

# Analysis of Senate Bill 13-250

CONCERNING CHANGES TO SENTENCING OF PERSONS CONVICTED  
OF DRUG CRIMES.

*Pursuant to C.R.S. 18-18-606*

*Presented to the House and Senate Judiciary Committees of the Colorado General  
Assembly*

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**February 2017**

**Colorado Department of Public Safety**

**Division of Criminal Justice**

**Office of Research and Statistics**

**700 Kipling St., Denver, Colorado 80215**

<https://www.colorado.gov/pacific/dcj-ors>



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Prepared by

Peg Flick

**Colorado Department of Public Safety**

Stan Hilkey, Executive Director

**Division of Criminal Justice**

Jeanne M. Smith, Director

**Office of Research and Statistics**

Kim English, Research Director

**700 Kipling St., Denver, Colorado 80215**



**COLORADO**  
Department of Public Safety



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Peg Flick, Senior Policy Analyst  
Office of Research and Statistics  
Division of Criminal Justice  
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## Study Highlights

This study analyzed the outcomes of drug cases in the three years prior to the implementation of Senate Bill 13-250 (10/1/2013) compared to the three years following enactment. *Only cases where the crime was committed, filed, convicted and sentenced during these periods were analyzed.*

- **Felony drug filings increased.** The number of drug convictions in which a felony drug offense was the most serious filing charge increased from 14,366 in the pre-S.B.13-215 period to 19,211 in the post-S.B. 13-250 period, mostly due to an increase in the number of Schedule I or II drug possession convictions. This change occurred regardless of the implementation of S.B. 13-250.
- **Felony possession cases convicted of misdemeanors increased.** Felony possession cases were convicted at the misdemeanor level in 39% of cases before compared to 58% after the implementation of S.B. 13-250.
- **Proportion of prison sentences and length of stay declined.** The proportion of drug felony convictions that received a prison sentence fell from 23% to 21%.
  - The average prison sentence length declined from 4.2 years to 3.5 years across all felony drug levels.
  - The length of DOC sentence declines were greater for Whites compared to Blacks.
- **Many cases qualified for wobbler; Whites more likely to qualify than Blacks.** The “wobbler” applies to certain Level 4 drug felonies and enables a defendant to avoid a felony conviction.
  - There were 7,611 wobbler-eligible cases in the post-S.B. 13-250 period.
  - Three-fourths (75%) of White defendants had a wobbler-eligible criminal history compared to 49% of Black defendants.
  - Wobbler-eligible sentences were given to 3,879 cases.
  - **Use of deferred judgements and diversion declined for wobbler-eligible cases but the wobbler provided an additional opportunity to avoid a felony conviction.** A deferred judgment was awarded to 33% of cases in the pre-S.B.13-250 period and to 18% of cases afterwards. In total, 35% (deferred + diversion) of cases in the before period could avoid a felony conviction if they were successful, versus 20% (deferred + diversion) in the post period. However, an additional 73% (community corrections + probation) of cases in the post-S.B.13-250 period also have the opportunity, as a wobbler, to have the felony conviction reduced to a misdemeanor, provided (for possession cases) the amounts were within the statutory limits and they successfully completed their sentence.
- **Probation revocations increased but fewer were sentenced to DOC.** Probation revocations in the post-period increased to 39% from 31% in the pre-period. However the proportion of probation cases revoked and re-sentenced to DOC fell from 32% to 27%.



## Executive Summary

**Background.** Senate Bill 13-250, signed by the governor on May 28, 2013, made extensive revisions to Title 18 C.R.S. concerning definitions and penalties for drug offenses. S.B. 13-250 was the result of nearly four years of work by the Colorado Commission on Criminal and Juvenile Justice’s (CCJJ) Drug Policy Task Force. The Drug Policy Task Force was created by the CCJJ pursuant to S.B.09-286 to address drug sentencing and treatment issues in Colorado. In May 2009, the Governor and Attorney General requested that the Drug Policy Task Force investigate if

*“there [are] evidence-based data to support changes in the length of sentence for those who use controlled substances, and should there be a focus on substituting treatment for punishment?”*

The Drug Policy Task Force was comprised of subject matter experts from across the criminal justice community including law enforcement professionals, defense and prosecuting attorneys, legislative representatives, victim and offender advocates, and offender supervision and treatment professionals. The Task Force investigated strategies for improving the effectiveness of Colorado’s drug laws and developed recommendations for statutory changes. These recommendations were approved by the CCJJ, and legislative sponsors drafted the recommendations into a bill that made substantial changes to drug offense statutes. Specifically, S.B.13-250

- Created a new sentencing grid for drug offenses,
- Created new qualifying amounts for felony, misdemeanor, and petty offenses,
- Created a new option for drug offenders to avoid a felony conviction,
- Instructed the court to exhaust all remedies before sentencing some drug offenders to the department of corrections (DOC),
- Prohibited plea agreements that require defendants to waive their right to petition to have a conviction record sealed,
- Expanded and encouraged treatment options for drug offenders.

S.B.13-250 also instructed the Division of Criminal Justice to collect data and issue a report to the legislature on the bill’s impact. This document represents that report.

**Study Design.** S.B.13-250 contained 72 sections which made broad changes to drug offenses and penalties (summarized in Appendix A). This report analyzed the impact of the following five major provisions of S.B.13-250:

1. Section 1 of S.B.13-250 created a new sentencing option for certain Level 4 drug felony offenses that requires the court to replace a felony conviction with a misdemeanor conviction if the defendant successfully completes his/her sentence in the community. This provision is known as the “wobbler.”

2. Sections 2 and 3 of S.B.13-250 created a requirement that the court exhaust all remedies before sentencing or revoking a defendant with a Level 4 drug felony conviction to the Department of Corrections.
3. Sections 4 through 31 created a new sentencing grid for felony, misdemeanor, and petty drug offenses and assigned each of the drug crimes a penalty based on the new grid.
4. Section 35 amended the intensive supervision probation program to allow defendants convicted of a drug misdemeanor to receive intensive supervision if they are deemed high risk.
5. Section 64 gives a second chance to defendants who fail while on a deferred judgment.

To analyze the impact of S.B.13-250, the outcomes of cases filed in the three years prior to the bill's passage were compared with outcomes of cases filed in the three years after the enactment of the bill. The three-year post-S.B.13-250 period began after the bill's enactment on 10/1/2013 and ended on 9/30/2016. The post-S.B.13-250 sample contains cases whose events occurred during this period, including date of drug offense, case filing date and, if convicted, sentencing date. The cases in the pre-S.B.13-250 comparison group likewise had events which occurred within a comparable three-year period: 10/1/2010 to 9/30/2013.

The unit of analysis throughout this report is at the case-level, rather than the person-level. For each of the sections that follow, court records from the Judicial Branch's Integrated Colorado Online Network (ICON) system were obtained. Drug filings and convictions in district, county, and juvenile court were analyzed. Denver County Court data were not available.

**New Drug Sentencing Grid.** S.B.13-250 reduced the number of felony levels for drug offenses from 6 to 4. The sentence ranges in the new scheme are shorter for Levels 4 to 2 felonies than the prior, although longer sentences can be imposed for Level 1 felony offenses, and for aggravating circumstances. S.B.13-250 also reclassified three felony offenses to misdemeanors and one petty offense to a misdemeanor. This section analyzed the impact of collapsing six felonies into four, shortening the potential DOC sentence lengths, and offense reclassifications by examining the following:

1. Felony filings convicted at the misdemeanor level
2. DOC sentence lengths for Level 4 through Level 1 felony convictions
3. Three felony offenses reclassified to misdemeanors
4. One petty offense reclassified to a misdemeanor

Cases filed at lower felony levels are frequently plead to misdemeanor-level convictions. The number of drug convictions in which a felony drug offense was the most serious filing charge increased from 14,366 pre-S.B.13-250 to 19,211 post-S.B.13-250, mostly due to an increase in the number of Schedule I or II drug possession convictions. Possession cases filed at the felony level were convicted at the misdemeanor level in 39% (n=3,549) of cases pre-S.B.13-250 versus 58% (n=8,006) of cases post-S.B.13-250. In contrast felony distribution filings were convicted at the felony level in 98% of cases both pre- and post-S.B.13-250 (n=2,398 and 3,056, respectively). For cases with White defendants with felony level filings, the proportion of cases convicted at the misdemeanor level increased from 35% (n=3,821) to 50% (n=7,773) in the post-S.B.13-250

period. For cases with Black defendants with felony level drug filings, the proportion convicted at the misdemeanor level increased from 31% (n=588) to 46% (n=911) post-S.B.13-250.

Sentence ranges in the new scheme are shorter for Levels 4 to 2 drug felonies compared to the prior grid, although longer sentences can be imposed for Level 1 felony offenses and for aggravating circumstances. The proportion of drug felony convictions that received a DOC sentence fell from 23% (n=2,062) to 21% (n=2,131), and the average sentence length declined from 4.2 years to 3.5 years across all felony drug levels. In the post-S.B.13-250 period, the average DOC sentence length for White defendants with cases having DF3 to DF1 level convictions decreased from 7.3 years (n=497) to 5.8 years (n=772). For White defendants with DF4 level convictions the average sentence length decreased from 2.4 years (n=901) to 1.1 years (n=827). In cases with Black defendants having DF3 through DF1 level convictions, the average sentence length decreased from 8.3 years (n=72) pre-S.B.13-250 to 5.0 years (n=104) in the post-S.B.13-250 period. For DF4 conviction cases with Black defendants, the average DOC sentence length fell from 2.9 years (n=236) to 1.2 years (n=151) post-S.B.13-250.

Distribution of less than 5lbs of Marijuana was reclassified from F5 to three levels: DF3, DF4, and DM1. In the post-S.B.13-250 period 50% (n=212) of convictions for Marijuana distribution less than 5lbs were at the misdemeanor level. These defendants would have received felony convictions prior to S.B.13-250. For those that were convicted at the felony level, 8% (DF3: n=11; DF4: n=5) received a sentence to DOC post-S.B.13-250 versus 6% (n=26) pre-S.B.13-250.

Prior to S.B.13-250, the possession or use of up to 8oz of Marijuana in a detention facility (C.R.S. 18-18-406.5(1)) was classified as an F6. S.B.13-250 reduced this offense to a Level 1 drug misdemeanor. In the pre-S.B.13-250 period, there were eight (8) convictions at the F6 level. In the post-S.B.13-250 period, there were six (6) convictions at the misdemeanor level. Of the eight cases sentenced pre-S.B.13-250 for F6 convictions, 5 received a sentence to the DOC.

In the pre-S.B.13-250 period, distribution of a Schedule V drug (C.R.S. 18-18-405(1),(2)(a)(IV)(B)) by a defendant who had prior convictions was classified as an F5. S.B.13-250 makes no distinction with regard to prior convictions and classifies this offense as a Level 1 misdemeanor. In the three-year pre-S.B.13-250 period, one (1) case with distribution of Schedule V drug with prior convictions was found. In the post-S.B.13-250 period, this conviction would be at the misdemeanor level.

Finally, S.B.13-250 increased the penalty for abusing toxic vapors (C.R.S. 18-18-412) from a Class 1 petty offense to a Level 2 drug misdemeanor. The maximum sentence for a DM2 is 12 months in jail and up to a \$750 fine versus 6 months and \$500 for a Class 1 petty offense. The number of cases convicted of abusing toxic vapors as the most serious offense increased from 76 in pre-S.B.13-250 period to 143 in the post- period. Sentences to jail decreased in the post period to 14% (n=20) of cases from 18% (n=14) while sentences to probation increased in the post- period from 41% (n=31) to 58% (n=83). Deferred judgments decreased slightly (4%, n=3 to 3%, n=4).

**The Wobbler.** Section 1 of S.B.13-250 created an alternative sentencing option for some Level 4 felony drug offenses that enables an offender to avoid a felony conviction. Under this provision, upon the successful completion of a community-based sentence, the drug felony conviction is vacated and replaced with a conviction for a Level 1 drug misdemeanor. This option is known as the “wobbler.” The wobbler is intended for offenders who are otherwise not qualified for deferred judgments or diversion, and is limited to those with minimal criminal history. The wobbler applies to specific Level 4 drug felonies:

1. Possession of not more than 4 grams of Schedule I or II drugs or Flunitrazepam, or not more than 2 grams of Methamphetamine, Heroin, Ketamine or Cathinone (C.R.S. 18-18-403.5(2)(a)).
2. A Level 4 drug felony for distribution of Schedule I or II drug when the transfer was for contemporaneous consumption (C.R.S. 18-18-405(2)(d)(II)).
3. Possession of 12 ounces or more of Marijuana or 3 ounces of Marijuana concentrate (C.R.S. 18-18-406(4)(a)).
4. Any violation of C.R.S. 18-18-415 which prohibits the obtaining of a controlled substance by fraud or deceit.

