier hearing. The place specified in the notice or summons to appear must be before a judge having jurisdiction of the drug petty offense within the county in which the drug petty offense charged is alleged to have been committed. The arrested or detained person, in order to secure release from arrest or detention, must 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 the written promise to appear commits a class 3 misdemeanor.

(b) (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 drug petty offense and, upon conviction thereof, shall be punished by a fine of up to one hundred dollars and up to twenty-four hours of community service.

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

(III) Except as otherwise provided for in subparagraph (I) of this paragraph (b), consumption or use of **marijuana or marijuana** concentrate is deemed possession thereof, and violations must be punished as provided for in paragraph (a) of this subsection (5) and subsection (4) of this section.

(c) Transferring or dispensing not more than two ounces of **marijuana** from one person to another for no consideration is a drug petty offense and is not deemed dispensing or sale thereof.

(6) The provisions of this section do 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.

(7) The provisions of this section do 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.

ANNOTATION

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).

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).

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).

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C.R.S. 18-18-406.3 (2013)

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.