

## Drug Felony Penalties

| Level | Minimum                     | Maximum           | Mandatory Parole | Fines                    | DOS     |
|-------|-----------------------------|-------------------|------------------|--------------------------|---------|
| DF1   | 8 Years<br>Mandatory Prison | 32 Years          | 3 Years          | \$5,000 -<br>\$1,000,000 | \$4,500 |
|       | <b>Presumptive</b>          | <b>Aggravated</b> |                  |                          |         |
| DF2   | 4-8 years                   | 8-16 years        | 2 Years          | \$3,000-\$750,000        | \$3,000 |
| DF3   | 2-4 years                   | 4-6 years         | 1 Year           | \$2,000-\$500,000        | \$2,000 |
| DF4   | 6-12 months                 | 1-2 years         | 1 Year           | \$1,000-\$100,000        | \$1,500 |

## Drug Misdemeanor Penalties

| Level | Minimum  | Maximum   | Fine          | DOS     |
|-------|----------|-----------|---------------|---------|
| DM1   | 6 months | 18 months | \$500-\$5,000 | \$1,000 |
| DM2   | 0 months | 12 months | \$50 - \$750  | \$300   |

### 18-18-405 Unlawful Distribution, manufacturing, dispensing or sale

- DF1
  - More than 225 grams schedule I/II
  - More than 100 grams of meth, heroine
  - Adult sells schedule I/II substance to minor and the adult is more than two years older than the minor
- DF2
  - More than 14 grams schedule I/II
  - More than 7 grams of meth, heroine,
  - Adult sells schedule III/IV to minor and the adult is more than two years older than the minor
- DF3
  - Less than 14 grams schedule I/II
  - Less than 7 grams of meth, heroine
  - More than 4 grams and contains a schedule III or IV controlled substance
- DF4
  - **“Sharing”** – offense for distributing or transferring a controlled substance “for purpose of consuming all of the controlled substance with another person or persons at a time substantially contemporaneous with the transfer”
  - Less than 4 grams schedule I/II
  - Less than 2 grams of meth, heroine
- \*\*\* 18-18-405(5) – Conspiracy to Distribute or possession with intent to distribute was added to the subsection permitting aggregation of quantities within a 6month time frame.\*\*\*

### 18-18-403.5 Possession of Controlled Substance

- There is no weight limit – all possession schedule I&II are DF4

| Level of Offense | When you can Petition to seal drug conviction (date of final dispo or release from supervision whichever is the later date) |
|------------------|-----------------------------------------------------------------------------------------------------------------------------|
| DF1              | 10 years-District Attorney has veto power if objection filed                                                                |
| DF2              | 10 years-District Attorney has veto power if objection filed                                                                |
| DF3              | 10 years-District Attorney has veto power if objection filed                                                                |
| DF4              | 7 years-District Attorney may object: Court May seal if no objection                                                        |
| DM1              | 5 years-District Attorney may object: Court Must seal if no objection                                                       |
| DM2              | 3 years-District Attorney may object: Court Must seal if no objection                                                       |
| DPO              | 1 year – sealing is mandatory if criteria is met                                                                            |

**Wobbler:** 18-1.3-103.5 Felony convictions – vacate and enter conviction on misdemeanor after successful completion.

In Short – If client is successful on qualifying DF4 sentence at conclusion of supervision the court SHALL convert the felony conviction to a MISDEMEANOR. (Pursuant to 18-18-403.5)

**When the Wobbler DOES NOT APPLY:**

- Client has prior conviction for:
  - Crime of violence
  - A crime that is sentenced pursuant to the crime of violence statute
  - An out of State conviction that would be a COV or sentenced as if a COV in Colorado.
- Client is not Probation eligible
- Has two or more prior drug convictions which are felonies
  - **\*\* A felony for purposes this includes the following\*\***
    - Any prior diversion
    - Deferred Prosecution
    - Deferred Judgment and Sentence for a felony offense
    - **Or an misdemeanor drug conviction that was originally charged as a felony**

**18-1.3-104.5 Exhaustion of Remedies**

- It is essential in DF4 that the court consider all sentencing options
- Prior to imposition of prison the court SHALL exhaust all reasonable and appropriate alternative sentences outlined in 18-1.3-104.5 (2)(b)
  - The court MUST determine that incarceration is the most suitable option given the facts and circumstances.
    - INCLUDING
      - The defendants willingness to participate in treatment
  - The court MUST also determine that ALL other reasonable and appropriate sanctions and responses to the violation available to the court
    - have been TRIED and FAILED
    - do not appear likely to be successful if tried OR
    - present an unacceptable risk to public safety
  - The court shall review to the extent available a complete statement as to what treatment and sentencing options
    - have been tried and have failed
    - what other community options are available and
    - reasons why other community options appear to be unlikely to be successful
  - The supervising agency shall provide the court with the risk level
- 18-1.3-301 – requires that the court conduct an exhaustion of remedies hearing even when an offender is terminated from community corrections.

**18-1.3-102 Deferred Judgment and Sentence**

- The court MAY find a violation without entering judgment and imposing sentence if the court makes findings of fact that
  - Entry of judgment and sentence would not be consistent with the purpose of sentencing
  - That the defendant would be better served by continuing the deferred period,
  - That public safety would not be jeopardized
- If the court makes those findings than the court SHALL impose additional sanctions to address the violation, to include but not limited to:
  - Further terms and conditions that will enhance the likelihood of success,
  - respond to the defendant's non-compliance and
  - promote further individual accountability
  - including extending the period of the deferred judgment up to two additional years or up to 90 days in jail