There were 7,611 cases with a wobbler-eligible statute as the highest conviction charge in the post-S.B.13-250 period, the majority of which (95%) were for possession of a schedule I or II controlled substance. The wobbler statute limits possession to less than 4gm but it is not known if the possession cases met this quantity limit because this information is not tracked in ICON. Most cases (73%, n=5,558) appeared to qualify given the statute’s criminal history limitations. Seventy-five percent (75%) of cases with White defendants (n=4,746) had wobbler-eligible criminal history, while 49% of cases with Black defendants (n=357) had wobbler-eligible criminal history. A majority of cases with male and female defendants met the criminal history restrictions: males: 70% (n=3,769); females: 81% (1,780).

The wobbler applies to sentences to probation or community corrections. Wobbler-eligible sentences were given to 3,879 cases, but only 22% (n=861) had sufficient time to complete their sentence within the analysis three-year timeframe. Of those, 13% (n=114) successfully finished their sentence and had their felony conviction replaced with a misdemeanor per the wobbler provision. Twenty more appeared to finish their sentence early and have their felony conviction replaced. An additional 26 that did not appear to meet the wobbler criteria also had the felony conviction set aside in favor of a misdemeanor for a total of 160 wobbler-successful cases. In 12 of these successful cases, a revocation occurred at some point, but the defendant was able to complete their sentence and have the felony conviction set aside.

In the pre-S.B.13-250 period, the only options to avoid a felony conviction were deferred judgment or diversion. These two sentencing options were compared pre- and post-S.B.13-250 for cases with a wobbler-eligible conviction and qualifying criminal history. For the pre-S.B.13-250 sample cases with the closest matching statute to the wobbler were selected. Although the resulting pre-S.B.13-250 sample was not an exact match, the comparison of sentences in the pre- and post-S.B.13-250 periods shows that the use of deferred judgments and diversion declined overall from 35% (n=1,731) to 20% (n=1,032) of convictions. However the wobbler provision enabled an additional 73% (n=3,879) of cases in the post-S.B.13-250 period to

potentially have the felony conviction reduced to a misdemeanor, provided they met quantity limits and successfully completed the sentence to the community.

**Exhaustion of Remedies.** S.B.13-250 directed the court to exhaust all remedies before sentencing a defendant convicted of a Level 4 drug felony to DOC following a revocation from probation or termination from community corrections. Using the same cohorts as in the previous analyses, the proportion of revocations from probation or from community corrections to DOC for Level 4 felony drug convictions in district court was analyzed pre- and post-S.B.13-250. The closest matching pre-S.B.13-250 offense was identified for each post-S.B.13-250 Level 4 offense, however due to S.B.13-250 changes to quantity limits, an exact match did not exist for all offenses. As a result some cases in the pre-S.B.13-250 sample would not be eligible for the exhaustion of remedies provision.

More DF4 level cases were sentenced to probation in the post-S.B.13-250 period than in the prior period: 3,160 pre-S.B.13-250 and 4,692 post-S.B.13-250. Revocations from probation increased in the post- period to 39% (1,817) of cases from 31% (n=971). However the proportion of probation cases revoked and re-sentenced to DOC fell in the post-S.B.13-250 period from 32% (n=306) of cases to 27% (n=498). In contrast, the proportion of cases rejected or revoked from community corrections and re-sentenced to DOC remained unchanged at 35% for both the pre- and post- periods (n=217 and n=189).

**Intensive Supervision for Level 4 Drug Felonies.** Section 35 of S.B.13-250 amended the intensive supervision probation statute to allow defendants convicted of a misdemeanor to participate if they were assessed as higher risk. Prior to S.B.13-250, defendants convicted at a misdemeanor level were not eligible for intensive supervision. Since the enactment of S.B.13-250, the state Division of Probation Services has admitted 53 males and 8 females convicted with a drug misdemeanor or petty offense as the most serious conviction to intensive supervision.

**Second Chance for Deferred Judgment Failures.** S.B.13-250 allows the court to reinstate deferred judgments upon revocation for drug offenses. Reinstatement rates for deferred judgment revocations were compared pre- and post-S.B.13-250. The use of the deferred judgment sentencing option declined from 16% (n=4,100) pre-S.B.13-250 to 9% (n=2,195) of drug convictions overall in the post-S.B.13-250 period. However the use of deferred judgments in juvenile court increased from 33% (n=517) to 37% (n=349) of drug convictions. Revocations from deferred judgments increased from 18% (n=744) of cases to 20% (n=441) of cases in the post-S.B.13-250 period. The rate of reinstatement of the deferment increased slightly overall between the periods (3% n=21 versus 4% n=16 post-S.B.13-250). Juvenile revocations experienced an increase in the number of deferred Judgment reinstatements: 6% to 16%, however the number of cases is very small (n=10 in both periods).

## Part 1: Introduction

### Background

Senate Bill 13-250, signed by the governor on May 28, 2013, made extensive revisions to Title 18 C.R.S. concerning definitions and penalties for drug offenses. S.B. 13-250 was the result of nearly four years of work by the Colorado Commission on Criminal and Juvenile Justice's (CCJJ) Drug Policy Task Force. The Drug Policy Task Force was created by the CCJJ pursuant to S.B.09-286 to address drug sentencing and treatment issues in Colorado. In May 2009, the Governor and Attorney General requested that the Drug Policy Task Force investigate if

*“there [are] evidence-based data to support changes in the length of sentence for those who use controlled substances, and should there be a focus on substituting treatment for punishment?”*

The Drug Policy Task Force was comprised of subject matter experts from across the criminal justice community including law enforcement professionals, defense and prosecuting attorneys, legislative representatives, victim and offender advocates, and offender supervision and treatment professionals. The Task Force investigated strategies for improving the effectiveness of Colorado's drug laws and developed recommendations for statutory changes. These recommendations were approved by the CCJJ, and legislative sponsors drafted the recommendations into a bill that made substantial changes to drug offense statutes. Specifically, S.B.13-250

- Created a new sentencing grid for drug offenses,
- Created new qualifying amounts for felony, misdemeanor, and petty offenses,
- Created a new option for drug offenders to avoid a felony conviction,
- Instructed the court to exhaust all remedies before sentencing some drug offenders to the department of corrections,
- Prohibited plea agreements that require defendants to waive their right to petition to have a conviction record sealed,
- Expanded and encouraged treatment options for drug offenders.

S.B.13-250 also instructed the Division of Criminal Justice to collect data and issue a report to the legislature on the bill's impact. This document represents that report.

### Organization of this Report

This report is organized as follows: Part One provides an overview of S.B.13-250; Part Two describes the study design; Parts Three through Seven analyze the impact of five major provisions of S.B.13-250; and Part Eight provides the specific data mandated by Section 58 of S.B.13-250.

## Part 2: Study Design

### Analysis Plan

S.B.13-250 contained 72 sections which made broad changes to drug offenses and penalties (summarized in Appendix A). This report analyzed the impact of the following five major provisions of S.B.13-250:

1. Section 1 of S.B.13-250 created a new sentencing option for certain Level 4 drug felony offenses that requires the court to replace a felony conviction with a misdemeanor conviction if the defendant successfully completes his/her sentence in the community. This provision is known as the “wobbler.”
2. Sections 2 and 3 of S.B.13-250 created a requirement that the court exhaust all remedies before sentencing or revoking a defendant with a Level 4 drug felony conviction to the Department of Corrections.
3. Sections 4 through 31 created a new sentencing grid for felony, misdemeanor, and petty drug offenses and assigned each of the drug crimes a penalty based on the new grid.
4. Section 35 amended the intensive supervision probation program to allow defendants convicted of a drug misdemeanor to receive intensive supervision if they are deemed high risk.
5. Section 64 gives a second chance to defendants who fail while on a deferred judgment.

### Methodology

To analyze the impact of S.B.13-250, the outcomes of cases filed in the three years prior to the bill’s passage were compared with outcomes of cases filed in the three years after the enactment of the bill.

**Timeframe.** The three-year post-S.B.13-250 period began after the bill’s enactment on 10/1/2013 and ended on 9/30/2016. The post-S.B.13-250 sample contains cases whose events occurred during this period, including date of drug offense, case filing date and, if convicted, sentencing date. The cases in the pre-S.B.13-250 comparison group likewise had events which occurred within a comparable three-year period:

1. The drug offense was committed between 10/1/2010 and 9/30/2013,
2. The case was filed between 10/1/2010 and 9/30/2013, and
3. All conviction and sentencing activities occurred between 10/1/2010 and 9/30/2013.

Cases in the pre-S.B.13-250 period that did not meet all three criteria were excluded.<sup>1</sup>

**Case classification.** The intent of this analysis is to compare the outcomes for drug offenses in the post-S.B.13-250 period to the outcomes for those same offenses in the prior period. Because S.B.13-250 modified statute numbers, comparable drug offenses between the pre- and post-S.B.13-250 periods were identified using statute descriptions. However, for some offenses, S.B.13-250 also changed the amounts considered unlawful at a particular felony or misdemeanor level. The closest pre-S.B.13-250 offense match was found for each

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<sup>1</sup> Cases in the post-S.B.13-250 period in which the drug offense date was prior to the bill’s enactment on October 1, 2013 were also excluded since these cases were not subject to the statutory changes.



post-S.B.13-250 offense, but for some an exact match was not possible. In addition, the “most serious” charge in a case was selected as the overall case classification. Cases usually contain more than one charge. The most serious charge was the charge with the highest felony, misdemeanor, or petty offense level. In the pre-SB12-250 period felonies ranged from F6 (least serious) to F2 (most serious), and in the post-S.B.13-250 period from DF4 (least serious) to DF1 (most serious). Similarly, misdemeanors ranged from M3 to M1 in the pre-S.B.13-250 period and from DM2 to DM1 in the post-period. Petty offenses ranged from PO2 to PO1 pre-S.B.13-250 versus a single petty offense (DPO) in the post-S.B.13-250 period.

**Outcome measure.** In this analysis the primary outcome measure was the initial sentence received for a drug conviction. When multiple sentences were imposed, such as probation and community service, the more serious sentence was selected for analysis. In cases in which a sentence to probation was accompanied by a jail term, the probation sentence was selected as the most serious since it was longer in duration. Nineteen sentence placements were collapsed into ten for clarity (see Appendix B). This report does not include an analysis of how S.B.13-250 was implemented across judicial districts. Instead, it focuses on a statewide analysis of case outcomes found in the court records.

**Unit of analysis.** The unit of analysis throughout this report is at the case-level, rather than the person-level. Defendants frequently have multiple cases involving different offense types that are sentenced together or separately. Case-level analysis was employed because it is not possible to accurately quantify outcomes involving complex person-level scenarios. As a result this report does not analyze the number of persons affected by changes resulting from the implementation of S.B.13-250.

**Data source.** For each of the sections that follow, court records from the Judicial Branch’s Integrated Colorado Online Network (ICON) system were obtained. Drug filings and convictions in district, county, and juvenile court were analyzed. Denver County Court data were not available.

**Minority impact.** Judicial Branch’s ICON system has a single field for race and ethnicity. Defendants of Hispanic ethnicity are frequently recorded by their race instead (White, Black, Other). As a result, the number of cases classified as Hispanic is not representative of the true population. This analysis therefore only examined impact on the Black population, in offense categories in which there were a sufficient number of cases.



## Part 3: New Drug Sentencing Grid

Sections 4 and 5 of S.B.13-250 created new sentencing grids for felony, misdemeanor, and petty offense drug convictions. Sections 8 through 30 assigned all existing drug crimes to a new penalty based on these grids. S.B.13-250 reduced the number of felony levels from six to four (Table 3-1). Most of the new felony levels have shorter sentencing ranges than the prior scheme, although with aggravating circumstances longer sentences can be imposed. In addition to the new grids, three felony level offenses were reclassified down to drug misdemeanors, and one petty offense was reclassified up to a drug misdemeanor.

Table 3-1. Presumptive sentencing range (years) for felony convictions, pre- and post-S.B.13-250

Before					After				
Felonies					Drug Felonies				
			Aggravated/Mitigated					Aggravated	
	Min	Max	Min	Max		Min	Max	Min	Max
F1	Life Imprisonment	Death							
					DF1	8	32		
F2	8	24	4	48					
F3	4	12	2	24					
					DF2	4	8	8	16
F4	2	6	1	12					
					DF3	2	4	4	6
F5	1	3	0.5	6					
F6	1	1.5	0.5	3					
					DF4	0.5	1	1	2

This section of the report analyzes the impact of collapsing six felonies into four, shortening the potential DOC sentence lengths, and offense reclassifications, by examining the following:

1. Felony filings convicted at the misdemeanor level
2. DOC sentence lengths for Level 4 through Level 1 felony convictions
3. Three felony offenses reclassified to misdemeanors
4. One petty offense reclassified to a misdemeanor

### 1. Felony Filings Convicted at the Misdemeanor Level

S.B.13-250 reduced the number of felony sentencing ranges for drug offenses from 6 to 4. Cases filed at lower felony levels are frequently plead to a misdemeanor level conviction.<sup>2</sup> Defendants convicted at the misdemeanor-level can be jailed but they are not subject to a sentence to the Department of Corrections

<sup>2</sup> In the data analyzed here, only 1% of cases with a drug offense as the most serious filing charge went to trial, both pre- and post-S.B.13-250. The remaining 99% were resolved as the result of a plea agreement.

(DOC). Misdemeanor convictions also have lower fines imposed than felony convictions. The impact of S.B.13-250's collapsing of 6 felony levels to 4 was analyzed by comparing the proportion of felony-level filings that resulted in a misdemeanor-level conviction pre- and post-S.B.13-250. Cases in district and juvenile court, where felony cases are filed, were analyzed.

The number of drug convictions in which a felony drug offense was the most serious filing charge increased from 14,366 pre-S.B.13-250 to 19,211 post-S.B.13-250 (Table 3-2). Most of this increase was due to the increase in Schedule I or II drug possession cases: from 9,257 to 14,025 post-S.B.13-250. Of those possession cases filed at the felony level pre-S.B.13-250, 61% were also convicted at the felony level and 39% at the misdemeanor level. In the post- S.B.13-250 period the proportion of possession cases filed at the felony level and also convicted at the felony level declined to 42%; misdemeanor level convictions increased to 58%.<sup>3</sup> In contrast, felony distribution filings were convicted at the felony level in 98% of cases both pre- and post-S.B.13-250.

Table 3-2. Conviction level for cases with a felony drug offense as most serious filing charge, pre- and post-S.B.13-250

Conviction Level	Before		After	
	%	N	%	N
<b>Distribution (non-Marijuana)</b>	<b>17%</b>	<b>2,459</b>	<b>16%</b>	<b>3,114</b>
Felony	98%	2,398	98%	3,056
Misdemeanor	2%	61	2%	58
<b>Possession of Schedule I or II drug</b>	<b>64%</b>	<b>9,257</b>	<b>73%</b>	<b>14,025</b>
Felony	61%	5,708	42%	6,019
Misdemeanor	39%	3,549	58%	8,006
<b>Other Drugs*</b>	<b>19%</b>	<b>2,650</b>	<b>11%</b>	<b>2,072</b>
Felony	46%	1,220	33%	672
Misdemeanor	47%	1,259	61%	1,254
Petty Offense	7%	179	6%	126
<b>Total</b>	<b>100%</b>	<b>14,366</b>	<b>100%</b>	<b>19,211</b>

Data source: District and juvenile court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

\*Marijuana (possession, cultivation, distribution), Synthetics (possession, manufacture, distribution), drug use, paraphernalia, distribution to a minor, obtaining a controlled substance by fraud or deceit.

For cases with White defendants with felony-level filings the proportion of cases convicted at the misdemeanor level increased from 35% to 50% in the post-S.B.13-250 period. For cases with Black defendants with felony-level drug filings, the proportion convicted at the misdemeanor level increased from 31% to 46% post-S.B.13-250 (Table 3-3).

<sup>3</sup> S.B.13-250 collapsed two felony levels (F4 and F6) into a single felony level (DF4) for possession of a Schedule I or II drug. This collapse made more felony cases at the lowest felony level which could potentially be plead to a misdemeanor.

Table 3-3. Conviction level for cases with a felony drug offense as most serious filing charge, pre- and post-S.B.13-250, by race/ethnicity

Conviction level	Before		After	
	%	N	%	N
<b>Black</b>	<b>13%</b>	<b>1,875</b>	<b>10%</b>	<b>1,973</b>
Felony	68%	1,275	54%	1,060
Misdemeanor	31%	588	46%	911
Petty Offense	1%	12	0%	2
<b>Hispanic</b>	<b>10%</b>	<b>1,378</b>	<b>7%</b>	<b>1,268</b>
Felony	73%	1,000	61%	774
Misdemeanor	26%	363	38%	488
Petty Offense	1%	15	0%	6
<b>Other</b>	<b>2%</b>	<b>347</b>	<b>2%</b>	<b>355</b>
Felony	72%	251	59%	208
Misdemeanor	26%	89	41%	146
Petty Offense	2%	7	0%	1
<b>White</b>	<b>75%</b>	<b>10,766</b>	<b>81%</b>	<b>15,615</b>
Felony	63%	6,800	49%	7,725
Misdemeanor	35%	3,821	50%	7,773
Petty Offense	1%	145	1%	117
<b>Total</b>	<b>100%</b>	<b>14,366</b>	<b>100%</b>	<b>19,211</b>

Data source: District and juvenile court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Note that Judicial systematically collects race but not ethnicity so most Hispanic cases are in the White category.

## 2. DOC Sentence Lengths for Felony Convictions

The new felony levels DF4 through DF2 have shorter sentencing ranges than the prior scheme, although with aggravating circumstances longer sentences can be imposed (Table 3-1). This section analyzes the effects of the new drug grid on DOC sentence lengths post-S.B.13-250 compared to the prior three years. Felony district court convictions, which are subject to a possible DOC sentence, were examined.

Overall, felony-level convictions pre-S.B.13-250 comprised 64% of cases in which a drug charge was the most serious conviction offense (Table 3-4). In the post-S.B.13-250 period, felony-level convictions declined to 51%. However, the total number of drug convictions overall increased in the post-S.B.13-250 period (14,069 versus 19,989). As a result, many more cases, as felony convictions, were subject to a possible sentence to DOC in the post-S.B.13-250 period than the prior period (9,007 versus 10,252).

Table 3-4. Conviction level of cases with drugs as most serious conviction offense, pre- and post-S.B.13-250

Conviction level	Before		After	
	%	N	%	N
Felony	64%	9,007	51%	10,252
Misdemeanor	34%	4,824	48%	9,561
Petty Offense	2%	238	1%	176
<b>Total</b>	<b>100%</b>	<b>14,069</b>	<b>100%</b>	<b>19,989<sup>4</sup></b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

For those that were convicted at all felony levels, a sentence to the DOC occurred in 23% of cases pre-S.B.13-250 and 21% post-S.B.13-250 (Table 3-5).

Table 3-5. Initial sentence for cases with drugs as most serious felony conviction, pre- and post-S.B.13-250

Initial sentence	Before		After	
	%	N	%	N
Community Corrections	9%	805	9%	876
Deferred Judgment	23%	2,110	13%	1,285
Dept of Corrections	23%	2,062	21%	2,131
Diversion	1%	89	1%	94
Jail	<1%	33	1%	52
Other	1%	71	<1%	42
Probation	43%	3,835	56%	5,771
Youthful Offender System	<1%	2	<1%	1
<b>Total</b>	<b>100%</b>	<b>9,007</b>	<b>100%</b>	<b>10,252</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

For those that received a DOC sentence, the average sentence length declined for DF4 offenses to 1.1 years during the post-S.B.13-250 period from 2.5 years (Table 3-6). The average sentence length for those convicted of Drug Levels 1 through 3 declined to 5.8 years from 7.1 years. Note that this table represents cases, not individuals.<sup>5</sup>

<sup>4</sup> Unlike the data in Table 3-2 these cases did not necessarily have a drug offense as the most serious filing charge, but a drug offense was the most serious conviction charge.

<sup>5</sup> From FY14 to FY16--roughly approximate to the post-S.B.13-250 period--DOC admitted 1,184 new inmates with a drug felony as the most serious conviction crime (data provided by the Colorado Department of Corrections, Office of Planning and Analysis and analyzed by the Division of Criminal Justice Office of Research and Statistics.).

Table 3-6. Average sentence to DOC (years) for cases with drugs as most serious felony conviction charge, pre- and post-S.B.13-250

Conviction level	Before		After	
	Average sentence (Years)	N	Average sentence (Years)	N
DF1 to DF3 and pre-S.B.13-250 comparable convictions	7.1	754	5.8	1,077
DF4 and pre-S.B.13-250 comparable convictions	2.5	1,308	1.1	1,054
	<b>4.2</b>	<b>2,062</b>	<b>3.5</b>	<b>2,131</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

In the post-S.B.13-250 period, the average DOC sentence length for White defendants with cases having DF3 to DF1 level convictions decreased from 7.3 years to 5.8 years (Table 3-7). For White defendants with DF4 convictions the average sentence length decreased from 2.4 years to 1.1 years. Cases with Black defendants having DF3 through DF1 level convictions saw an average sentence length decrease from 8.3 years pre-S.B.13-250 to 5.0 years in the post-S.B.13-250 period. For DF4 conviction cases with Black defendants the average DOC sentence length fell from 2.9 years to 1.2 years post-S.B.13-250.

Table 3-7. Average sentence to DOC (years) for cases with drugs as most serious felony conviction charge, pre- and post-S.B.13-250, by race/ethnicity\*

Conviction level	Before		After	
	Average sentence (Years)	N	Average sentence (Years)	N
<b>Black</b>				
DF1 to DF3 and pre-S.B.13-250 comparable convictions	8.3	72	5.0	104
DF4 and pre-S.B.13-250 comparable convictions	2.9	236	1.2	151
<b>Hispanic</b>				
DF1 to DF3 and pre-S.B.13-250 comparable convictions	6.6	159	7.0	168
DF4 and pre-S.B.13-250 comparable convictions	2.7	144	1.1	67
<b>Other</b>				
DF1 to DF3 and pre-S.B.13-250 comparable convictions	5.3	26	5.6	33
DF4 and pre-S.B.13-250 comparable convictions	2.6	27	1.0	9
<b>White</b>				
DF1 to DF3 and pre-S.B.13-250 comparable convictions	7.3	497	5.8	772
DF4 and pre-S.B.13-250 comparable convictions	2.4	901	1.1	827
<b>Total</b>	<b>4.2</b>	<b>2,062</b>	<b>3.5</b>	<b>2,131</b>

Data source: District court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

\* Judicial race data does not distinguish between race and ethnicity (particularly "White" and "Hispanic"). As a result, the ability to accurately interpret this data is limited.

### 3. Felonies Reclassified to Misdemeanors

S.B.13-250 reclassified three felony-level drug offenses down to the misdemeanor level: 1) Distribution of less than 4oz of Marijuana, 2) Possession of Marijuana in a Detention Facility, and 3) Possession of Schedule V with any prior conviction. As noted above, misdemeanor level convictions are not subject to a DOC sentence and the fines imposed are lower.

#### Marijuana Distribution less than 5lbs

Prior to S.B.13-250, a single statute for the distribution of less than 5lbs of Marijuana was classified at the F5 level. S.B.13-250 created the following 3 levels for Marijuana distribution under 5lbs:

- 12oz to 5lbs as DF3 (C.R.S. 18-18-406(2)(b)(III)(C))
- 4oz to 12oz as DF4 (C.R.S. 18-18-406(2)(b)(III)(D))
- Less than 4oz as DM1 (C.R.S. 18-18-406(2)(b)(III)(E))

As a result of the addition of the misdemeanor level penalty, 50% of convictions for Marijuana distribution under 5lbs in the post-S.B.13-250 period were at the misdemeanor level (Table 3-8). Prior to the passage of S.B.13-250, these convictions would have been felonies.

Table 3-8. Cases with distribution of less than 5lbs of Marijuana as most serious conviction charge, pre- and post-S.B.13-250

Conviction level	Before		After	
	%	N	%	N
DF3			33%	141
DF4			17%	71
DM1			50%	212
F5	100%	430		
<b>Total</b>	<b>100%</b>	<b>430</b>	<b>100%</b>	<b>424</b>

Data source: District, juvenile and county court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

For those convicted at the felony level of distribution of less than 5lbs of Marijuana in the pre-S.B.13-250 period, 6% received a sentence to the DOC, versus 8% for both DF4 and DF3 convictions in the post-S.B.13-250 period (Table 3-9). Deferred judgments, in which a felony conviction can be set aside upon successful completion, were awarded to 45% of felony (F5) cases pre-S.B.13-250 but declined to 25% of DF4 convictions in the post-period. Level 4 felony convictions for Marijuana distribution do not have the wobbler option available (see Part 4).

Table 3-9. Initial sentences for felony cases convicted of distribution of less than 5lbs Marijuana as the most serious charge, pre- and post-S.B.13-250

Initial sentence	Before		After	
	%	N	%	N
<b>DF3</b>			<b>68%</b>	<b>138</b>
Community Corrections			7%	10
Deferred Judgment			34%	47
Dept of Corrections			8%	11
Other			1%	1
Probation			50%	69
<b>DF4</b>			<b>32%</b>	<b>65</b>
Community Corrections			3%	2
Deferred Judgment			25%	16
Dept of Corrections			8%	5
Diversion			3%	2
Division of Youth Corrections			3%	2
Probation			58%	38
<b>F5</b>	<b>100%</b>	<b>422</b>		
Community Corrections	3%	11		
Deferred Judgment	45%	190		
Dept of Corrections	6%	26		
Diversion	4%	15		
Division of Youth Corrections	1%	5		
Jail	<1%	2		
Other	1%	5		
Probation	40%	168		
<b>Total</b>	<b>100%</b>	<b>422</b>	<b>100%</b>	<b>203</b>

Data source: District and juvenile court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

For defendants who received a DOC sentence for Marijuana distribution prior to S.B.13-250, the F5 level had a sentencing range of 1 to 3 years (with 6 months to 6 years for aggravated/mitigated circumstances). Post-S.B.13-250, conviction for possession of 12oz to 5lbs is a DF3 felony and subject to DOC sentence of 2 to 4 years or 4 to 6 years with aggravated circumstances. Convictions at the DF4 level are subject to a DOC sentence of 6 months to one year or 1 to 2 years with aggravated circumstances.

For those who received a sentence to the DOC, the average sentence length increased for the DF3 convictions and decreased for the DF4 convictions as compared to the pre-S.B.13-250 F5 convictions (Table 3-10). Note that these data represent cases, not individuals.



Table 3-10. Average DOC sentence length for felony Marijuana distribution < 5lbs as most serious conviction, by felony level

Felony level	Before		After	
	Average sentence (Years)	N	Average sentence (Years)	N
DF3			3.5	11
DF4			1.2	5
F5	2.7	26		

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

**Possession or use of less than 8oz of Marijuana in a Detention Facility**

Prior to S.B.13-250, the possession or use of up to 8oz of Marijuana in a detention facility (C.R.S. 18-18-406.5(1)) was classified as an F6. S.B.13-250 reduced this offense to a Level 1 drug misdemeanor. In the pre-S.B.13-250 period, there were 8 convictions at the F6 level. In post-S.B.13-250 there were 6 convictions at the misdemeanor level. Of the 8 cases sentenced pre-S.B.13-250 for F6 convictions, 5 received a sentence to the DOC (data not presented).

**Distribution of Schedule V with Prior Convictions**

In the pre-S.B.13-250 period, distribution of a Schedule V drug (C.R.S. 18-18-405(2)(a)(IV)(B)) with prior convictions was classified as F5. S.B.13-250 makes no distinction for prior convictions and classifies this offense as a misdemeanor. In the three-year pre-S.B.13-250 period, one case with distribution of Schedule V drug with prior convictions as the most serious conviction offense was found (data not presented). In the post-S.B.13-250 period, this conviction would be at the misdemeanor level.

#### 4. Petty Offense Increased to Misdemeanor

S.B.13-250 increased the penalty for abusing toxic vapors (C.R.S. 18-18-412) from a Class 1 petty offense (PO1) to a Level 2 drug misdemeanor (DM2). The maximum sentence for a DM2 is 12 months in jail and up to \$750 in fines versus 6 months and up to \$500 for a PO1. The number of cases convicted of abusing toxic vapors as the most serious crime increased in district, juvenile and county court from 76 in pre-S.B.13-250 period to 143 in the post- period (Table 3-11). Sentences to jail<sup>6</sup> decreased in the post-S.B.13-250 period to 14% of cases from 18% while probation increased in the post- period from 41% to 58%. The use of deferred judgments decreased slightly (4% to 3%).

Table 3-11. Initial sentence for cases convicted of abusing toxic vapors as most serious conviction charge, pre- and post-S.B.13-250

Initial sentence	Before		After	
	%	N	%	N
<b>DM2</b>			<b>100%</b>	<b>143</b>
Deferred			3%	4
Diversion			2%	3
Division of Youth Corrections			1%	1
Jail			14%	20
Other			22%	32
Probation			58%	83
<b>PO1</b>	<b>100%</b>	<b>76</b>		
Deferred	4%	3		
Diversion	1%	1		
Division of Youth Corrections	1%	1		
Jail	18%	14		
Juvenile Detention	0%	0		
Other	34%	26		
Probation	41%	31		
<b>Total</b>	<b>100%</b>	<b>76</b>	<b>100%</b>	<b>143</b>

Data source: District, juvenile and county court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

**Summary.** S.B.13-250 reduced the number of felony levels for drug offenses from 6 to 4. The sentence ranges in the new scheme are shorter for Levels 4 to 2 felonies than the prior, although longer sentences can be imposed for Level 1 felony offenses, and for aggravating circumstances. S.B.13-250 also reclassified three felony offenses to misdemeanors and one petty offense to a misdemeanor. This section analyzed the impact

<sup>6</sup> In both pre- and post-S.B.13-250 periods a sentence to jail on the first offense is prohibited.

of collapsing six felonies into four, shortening the potential DOC sentence lengths, and offense reclassifications by examining the following:

1. Felony filings convicted at the misdemeanor level
2. DOC sentence lengths for Level 4 through Level 1 felony convictions
3. Three felony offenses reclassified to misdemeanors
4. One petty offense reclassified to a misdemeanor

Cases filed at lower felony levels are frequently plead to misdemeanor-level convictions. The number of drug convictions in which a felony drug offense was the most serious filing charge increased from 14,366 pre-S.B.13-250 to 19,211 post-S.B.13-250, mostly due to an increase in the number of Schedule I or II drug possession convictions. Possession cases filed at the felony level were convicted at the misdemeanor level in 39% (n=3,549) of cases pre-S.B.13-250 versus 58% (n=8,006) of cases post-S.B.13-250. In contrast felony distribution filings were convicted at the felony level in 98% of cases both pre- and post-S.B.13-250 (n=2,398 and 3,056, respectively). For cases with White defendants with felony level filings, the proportion of cases convicted at the misdemeanor level increased from 35% (n=3,821) to 50% (n=7,773) in the post-S.B.13-250 period. For cases with Black defendants with felony level drug filings, the proportion convicted at the misdemeanor level increased from 31% (n=588) to 46% (n=911) post-S.B.13-250.

Sentence ranges in the new scheme are shorter for Levels 4 to 2 drug felonies compared to the prior grid, although longer sentences can be imposed for Level 1 felony offenses and for aggravating circumstances. The proportion of drug felony convictions that received a DOC sentence fell from 23% (n=2,062) to 21% (n=2,131), and the average sentence length declined from 4.2 years to 3.5 years across all felony drug levels. In the post-S.B.13-250 period, the average DOC sentence length for White defendants with cases having DF3 to DF1 level convictions decreased from 7.3 years (n=497) to 5.8 years (n=772). For White defendants with DF4 level convictions the average sentence length decreased from 2.4 years (n=901) to 1.1 years (n=827). In cases with Black defendants having DF3 through DF1 level convictions, the average sentence length decreased from 8.3 years (n=72) pre-S.B.13-250 to 5.0 years (n=104) in the post-S.B.13-250 period. For DF4 conviction cases with Black defendants, the average DOC sentence length fell from 2.9 years (n=236) to 1.2 years (n=151) post-S.B.13-250.

Distribution of less than 5lbs of Marijuana was reclassified from F5 to three levels: DF3, DF4, and DM1. In the post-S.B.13-250 period 50% (n=212) of convictions for Marijuana distribution less than 5lbs were at the misdemeanor level. These defendants would have received felony convictions prior to S.B.13-250. For those that were convicted at the felony level, 8% (DF3: n=11; DF4: n=5) received a sentence to DOC post-S.B.13-250 versus 6% (n=26) pre-S.B.13-250.

Prior to S.B.13-250, the possession or use of up to 8oz of Marijuana in a detention facility (C.R.S. 18-18-406.5(1)) was classified as an F6. S.B.13-250 reduced this offense to a Level 1 drug misdemeanor. In the pre-S.B.13-250 period, there were eight (8) convictions at the F6 level. In the post-S.B.13-250 period, there were six (6) convictions at the misdemeanor level. Of the eight cases sentenced pre-S.B.13-250 for F6 convictions, 5 received a sentence to the DOC.

In the pre-S.B.13-250 period, distribution of a Schedule V drug (C.R.S. 18-18-405(1),(2)(a)(IV)(B)) by a defendant who had prior convictions was classified as an F5. S.B.13-250 makes no distinction with regard to prior convictions and classifies this offense as a Level 1 misdemeanor. In the three-year pre-S.B.13-250 period, one (1) case with distribution of Schedule V drug with prior convictions was found. In the post-S.B.13-250 period, this conviction would be at the misdemeanor level.

Finally, S.B.13-250 increased the penalty for abusing toxic vapors (C.R.S. 18-18-412) from a Class 1 petty offense to a Level 2 drug misdemeanor. The maximum sentence for a DM2 is 12 months in jail and up to a \$750 fine versus 6 months and \$500 for a Class 1 petty offense. The number of cases convicted of abusing toxic vapors as the most serious offense increased from 76 in pre-S.B.13-250 period to 143 in the post- period. Sentences to jail decreased in the post period to 14% (n=20) of cases from 18% (n=14) while sentences to probation increased in the post- period from 41% (n=31) to 58% (n=83). Deferred judgments decreased slightly (4%, n=3 to 3%, n=4).

## Part 4: The Wobbler

Section 1 of S.B.13-250 created an alternative sentencing option for certain Level 4 felony drug offenses that enables an offender to avoid a felony conviction. Under this provision, upon successful completion of a community-based sentence, the drug felony conviction is vacated and replaced with a conviction for a Level 1 drug misdemeanor. This option is known as the “wobbler.” The bill states:

*In order to expand opportunities for defendants to avoid a drug felony conviction, to reduce the significant negative consequences of that felony conviction, and to provide positive reinforcement for drug defendants who work to successfully complete any community-based sentence imposed by the court, the legislature hereby creates an additional opportunity for those drug defendants who may not otherwise have been eligible for or successful in other statutorily created programs that allow the drug offender to avoid a felony conviction, such as diversion or deferred judgment.*

This provision applies to specific Level 4 drug felonies:

1. Possession of not more than 4 grams of Schedule I or II drugs or Flunitrazepam, or not more than 2 grams of Methamphetamine, Heroin, Ketamine or Cathinone (C.R.S. 18-18-403.5(2)(a)).
2. A Level 4 drug felony for distribution of Schedule I or II drug when the transfer was for contemporaneous consumption (C.R.S. 18-18-405(2)(d)(II)).
3. Possession of 12 ounces or more of Marijuana or 3 ounces of Marijuana concentrate (C.R.S. 18-18-406(4)(a)).
4. Any violation of C.R.S. 18-18-415 which prohibits the obtaining of a controlled substance by fraud or deceit.

The bill further limits this sentencing option to those defendants with minimal criminal history:

1. No prior convictions for violent crimes,

2. No convictions that would have disqualified them for a probation sentence,
3. Less than two prior felony drug convictions.

ICON does not explicitly track wobbler-eligible cases.<sup>7</sup> Therefore, the conditions described above were used to identify these cases. However not all of these conditions are sufficiently tracked in ICON to enable precise identification of wobbler-eligible cases (Table 4-1). As a result, the analysis below uses the available data to identify wobbler-eligible cases as precisely as possible.

Table 4-1. Wobbler conditions identifiable in ICON

Necessary condition	Identifiable in ICON
Conviction statute is wobbler-eligible	Yes
Minimal criminal history (no prior violent convictions, no probation-disqualifying convictions, less than two drug felony convictions)	Partial. Out of state data not available. Name, birthdate, and state identification number (SID) search may miss cases.
Meets qualifying amounts for possession of Schedule I or II drugs	No. Amounts are not present.
Sentenced to the community	Yes
Had sufficient time to complete sentence to the community	Partial. There is no explicit indication that a sentence was completed. However, an estimated completion date was calculated.

In the post-S.B.13-250 period, 7,611 cases were convicted with a wobbler statute as the most serious conviction charge (Table 4-2). The majority of these cases (95%) were convicted of possession of a Schedule I or II drug.

Table 4-2. Cases with wobbler-eligible charge as most serious conviction charge, post-S.B.13-250

Conviction category	%	N
Distribution with contemporaneous consumption	1%	89
Marijuana possession >12oz	2%	120
Fraud and deceit	2%	148
Schedule I or II possession	95%	7,254
<b>Total</b>	<b>100%</b>	<b>7,611</b>

Data source: District and juvenile court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

<sup>7</sup> The clerk of the court may or may not enter text in the record specifying wobbler eligibility. However, an examination of the minute orders found that this text was not standardized and was difficult to identify with precision. This text was therefore not used to identify wobbler-eligible cases.

Criminal history<sup>8</sup> was used to further narrow these cases to those that were wobbler-eligible. Table 4-3 shows that 73% of cases were eligible using criminal history as a discriminator. Seventy-five percent of cases with White defendants had wobbler-eligible criminal history, while 49% of cases with Black defendants had wobbler-eligible criminal history (Table 4-4). A majority of cases with male defendants and female defendants met the criminal history restrictions: males: 70%; females: 81% (Table 4-5).

Table 4-3. Cases with wobbler-eligible criminal history, post-S.B.13-250

<b>Met criminal history eligibility</b>	<b>%</b>	<b>N</b>
No	27%	2,053
Yes	73%	5,558
<b>Total</b>	<b>100%</b>	<b>7,611</b>

Data source: District and juvenile court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

Table 4-4. Cases with wobbler-eligible criminal history, post-S.B.13-250, by race/ethnicity\*

<b>Met criminal history eligibility</b>	<b>%</b>	<b>N</b>
<b>Black</b>	<b>9%</b>	<b>722</b>
No	51%	365
Yes	49%	357
<b>Hispanic</b>	<b>6%</b>	<b>449</b>
No	23%	104
Yes	77%	345
<b>Other</b>	<b>2%</b>	<b>136</b>
No	19%	26
Yes	81%	110
<b>White</b>	<b>83%</b>	<b>6,304</b>
No	25%	1,558
Yes	75%	4,746
<b>Total</b>	<b>100%</b>	<b>7,611</b>

Data source: District and juvenile court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

\* Judicial race data does not distinguish between race and ethnicity (particularly "White" and "Hispanic"). As a result, the ability to accurately interpret this data is limited.

<sup>8</sup> Criminal history was found using name, date of birth and state identification number (SID).

Table 4-5. Cases with wobbler-eligible criminal history, post-S.B.13-250, by gender

<b>Met criminal history eligibility</b>	<b>%</b>	<b>N</b>
<b>Female</b>	<b>29%</b>	<b>2,196</b>
No	19%	416
Yes	81%	1,780
<b>Male</b>	<b>71%</b>	<b>5,405</b>
No	30%	1,636
Yes	70%	3,769
<b>Unknown</b>	<b>&lt;1%</b>	<b>10</b>
No	10%	1
Yes	90%	9
<b>Total</b>	<b>100%</b>	<b>7,611</b>

Data source: District and juvenile court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

The statute further states that the wobbler applies to any “community-based sentence to probation or to a community corrections program.” A majority of criminal history-eligible cases (73%) above received a wobbler-eligible sentence: 6% of cases received a sentence to community corrections and 67% received a sentence to probation (Table 4-6).

Table 4-6. Sentences for cases having a wobbler-eligible charge as most serious conviction and criminal history eligible, post-S.B.13-250

<b>Initial sentence</b>	<b>%</b>	<b>N</b>
Community Corrections	6%	294
Deferred Judgment	18%	944
Dept of Corrections	7%	362
Diversion	2%	90
Division of Youth Corrections	<1%	15
Jail	1%	30
Other	<1%	24
Probation	67%	3,585
Youthful Offender System	<1%	1
<b>Subtotal</b>	<b>96%</b>	<b>5,343</b>
Not yet sentenced	4%	215
<b>Total</b>	<b>100%</b>	<b>5,558</b>

Data source: District and juvenile court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

Under the wobbler provision, upon the successful completion of a sentence to probation or community corrections the felony conviction is set aside and a misdemeanor conviction is takes its place. Due to the three year timeframe of this study, not all sentences would have had time to be successfully completed. The

majority (78%) of wobbler-eligible sentences did not have sufficient time to be completed (Table 4-7). Of those that did have sufficient time to successfully complete their sentence 13% had the felony conviction set aside and a misdemeanor conviction entered. In addition, 20 cases had the felony conviction set aside earlier than the estimated sentence length.<sup>9</sup>

Table 4-7. Wobbler success, by time sufficient to complete sentence to the community, post-S.B.13-250

<b>Time sufficient to complete sentence to community</b>	<b>%</b>	<b>N</b>
<b>No</b>	<b>78%</b>	<b>3,018</b>
Success	1%	20
Pending or ineligible	99%	2,998
<b>Yes</b>	<b>22%</b>	<b>861</b>
Success	13%	114
Pending, not successful, or ineligible	87%	747
<b>Total</b>	<b>100%</b>	<b>3,879</b>

Data source: District and juvenile court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

Note that 8% (n=12) of the successful cases above were revoked and reinstated at some point; the sentence was completed and the felony conviction set aside (data not presented). Therefore it is still possible that some of the cases that are not yet successful could complete their sentence and have the felony conviction set aside at a later date. In addition, some of the “pending” cases may actually be ineligible for the wobbler for reasons not detectable in ICON, such as criminal history or qualifying amount.

In addition to the cases meeting the wobbler criteria, there were 26 cases in which the felony conviction was set aside and a misdemeanor conviction entered:

- 7 cases with a deferred sentence
- 1 case with no sentences other than fines
- 15 cases with apparent criminal history disqualifiers
- 3 cases in which the drug offense occurred prior to S.B.13-250 effective date

A total of 160 cases had their felony conviction set aside and a misdemeanor conviction entered, per the wobbler provision.

In the pre-S.B.13-250 period nothing comparable to the wobbler existed. The only opportunities to avoid a felony conviction prior to S.B.13-250 were deferred judgments and diversion. The wobbler was intended to give defendants who were not qualified for these sentencing options an opportunity to avoid a felony conviction. To analyze the effect of the wobbler option deferred judgments and diversion sentences for cases

<sup>9</sup> Except for deferred judgments and diversion ICON does not contain an indicator that the sentence imposed was completed. Therefore an estimated sentence completion date was calculated from the sentence date and sentence length. This estimation is inexact since sentences can be modified later.



having a wobbler-eligible conviction pre- and post-S.B.13-250 were examined. For the pre-S.B.13-250 sample cases with the closest matching wobbler-eligible statute were selected (Appendix C). No comparable statute existed pre-S.B.13-250 for distribution of a Schedule I or II drug with contemporaneous consumption (C.R.S. 18-18-405(2)(d)(II)). The pre-S.B.13-250 sample therefore includes those who would not have been eligible for the wobbler.<sup>10</sup> The selected pre-S.B.13-250 cases were further restricted to those with qualifying criminal history in order to match the wobbler conditions as closely as possible.

A deferred judgment was awarded to 33% of cases in the pre-S.B.13-250 period and to 18% of cases in the post-S.B.13-250 period (Table 4-8). Defendants received diversion in 2% of cases pre-S.B.13-250 and in 2% of cases post-S.B.13-250. In total, 35% (deferred + diversion) of cases in the pre-S.B.13-250 period could avoid a felony conviction if they were successful, versus 20% (deferred + diversion) in the post-S.B.13-250 period. However, an additional 73% (community corrections + probation) of cases in the post-S.B.13-250 period also have the opportunity as a wobbler to have their felony conviction reduced to a misdemeanor, provided (for possession cases) their amounts were within the statutory limits<sup>11</sup> and they successfully completed their sentence.

Table 4-8. Initial sentence for cases with qualifying criminal history and most serious conviction charge is a wobbler-statute, pre-and post-S.B.13-250

Initial sentence	Before		After	
	%	N	%	N
Community Corrections	7%	345	6%	294
Deferred Judgment	33%	1,642	18%	942
Dept of Corrections	13%	654	7%	362
Diversion	2%	89	2%	90
Division of Youth Corrections	<1%	13	<1%	15
Jail	<1%	19	1%	30
Juvenile Detention	<1%	2	0%	0
Other	1%	43	<1%	24
Probation	44%	2,210	67%	3,585
Youthful Offender System	<1%	1	<1%	1
<b>Total</b>	<b>100%</b>	<b>5,018</b>	<b>100%</b>	<b>5,343</b>

Data source: District and juvenile court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

<sup>10</sup> In the post-S.B.13-250 period distribution of a Schedule I or II drug with contemporaneous consumption comprise 2% of the sample. In contrast, in the pre-S.B.13-250 period distribution of a Schedule I or II drug convictions comprise 23% of the sample.

<sup>11</sup> Prior to S.B.13-250 possession of a Schedule I or II drug had two felony levels: less than 4gm as F6 and more than 4gm as F4. Using data from cases charged with these statutes, it was found that 77% of possession cases were charged with less than 4 grams of a Schedule I or II drug.

**Summary.** Section 1 of S.B.13-250 created an alternative sentencing option for some Level 4 felony drug offenses that enables an offender to avoid a felony conviction. Under this provision, upon the successful completion of a community-based sentence, the drug felony conviction is vacated and replaced with a conviction for a Level 1 drug misdemeanor. This option is known as the “wobbler.” The wobbler is intended for offenders who are otherwise not qualified for deferred judgments or diversion, and is limited to those with minimal criminal history. The wobbler applies to specific Level 4 drug felonies:

1. Possession of not more than 4 grams of Schedule I or II drugs or Flunitrazepam, or not more than 2 grams of Methamphetamine, Heroin, Ketamine or Cathinone (C.R.S. 18-18-403.5(2)(a)).
2. A Level 4 drug felony for distribution of Schedule I or II drug when the transfer was for contemporaneous consumption (C.R.S. 18-18-405(2)(d)(II)).
3. Possession of 12 ounces or more of Marijuana or 3 ounces of Marijuana concentrate (C.R.S. 18-18-406(4)(a)).
4. Any violation of C.R.S. 18-18-415 which prohibits the obtaining of a controlled substance by fraud or deceit.

There were 7,611 cases with a wobbler-eligible statute as the highest conviction charge in the post-S.B.13-250 period, the majority of which (95%) were for possession of a schedule I or II controlled substance. The wobbler statute limits possession to less than 4gm but it is not known if the possession cases met this quantity limit because this information is not tracked in ICON. Most cases (73%, n=5,558) appeared to qualify given the statute’s criminal history limitations. Seventy-five percent (75%) of cases with White defendants (n=4,746) had wobbler-eligible criminal history, while 49% of cases with Black defendants (n=357) had wobbler-eligible criminal history. A majority of cases with male and female defendants met the criminal history restrictions: males: 70% (n=3,769); females: 81% (1,780).

The wobbler applies to sentences to probation or community corrections. Wobbler-eligible sentences were given to 3,879 cases, but only 22% (n=861) had sufficient time to complete their sentence within the analysis three-year timeframe. Of those, 13% (n=114) successfully finished their sentence and had their felony conviction replaced with a misdemeanor per the wobbler provision. Twenty more appeared to finish their sentence early and have their felony conviction replaced. An additional 26 that did not appear to meet the wobbler criteria also had the felony conviction set aside in favor of a misdemeanor for a total of 160 wobbler-successful cases. In 12 of these successful cases, a revocation occurred at some point, but the defendant was able to complete their sentence and have the felony conviction set aside.

In the pre-S.B.13-250 period, the only options to avoid a felony conviction were deferred judgment or diversion. These two sentencing options were compared pre- and post-S.B.13-250 for cases with a wobbler-eligible conviction and qualifying criminal history. For the pre-S.B.13-250 sample cases with the closest matching statute to the wobbler were selected. Although the resulting pre-S.B.13-250 sample was not an exact match, the comparison of sentences in the pre- and post-S.B.13-250 periods shows that the use of deferred judgments and diversion declined overall from 35% (n=1,731) to 20% (n=1,032) of convictions. However the wobbler provision enabled an additional 73% (n=3,879) of cases in the post-S.B.13-250 period to

potentially have the felony conviction reduced to a misdemeanor, provided they met quantity limits and successfully completed the sentence to the community.

## Part 5: Exhaustion of Remedies for Level 4 Drug Felonies

Sections 2 and 3 of S.B.13-250 instruct the court to consider all sentencing options prior to sentencing a defendant to the DOC, in order to “ensure that the state’s costly prison resources are used for those defendants for whom another sentence is not appropriate or will not properly meet the goals of community safety and rehabilitation of the offender.” Exhaustion of remedies applies to Level 4 drug felonies<sup>12</sup> at sentencing, and resentencing after a revocation to probation or community corrections.

Before sentencing an offender to the DOC the court is instructed to determine that this would be the most suitable sentence based on the following:

- Taking into consideration the facts of the case,
- Considering the defendant’s willingness to participate in treatment,
- Finding that all other sanctions have been tried and failed,
- Finding that other sanctions are unlikely to work,
- Finding that other sanctions present an unacceptable risk to public safety.

The Level 4 drug offenses include the following:

1. Possession of Schedule I or II drugs (C.R.S. 18-18-403.5,(2)(a)),
2. Distribution of less than 4gm of Schedule III or IV drugs (C.R.S. 18-18-405(1),(2)(d)(I)) or Schedule I or II with contemporaneous consumption (C.R.S. 18-18-405(1),(2)(d)(II)),
3. Marijuana possession (C.R.S. 18-18-406(4)(a)), distribution (C.R.S. 18-18-406(2)(b)(III)(D)), and cultivation (C.R.S. 18-18-406(3)(b)) with quantity limits, and Marijuana distribution of 1oz or less to a minor (C.R.S. 18-18-406(1)(d)),
4. Obtaining a controlled substance by fraud or deceit (C.R.S. 18-18-415),
5. Imitation controlled substance manufacture, distribution, or possession with intent to distribute (C.R.S. 18-18-422(1)(b)(I)).

This section analyzes the impact of the exhaustion of remedies provision on A) direct sentences to the DOC, and B) revocations to the DOC from probation and community corrections, to determine if the proportion of cases sentenced to the DOC after S.B.13-250’s enactment declined as compared to the prior three years. For each of the DF4 offenses, the closest matching pre-S.B.13-250 offense was analyzed (see Appendix D). Because S.B.13-250 made changes to drug quantities that apply to specific crime types, an exact pre-S.B.13-250 match did not exist for some offenses.

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<sup>12</sup> The specific level 4 drug felonies that exhaustion of remedies applies to are not specified in S.B.13-250. Therefore, all level 4 drug felony statutes were analyzed.

## A. Direct Sentences to DOC

None of the factors that S.B.13-250 instructs the court to take into consideration, such as the offender’s willingness to participate in treatment, or that other sanctions are unlikely to work, are recorded in ICON. The impact of the exhaustion of remedies provision was therefore measured by determining the proportion of cases in district court<sup>13</sup> that received a sentence to DOC, pre- and post-S.B.13-250.

Criminal history was also examined to determine if defendants with more serious criminal history, thus a potentially higher public safety risk, received a DOC sentence in the post-S.B.13-250 period than in the prior period. Criminal history was measured as the number of prior court cases containing a felony conviction. Prior convictions were found by using name, date of birth, and the state identification number (SID) of the defendant. Cases may have been missed due to spelling or birthdate variations. In addition, factors other than criminal history and unrecorded factors in ICON likely affect the sentence given to a defendant.

### Possession of Schedule I or II Drugs

Possession of any quantity of a Schedule I or II drug is now a Level 4 drug felony. Prior to S.B.13-250 possession of less than 4gm was classified as F6 and more than 4gm was classified as F4. Because S.B.13-250 removed drug amount limits, cases in the pre- and post-S.B.13-250 samples are comparable. The number of cases with possession of Schedule I or II controlled substance as the most serious conviction charge increased from 5,687 pre-S.B.13-250 to 6,755 post-S.B.13-250 (Table 5-1). However the proportion of cases with sentences to the DOC decreased in the post-S.B.13-250 period from 19% to 14%.

Table 5-1. Initial sentence for cases with possession of Schedule I or II drug as most serious conviction crime, pre- and post-S.B.13-250.

Initial sentence	Before		After	
	%	N	%	N
Community Corrections	9%	526	8%	527
Deferred Judgment	27%	1,551	13%	897
Dept of Corrections	19%	1,074	14%	966
Diversion	1%	55	1%	69
Jail	<1%	23	1%	38
Other	1%	48	<1%	24
Probation	42%	2,409	63%	4,233
Youthful Offender System	<1%	1	<1%	1
<b>Total</b>	<b>100%</b>	<b>5,687</b>	<b>100%</b>	<b>6,755</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

<sup>13</sup> Cases were restricted to those filed in district court since the majority sentences to DOC occur in district court.

Post-S.B.13-250 possession cases sentenced to the DOC had more serious criminal history, as measured by prior felony convictions, than those sentenced to DOC in the pre-S.B.13-250 period (Table 5-2). In the pre-S.B.13-250 period, 19% of cases sentenced to DOC for possession had no prior felony conviction. In the post-S.B.13-250 period 12% had no prior felony conviction.

Table 5-2. Number of prior felony convictions for possession cases sentenced to the DOC, pre- and post-S.B.13-250.

Prior felony convictions (cases)	Before		After	
	%	N	%	N
None	19%	201	12%	112
1-3	48%	511	45%	435
4-6	29%	316	35%	341
7-9	4%	38	7%	64
>9	1%	8	1%	14
<b>Total</b>	<b>100%</b>	<b>1,074</b>	<b>100%</b>	<b>966</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

### Distribution of Schedules III and IV Drugs

Distribution of Schedules III and IV drugs are now Level 4 drug felonies, provided the amount is under 4gm.<sup>14</sup> Prior to S.B.13-250, these crimes were classified as F4s and F5s, respectively, for any amount. For distribution convictions, an exact comparison between the pre- and post- period cannot be made because distribution of Schedule III and IV drugs exceeding 4gm post-S.B.13-250 is now a Level 3 drug felony and not subject to exhaustion of remedies. Therefore some of the cases in the pre-S.B.13-250 sample (which did not have quantity limits), are not directly comparable with those in the post-S.B.13-250 period. With that caveat in mind, Table 5-3 shows that the proportion of sentences to the DOC decreased in the post-S.B.13-250 period to 23% of convictions from 29% in the pre-S.B.13-250 period.

<sup>14</sup> Distribution of Schedule I or II drugs with contemporaneous consumption (C.R.S. 18-18-405(2)(d)(II)) is a Level 4 drug felony but is not examined here because there is no comparable pre-S.B.13-250 statute. In the post-S.B.13-250 period, there were 88 cases in which this statute was the most serious conviction charge; of those, 3 received a DOC sentence.

Table 5-3. Initial sentence for cases with distribution of Schedules III and IV as most serious conviction charge, pre- and post-S.B.13-250

Initial sentence	Before		After	
	%	N	%	N
Community Corrections	8%	40	4%	9
Deferred Judgment	7%	35	4%	9
Dept of Corrections	29%	152	23%	55
Jail	1%	3	2%	5
Other	<1%	2	<1%	1
Probation	56%	297	67%	162
<b>Total</b>	<b>100%</b>	<b>529</b>	<b>100%</b>	<b>241</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

In addition, those sentenced to the DOC in the post-S.B.13-250 period had a more serious criminal history. Prior to S.B.13-250, 32% of cases sentenced to the DOC for the distribution of Schedule III or IV drugs had no prior felony convictions (Table 5-4). In the post-13-250 period, only 16% of cases had no prior felony convictions.

Table 5-4. Criminal history for cases sentenced to DOC with distribution of Schedule III or IV as most serious conviction charge, pre- and post-S.B.13-250

Prior felony convictions (cases)	Before		After	
	%	N	%	N
None	32%	49	16%	9
1-3	41%	62	42%	23
4-6	25%	38	35%	19
7-9	2%	3	5%	3
>9	0%	0	2%	1
<b>Total</b>	<b>100%</b>	<b>152</b>	<b>100%</b>	<b>55</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

## Marijuana Offenses<sup>15</sup>

The new DF4 felony applies to the following Marijuana possession, distribution, and cultivation offenses:

- Possession of more than 12 ounces, previously classified as F6,
- Distribution between 4 and 12oz., previously classified as F5,

<sup>15</sup> Distribution of 1oz or less of Marijuana to a minor (C.R.S. 18-18-406(1)(d)) has no equivalent crime in the pre-S.B.13-250 period and was not included in the comparison analysis. In the post-S.B.13-250 period there were 28 cases with this offense as the most serious conviction charge, 2 of which received a sentence to the DOC.

- Cultivation of 7 to 30 plants, previously classified as F5.

The prohibited amounts for possession and cultivation above remained the same between the pre- and post-periods and were therefore comparable. However, the limit for distribution in the pre- period was less than 5lbs whereas in the post-S.B.13-250 period it is between 4 and 12 ounces for the Level 4 drug felony, but is a Level 3 felony for over 12 ounces. Consequently some of the pre-S.B.13-250 cases in the table below are not directly comparable to the post-S.B.13-250 cases. With that caveat in mind, 4% of the cases in the post-S.B.13-250 period received a sentence to the DOC versus 7% of cases in the pre-S.B.13-250 period (Table 5-5).

Table 5-5. Initial sentence for cases with DF4-comparable Marijuana offenses as most serious conviction charge, pre- and post-S.B.13-250

Initial sentence	Before		After	
	%	N	%	N
Community Corrections	3%	19	1%	2
Deferred Judgment	37%	208	19%	34
Dept of Corrections	7%	39	4%	7
Diversion	1%	7	1%	1
Jail	1%	3	1%	1
Other	1%	7	1%	1
Probation	49%	274	74%	129
<b>Total</b>	<b>100%</b>	<b>557</b>	<b>100%</b>	<b>175</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

The post-S.B.13-250 cases sentenced to the DOC above had more serious criminal history than the pre-S.B.13-250 cases. Of the 7 sentenced to DOC in the post-S.B.13-250 period, 29% (n=2) had no prior felony convictions versus 56% (n=22) with no prior felony cases in the pre-S.B.13-250 period (Data not shown).

### Obtaining Controlled Substance by Fraud or Deceit

All of the statutes for obtaining a controlled substance by fraud or deceit are now DF4 felonies. Previously these were classified as F6s. These statutes were directly comparable between the periods. While the number of cases with fraud or deceit as the most serious conviction charge declined from 360 to 144, the proportion of cases that received a DOC sentence rose in the post-S.B.13-250 period from 7% to 9% (Table 5-6).

Table 5-6. Initial sentence for cases with Fraud and Deceit as most serious conviction charge, pre- and post-S.B.13-250

Initial sentence	Before		After	
	%	N	%	N
Community Corrections	9%	32	2%	3
Deferred Judgment	39%	140	35%	51
Dept of Corrections	7%	26	9%	13
Diversion	5%	18	3%	5
Jail	0%	0	1%	2
Other	0%	0	0%	0
Probation	40%	144	49%	70
<b>Total</b>	<b>100%</b>	<b>360</b>	<b>100%</b>	<b>144</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

The number of cases that received a DOC sentence in both the pre- and post-S.B.13-250 periods were small, and so this analysis must be interpreted with caution. The seriousness of the criminal history of those that received a sentence to DOC in the post-S.B.13-250 period increased: 2 had no prior felony convictions pre-S.B.13-250 and none in the post-S.B.13-250 period (Table 5-7).

Table 5-7. Criminal history for cases sentenced to the DOC for Fraud and Deceit as the most serious conviction charge, pre- and post-S.B.13-250

Prior felony convictions (cases)	Before		After	
	%	N	%	N
None	8%	2	0%	0
1-3	54%	14	38%	5
4-6	31%	8	46%	6
7-9	4%	1	8%	1
>9	4%	1	8%	1
<b>Total</b>	<b>100%</b>	<b>26</b>	<b>100%</b>	<b>13</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

### Imitation Controlled Substances

The statute governing the manufacture, distribution or possession of imitation controlled substances is the same in the pre- and post-S.B.13-250 periods. In the post-S.B.13-250 period, sentences to the DOC increased from 22% of cases (n=18) to 36% of cases (n=8), although the overall number of cases in both periods is small and so these findings should be interpreted with caution (n=82 pre-S.B.13-250 and n=22 post-S.B.13-250) (data not presented).



## Comparison of DOC Sentences for Level 4 Drug Felonies to Levels 1 through 3 Drug Felonies

The use of DOC sentences in all DF4 felony convictions was compared to the use of DOC sentences in DF3 through DF1 to determine if the overall imposition of prison sentences declined or just the use of DOC in DF4 convictions that are subject to the exhaustion of remedies provision. The proportion of felony cases convicted at Levels 1 through 3 increased from 20% of cases pre-S.B.13-250 to 27% of cases (Table 5-8). A higher proportion of cases convicted at Levels 1 through 3 received a DOC sentence than those convicted at the Level 4 felony in both periods. The use of DOC decreased for all felony levels in the post-S.B.13-250 period, from 42% to 38% in DF3 to DF1 cases and from 18% to 14% for DF4 level cases.

Table 5-8. Initial sentences for cases with felony drugs as most serious conviction charge, pre- and post-S.B.13-250

Initial sentence	Before		After	
	%	N	%	N
<b>DF1 through DF3 and pre-S.B.13-250 comparable convictions</b>	<b>20%</b>	<b>1,792</b>	<b>27%</b>	<b>2,803</b>
Community Corrections	10%	180	12%	331
Deferred Judgment	9%	162	10%	281
Dept of Corrections	42%	754	38%	1,077
Diversion	1%	9	1%	15
Jail	<1%	2	<1%	5
Other	1%	9	1%	15
Probation	38%	675	38%	1,079
Youthful Offender System	<1%	1	0%	0
<b>DF4 and pre-S.B.13-250 comparable convictions</b>	<b>80%</b>	<b>7,215</b>	<b>73%</b>	<b>7,449</b>
Community Corrections	9%	625	7%	545
Deferred Judgment	27%	1,948	13%	1,004
Dept of Corrections	18%	1,308	14%	1,054
Diversion	1%	80	1%	79
Jail	<1%	31	1%	47
Other	1%	62	<1%	27
Probation	44%	3,160	63%	4,692
Youthful Offender System	<1%	1	<1%	1
<b>Total</b>	<b>100%</b>	<b>9,007</b>	<b>100%</b>	<b>10,252</b>

Data source: District court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

## Impact of Exhaustion of Remedies by Race

For all Level 4 felony drug convictions, the proportion of cases with White defendants that received a sentence to DOC declined from 17% pre-S.B.13-250 to 13% post-S.B.13-250. For DF4 cases with Black defendants, the proportion sentenced to DOC declined from 23% to 20% (Table 5-9). Blacks were more likely to receive a sentence to DOC compared to the other race/ethnicity categories.



Table 5-9. Initial sentences for cases with Level 4 felony drugs as most serious conviction charge, pre- and post-S.B.13-250, by race/ethnicity\*

DF4 and pre-S.B.13-250 comparable convictions	Before		After	
	%	N	%	N
<b>Black</b>				
Community Corrections	9%	96	8%	61
Deferred	22%	221	10%	76
Dept of Corrections	23%	236	20%	151
Diversion	0%	1	1%	4
Jail	0%	1	1%	7
Other	0%	2	0%	1
Probation	45%	464	60%	448
<b>Hispanic</b>				
Community Corrections	6%	37	8%	34
Deferred	21%	136	12%	51
Dept of Corrections	22%	144	16%	67
Diversion	0%	2	0%	1
Jail	1%	5	0%	1
Other	1%	8	0%	1
Probation	49%	314	63%	260
Youthful Offender System	0%	0	0%	1
<b>Other</b>				
Community Corrections	8%	14	5%	6
Deferred	25%	41	17%	20
Dept of Corrections	16%	27	8%	9
Diversion	1%	1	2%	2
Jail	0%	0	1%	1
Other	1%	1	0%	0
Probation	50%	83	68%	81
<b>White</b>				
Community Corrections	9%	478	7%	444
Deferred	29%	1,550	14%	857
Dept of Corrections	17%	901	13%	827
Diversion	1%	76	1%	72
Jail	0%	25	1%	38
Other	1%	51	0%	25
Probation	43%	2,299	63%	3,903
Youthful Offender System	0%	1	0%	0
<b>Total</b>	<b>100%</b>	<b>7,215</b>	<b>100%</b>	<b>7,449</b>

Data source: District court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

\*Judicial race data does not distinguish between race and ethnicity (particularly "White" and "Hispanic"). As a result, the ability to accurately interpret this data is limited.

**Summary.** Section 2 of S.B.13-250 instructed the court to exhaust all remedies before sentencing a defendant to the DOC for a Level 4 felony drug offense, taking into consideration factors such as participation in treatment, likelihood of success, and public safety. The factors S.B.13-250 instructs the court to consider are not captured in ICON; nevertheless, the proportion of cases that received a DOC sentence in the pre- and post-S.B.13-250 periods was analyzed. Criminal history, as defined as prior felony convictions, was also examined to determine if those who received a sentence to DOC in the post-S.B.13-250 period had more serious offending history than those who received a DOC sentence in the prior period. The pre-S.B.13-250 sample contained cases with a comparable Level 4 drug conviction, although exact matches for some post-S.B.13-250 offenses did not exist. The exhaustion of remedies provision applies to the following Level 4 drug felonies:

1. Possession of Schedule I or II drugs (C.R.S. 18-18-403.5,(2)(a)),
2. Distribution of less than 4gm of Schedule III or IV drugs (C.R.S. 18-18-405(2)(d)(I)) or Schedule I or II with contemporaneous consumption (C.R.S. 18-18-405(1),(2)(d)(II)),
3. Marijuana possession (C.R.S. 18-18-406(4)(a)), distribution (C.R.S. 18-18-406(2)(b)(I),(III)(D)), and cultivation (C.R.S. 18-18-406(3)(b)) with quantity limits, and Marijuana distribution of 1oz or less to a minor (C.R.S. 18-18-406(1)(d)),
4. Obtaining a controlled substance by fraud or deceit (C.R.S. 18-18-415), and
5. Imitation controlled substance manufacture, distribution, or possession with intent to distribute (C.R.S. 18-18-422(1)(b)(I)).

The number of convictions for possession of Schedule I or II drugs increased from 5,687 pre-S.B.13-250 to 6,755 post-S.B.13-250, but the proportion of cases that received a DOC sentence declined from 19% (n=1,074) to 14% (n=966). Prior to S.B.13-250 possession of a Schedule I or II drug had two felony levels, depending on amount. S.B.13-250 did away with amount limits, and therefore the pre- and post- samples were comparable.

For distribution of Schedule III or IV drug convictions the proportion of sentences to DOC declined from 29% (n=152) of convictions to 23% (n=55) in the post-S.B.13-250 period. However the offenses between the pre- and post-S.B.13-250 periods are not directly comparable because S.B.13-250 introduced a limit of 4gm for the Level 4 felony, and created a Level 3 felony for quantities greater than 4gm. Prior to S.B.13-250 there were no quantity limits for distribution of Schedule III or IV drugs. Therefore some of the cases in the pre-S.B.13-250 sample would not be subject to the exhaustion of remedies provision, making the samples not directly comparable.

Several Marijuana possession, distribution, and cultivation statutes are now classified at the DF4 level. The proportion of DOC sentences for convictions of these statutes declined from 7% (n=39) to 4% (n=7) in the post-S.B.13-250 period. While the statutes prohibiting possession and cultivation were comparable between the periods, S.B.13-250 introduced a Level 3 drug felony for distribution greater than 12 ounces, whereas in the pre-S.B.13-250 period the limit was less than 5lbs. Therefore, some of the cases in the pre-S.B.13-250 sample would not be subject to the exhaustion of remedies provision, making the samples not directly comparable.

The statutes prohibiting obtaining controlled substances by fraud or deceit did not change between the pre- and post-S.B.13-250 periods and were therefore directly comparable. The proportion of DOC sentences increased from 7% (n=26) of convictions to 9% (n=13) of convictions in the post-S.B.13-250 period.

The statute governing the manufacture, distribution or possession of imitation controlled substances is the same in the pre- and post-S.B.13-250 periods. In the post-S.B.13-250 period the proportion of sentences to the DOC increased from 22% of cases (n=18) to 36% of cases (n=8), although the overall number of cases in both periods is small (n=82 pre-S.B.13-250 and n=22 post-S.B.13-250).

Defendants in cases sentenced to DOC for all Level 4 drug felonies had more serious criminal history, as measured by prior felony convictions, in the post-S.B.13-250 period. More serious criminal history occurred in the post-S.B.13-250 period across all the Level 4 felony possession, distribution, Marijuana, and fraud and deceit convictions as compared to convictions in comparable pre-S.B.13-250 cases.

The proportion of DOC sentences in DF4 convictions was compared to the proportion of DOC sentences in higher felony convictions to determine if any difference existed. While the proportion of sentences to DOC for DF4 convictions decreased from 18% (n=1,308) to 14% (n=1,054) post-S.B.13-250, the proportion of DOC sentences also decreased for higher felony (DF3 through DF1) convictions, from 42% (n=754) to 38% (n=1,077).

Seventeen percent (17%) (n=901) of cases with White defendants received a sentence to DOC for a Level 4 felony conviction pre-S.B.13-250. In the post-S.B.13-250 period that declined to 13% (n=827) of cases. For DF4 conviction with Black defendants the proportion sentenced to DOC declined from 23% (n=236) to 20% (n=151).

## **B. Revocations from Probation and Community Corrections**

Exhaustion of remedies prior to sentencing a defendant to DOC for a Level 4 felony conviction also applies to revocations from probation. Using the same matched samples in the previous analyses, the proportion of revocations from probation to DOC for Level 4 felony drug convictions in district court was analyzed pre- and post-S.B.13-250. As noted above, the pre-S.B.13-250 sample contains cases that would not be eligible for the exhaustion of remedies provision due to S.B.13-250 changes to quantity limits.

More DF4 level cases were sentenced to probation in the post-S.B.13-250 period than in the prior period: 3,160 pre-S.B.13-250 and 4,692 post-S.B.13-250 (Table 5-10). Revocations from probation increased in the post-S.B.13-250 period from 31% of cases to 39%. Of those revoked, 32% were revoked to DOC pre-S.B.13-250 versus 27% post-S.B.13-250. Note that the revocation to DOC did not necessarily occur on the first revocation event, but may have occurred after multiple revocation-reinstatement episodes. In addition, these data represent revocations that occurred within the respective pre- or post- three-year periods.

Table 5-10. DF4-comparable cases sentenced to probation and later revoked and sentenced to DOC, pre- and post-S.B.13-250

	Before		After	
	%	N	%	N
<b>Not revoked</b>	<b>69%</b>	<b>2,189</b>	<b>61%</b>	<b>2,875</b>
<b>Revoked</b>	<b>31%</b>	<b>971</b>	<b>39%</b>	<b>1,817</b>
Revoked to other*	68%	665	73%	1,319
Revoked to DOC	32%	306	27%	498
<b>Total</b>	<b>100%</b>	<b>3,160</b>	<b>100%</b>	<b>4,692</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

\* Includes revoked and reinstated to Probation or some other sentence such as Jail.

Section 3 of S.B.13-250 also applies the exhaustion of remedies provision to Level 4 felony drug defendants who are revoked from, or rejected by, a community corrections program. Table 5-11 shows no difference between the pre- and post-S.B.13-250 periods in the proportion of cases that were terminated or rejected from a community corrections sentence and subsequently sentenced to DOC (35% pre-S.B.13-250 versus 35% post-S.B.13-250).

Table 5-11. DF4-comparable cases sentenced to community corrections and later terminated or rejected and sentenced to DOC, pre- and post-S.B.13-250

	Before		After	
	%	N	%	N
<b>Terminated or rejected from ComCor to DOC</b>				
No	65%	408	65%	356
Yes	35%	217	35%	189
<b>Total</b>	<b>100%</b>	<b>625</b>	<b>100%</b>	<b>545</b>

Data source: District court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

**Summary.** S.B.13-250 directed the court to exhaust all remedies before sentencing a defendant convicted of a Level 4 drug felony to DOC following a revocation from probation or termination from community corrections. Using the same cohorts as in the previous analyses, the proportion of revocations from probation or from community corrections to DOC for Level 4 felony drug convictions in district court was analyzed pre- and post-S.B.13-250. The closest matching pre-S.B.13-250 offense was identified for each post-S.B.13-250 Level 4 offense, however due to S.B.13-250 changes to quantity limits, an exact match did not exist for all offenses. As a result some cases in the pre-S.B.13-250 sample would not be eligible for the exhaustion of remedies provision.

More DF4 level cases were sentenced to probation in the post-S.B.13-250 period than in the prior period: 3,160 pre-S.B.13-250 and 4,692 post-S.B.13-250. Revocations from probation increased in the post- period to 39% (1,817) of cases from 31% (n=971). However the proportion of probation cases revoked and re-sentenced to DOC fell in the post-S.B.13-250 period from 32% (n=306) of cases to 27% (n=498). In contrast, the

proportion of cases rejected or revoked from community corrections and re-sentenced to DOC remained unchanged at 35% for both the pre- and post- periods (n=217 and n=189).

## **Part 6: Intensive Supervision for Misdemeanants**

Section 35 of S.B.13-250 amended the intensive supervision probation statute to allow defendants convicted of a misdemeanor to participate if they were assessed as higher risk. Prior to S.B.13-250, defendants convicted at a misdemeanor level were not eligible for intensive supervision. Since the enactment of S.B.13-250, the state Division of Probation Services has admitted 53 males and 8 females convicted with a drug misdemeanor or petty offense as the most serious conviction to intensive supervision (data not presented).<sup>16</sup>

## **Part 7: Second Chance for Deferred Judgment Failures**

Deferred judgment is a sentencing option that enables a defendant to have the charge or charges against them dismissed, provided they successfully complete their sentence. In a deferred judgment the defendant enters into an agreement with the district attorney in which he/she pleads guilty to the charge or charges, and agrees to the conditions specified. Upon successful completion of these conditions, the guilty plea is withdrawn and the charges are dismissed.

However, if the defendant fails to comply with the agreement, the court enters a conviction and sentence on the original guilty plea. Section 64 of S.B.13-250 allows, but does not require, the court to continue the deferred judgment in the event of failure, giving defendants with drug offenses another opportunity to complete their sentence and have the charges dismissed. The effect of this provision was analyzed by comparing the rate of reinstatement for failures from deferred judgments, pre- and post-S.B.13-250.

As noted previously the use of deferred judgments declined in the post-S.B.13-250 period.

Table 7-1 shows that deferred judgments declined overall from 16% of drug convictions to 9% across district, juvenile and county courts.

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<sup>16</sup> Data provided by the Division of Probation Services, Office of the State Court Administrator.

Table 7-1. Initial sentence for cases with drug offense as most serious conviction charge, pre- and post-S.B.13-250

Initial sentence	Before		After	
	%	N	%	N
Community Corrections	3%	810	4%	897
Deferred Judgment	16%	4,100	9%	2,195
Dept of Corrections	8%	2,067	9%	2,143
Diversion	1%	151	1%	245
Division of Youth Corrections	<1%	38	<1%	49
Jail	4%	953	7%	1,780
Juvenile Detention	<1%	19	<1%	9
Other	35%	9,010	13%	3,034
Probation	33%	8,630	57%	13,889
Youthful Offender System	<1%	2	<1%	1
<b>Total</b>	<b>100%</b>	<b>25,780</b>	<b>100%</b>	<b>24,242</b>

Data source: District, juvenile, and county court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

This decline was not uniform across all courts. Deferred judgments declined in district court from 16% to 8%, and in county court from 13% to 10%, but increased in juvenile court from 33% of drug convictions pre-S.B.13-250 to 37% post-S.B.13-250 (Table 7-2).



Table 7-2. Initial sentence for cases with drug offense as most serious conviction charge, pre- and post-S.B.13-250, by court

Initial sentence	Before		After	
	%	N	%	N
<b>District</b>	<b>55%</b>	<b>14,069</b>	<b>82%</b>	<b>19,989</b>
Community Corrections	6%	810	4%	897
Deferred Judgment	16%	2,274	8%	1,501
Dept of Corrections	15%	2,067	11%	2,143
Diversion	1%	91	<1%	99
Jail	5%	740	8%	1,626
Other	4%	607	3%	557
Probation	53%	7,478	66%	13,165
Youthful Offender System	<1%	2	<1%	1
<b>Juvenile</b>	<b>6%</b>	<b>1,551</b>	<b>4%</b>	<b>949</b>
Deferred Judgment	33%	517	37%	349
Diversion	3%	48	5%	44
Division of Youth Corrections	2%	38	5%	49
Jail	1%	15	2%	16
Juvenile Detention	1%	19	1%	9
Other	7%	114	7%	68
Probation	52%	800	44%	414
<b>County</b>	<b>39%</b>	<b>10,160</b>	<b>14%</b>	<b>3,305</b>
Deferred Judgment	13%	1,309	10%	345
Diversion	<1%	12	3%	102
Jail	2%	198	4%	138
Other	82%	8,289	73%	2,409
Probation	3%	352	9%	311
<b>Total</b>	<b>100%</b>	<b>25,780</b>	<b>100%</b>	<b>24,243</b>

Data source: District, juvenile and county court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

Revocations<sup>17</sup> from deferred judgments occurred in 18% of cases pre-S.B.13-250 and in 20% of cases post-S.B.13-250 (Table 7-3). The proportion of cases in which a deferred judgment was reinstated increased slightly from 3% to 4% post-S.B.13-250.

<sup>17</sup> The revocation had to have occurred within the three year pre- or post- period to be counted.

Table 7-3. Revocations from deferred judgment and revocation result, pre- and post-S.B.13-250

Revoked from Deferred Judgment	Before		After	
	%	N	%	N
<b>No</b>	<b>82%</b>	<b>3,356</b>	<b>80%</b>	<b>1,754</b>
<b>Yes</b>	<b>18%</b>	<b>744</b>	<b>20%</b>	<b>441</b>
Community Corrections	6%	45	7%	33
Dept of Corrections	4%	27	4%	18
Jail	5%	35	7%	33
Other	2%	14	2%	8
Probation	66%	492	63%	276
Reinstated	3%	21	4%	16
Unknown*	15%	110	13%	57
<b>Total</b>	<b>100%</b>	<b>4,100</b>	<b>100%</b>	<b>2,195</b>

Data source: District, juvenile and county records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

\*No new sentence followed the revocation event, therefore the result was unknown.

Cases in juvenile court experienced an increase in deferred judgments being reinstated from 6% pre-S.B.13-250 to 16% post-S.B.13-250 although this represented only 10 cases in both periods (Table 7-4) so the findings must be viewed with caution.

Table 7-4. Deferred judgment revocation result, pre- and post-S.B.13-250, by court

Revocation Result	Before		After	
	%	N	%	N
<b>District Court</b>	<b>72%</b>	<b>533</b>	<b>78%</b>	<b>342</b>
Community Corrections	8%	45	10%	33
Dept of Corrections	5%	27	5%	18
Jail	3%	17	7%	24
Probation	71%	376	68%	232
Reinstated	2%	8	2%	6
Unknown*	11%	60	8%	29
<b>Juvenile Court</b>	<b>21%</b>	<b>159</b>	<b>15%</b>	<b>64</b>
Jail	7%	11	9%	6
Other	9%	14	13%	8
Probation	68%	108	50%	32
Reinstated	6%	10	16%	10
Unknown*	10%	16	13%	8
<b>County Court</b>	<b>7%</b>	<b>52</b>	<b>8%</b>	<b>35</b>
Jail	13%	7	9%	3
Probation	15%	8	34%	12
Reinstated	6%	3	0%	0
Unknown*	65%	34	57%	20
<b>Total</b>	<b>100%</b>	<b>744</b>	<b>100%</b>	<b>441</b>

Data source: District, juvenile and county records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

\*No new sentence followed the revocation event, therefore the result was unknown.

**Summary.** S.B.13-250 allows the court to reinstate deferred judgments upon revocation for drug offenses. Reinstatement rates for deferred judgment revocations were compared pre- and post-S.B.13-250. The use of the deferred judgment sentencing option declined from 16% (n=4,100) pre-S.B.13-250 to 9% (n=2,195) of drug convictions overall in the post-S.B.13-250 period. However the use of deferred judgments in juvenile court increased from 33% (n=517) to 37% (n=349) of drug convictions. Revocations from deferred judgments increased from 18% (n=744) of cases to 20% (n=441) of cases in the post-S.B.13-250 period. The rate of reinstatement of the deferment increased slightly overall between the periods (3% n=21 versus 4% n=16 post-S.B.13-250). Juvenile revocations experienced an increase in the number of deferred Judgment reinstatements: 6% to 16%, however the number of cases is very small (n=10 in both periods).

## Part 8: Reporting Requirements

Section 58 of S.B.13-250 requires the Division of Criminal Justice to collect specific data elements related to court filings and pre-filing diversion (See Appendix D). ***The following data pertain to cases filed or diverted from 10/1/2013 to 9/30/2016 in district, juvenile, and county court, and having a drug offense committed within the same timeframe.*** Denver County data were not available. These data represent cases, not individuals.

Table 8-1. Drug cases diverted pre-filing post-S.B.13-250, by judicial district\*

District	Pre-filing diversion
1 <sup>st</sup>	No Pre-file Diversion for Drug Cases
2 <sup>nd</sup>	Data not available
3 <sup>rd</sup>	No Pre-file Diversion for Drug Cases
4 <sup>th</sup>	Yes. However, complete "specialty drug court"
5 <sup>th</sup>	No Pre-file Diversion for Drug Cases
6 <sup>th</sup>	Very limited Pre-file Diversion.
7 <sup>th</sup>	No Pre-file Diversion for Drug Cases
8 <sup>th</sup>	No Pre-file Diversion for Drug Cases
9 <sup>th</sup>	Yes, 4 cases diverted
10 <sup>th</sup>	No Pre-file Diversion for Drug Cases
11 <sup>th</sup>	No Pre-file Diversion for Drug Cases
12 <sup>th</sup>	No Pre-file Diversion for Drug Cases
13 <sup>th</sup>	No Pre-file Diversion for Drug Cases
14 <sup>th</sup>	No Pre-file Diversion for Drug Cases
15 <sup>th</sup>	No Pre-file Diversion for Drug Cases
16 <sup>th</sup>	No Pre-file Diversion for Drug Cases
17 <sup>th</sup>	Yes, 64 cases diverted from 2/2015 to 9/2016
18 <sup>th</sup>	No Pre-file Diversion for Drug Cases offered.
19 <sup>th</sup>	No Pre-file Diversion for Drug Cases
20 <sup>th</sup>	No Pre-file Diversion for Drug Cases
21 <sup>st</sup>	No Pre-file Diversion for Drug Cases
22 <sup>nd</sup>	No Pre-file Diversion for Drug Cases offered. (Five cases diverted in last 12 months).

Data source: Colorado District Attorneys' Council.

### **\*Pre-filing diversion notes:**

Drug cases for adults in which the charge(s) in the case were solely drug-related charges pursuant to Title 18, Article 18.

Table 8-2. Total cases filed containing a drug offense post-S.B.13-250, by judicial district

District	Drug offense is most serious filing charge		Total
	No	Yes	
1 <sup>st</sup>	1,383	2,825	4,208
2 <sup>nd</sup>	486	4,856	5,342
3 <sup>rd</sup>	46	186	232
4 <sup>th</sup>	1,571	3,559	5,130
5 <sup>th</sup>	180	554	734
6 <sup>th</sup>	124	244	368
7 <sup>th</sup>	204	491	695
8 <sup>th</sup>	912	2,291	3,203
9 <sup>th</sup>	201	461	662
10 <sup>th</sup>	373	1,047	1,420
11 <sup>th</sup>	206	653	859
12 <sup>th</sup>	213	424	637
13 <sup>th</sup>	205	434	639
14 <sup>th</sup>	110	380	490
15 <sup>th</sup>	86	266	352
16 <sup>th</sup>	65	205	270
17 <sup>th</sup>	1,199	3,535	4,734
18 <sup>th</sup>	1,330	3,252	4,582
19 <sup>th</sup>	605	2,004	2,609
20 <sup>th</sup>	510	1,350	1,860
21 <sup>st</sup>	649	1,612	2,261
22 <sup>nd</sup>	62	217	279
<b>Total</b>	<b>10,720</b>	<b>30,846</b>	<b>41,566</b>

Data source: Court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

Table 8-3. Cases filed post-S.B.13-250 with drug offense as most serious filing charge, by race/ethnicity,\* gender, and prior felony convictions

Count of prior felony convictions (cases)	Female	Male	Unknown	Total
<b>Black</b>	<b>447</b>	<b>2,280</b>		<b>2,727</b>
None	240	902	0	1,142
1-2	123	594	0	717
3-4	49	429	0	478
5-6	27	238	0	265
>7	8	117	0	125
<b>Hispanic</b>	<b>453</b>	<b>1,467</b>		<b>1,920</b>

Count of prior felony convictions (cases)	Female	Male	Unknown	Total
None	312	982	0	1,294
1-2	100	337	0	437
3-4	33	100	0	133
5-6	8	32	0	40
>7	0	16	0	16
<b>Other</b>	<b>150</b>	<b>450</b>	<b>43</b>	<b>643</b>
None	105	325	39	469
1-2	34	73	4	111
3-4	7	36	0	43
5-6	3	16	0	19
>7	1	0	0	1
<b>White</b>	<b>7,322</b>	<b>18,224</b>	<b>10</b>	<b>25,556</b>
None	4,858	11,144	7	16,009
1-2	1,822	4,365	2	6,189
3-4	465	1,745	0	2,210
5-6	129	705	1	835
>7	48	265	0	313
<b>Total</b>	<b>8,372</b>	<b>22,421</b>	<b>53</b>	<b>30,846</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

\* Judicial race data does not distinguish between race and ethnicity (particularly "White" and "Hispanic"). As a result, the ability to accurately interpret this data is limited.

Table 8-4. Outcome of cases with drugs as most serious filing charge post-S.B.13-250, by statute\*

Most serious filing statute	Charges Dismissed/ Not Guilty	Charges Dismissed (Had Other Cases)	Convicted	Total
<b>Distribution Schedules I to V</b>	<b>346</b>	<b>209</b>	<b>4,588</b>	<b>5,143</b>
18-18-405(1),(2)(a)(I)(A)	26	4	168	198
18-18-405(1),(2)(a)(I)(B)	49	12	355	416
18-18-405(1),(2)(a)(I)(C)	0	0	2	2
18-18-405(1),(2)(b)(I)(A)	50	15	530	595
18-18-405(1),(2)(b)(I)(B)	57	48	884	989
18-18-405(1),(2)(c)(I)	108	84	1,655	1,847
18-18-405(1),(2)(c)(I)(A)	1	0	40	41
18-18-405(1),(2)(c)(I)(B)	1	1	8	10
18-18-405(1),(2)(c)(II)	37	38	772	847
18-18-405(1),(2)(c)(III)	0	0	5	5
18-18-405(1),(2)(c)(IV)	2	2	23	27

Most serious filing statute	Charges Dismissed/ Not Guilty	Charges Dismissed (Had Other Cases)	Convicted	Total
18-18-405(1),(2)(d)(I)	3	3	39	45
18-18-405(1),(2)(d)(II)	2	0	7	9
18-18-405(1),(2)(e)(I)	1	0	9	10
18-18-405(1),(2)(e)(II)	0	0	9	9
18-18-422(1)(a)	9	2	82	93
<b>Distribution to Minor</b>	<b>1</b>		<b>23</b>	<b>24</b>
18-18-405(1),(2)(a)(II)	1	0	22	23
18-18-405(1),(2)(a)(II)(B)	0	0	1	1
<b>Drug Paraphernalia</b>	<b>945</b>	<b>380</b>	<b>2,013</b>	<b>3,338</b>
18-18-428(1)	944	379	2,006	3,329
18-18-429	1	1	7	9
<b>Marijuana Cultivation</b>	<b>18</b>	<b>3</b>	<b>91</b>	<b>112</b>
18-18-406(3)(a)	1	2	14	17
18-18-406(3)(a)(1)	2	1	1	4
18-18-406(3)(a)(I)	10	0	62	72
18-18-406(3)(a)(II)	1	0	4	5
18-18-406(3)(a)(III)	4	0	5	9
18-18-406(3)(b)	0	0	4	4
18-18-406(3)(c)	0	0	1	1
<b>Marijuana Distribution</b>	<b>117</b>	<b>26</b>	<b>790</b>	<b>933</b>
18-18-406(2)(a)(I)	4	0	32	36
18-18-406(2)(b)(I),(III)(A)	14	0	81	95
18-18-406(2)(b)(I),(III)(B)	26	1	183	210
18-18-406(2)(b)(I),(III)(C)	17	5	183	205
18-18-406(2)(b)(I),(III)(D)	4	2	65	71
18-18-406(2)(b)(I),(III)(E)	52	18	246	316
<b>Marijuana Distribution to Minor</b>	<b>7</b>	<b>3</b>	<b>23</b>	<b>33</b>
18-18-406(1)(a)	1	1	5	7
18-18-406(1)(b)	0	0	1	1
18-18-406(1)(c)	2	2	3	7
18-18-406(1)(d)	4	0	14	18
<b>Marijuana Other</b>	<b>161</b>	<b>29</b>	<b>296</b>	<b>486</b>
18-18-406(5)(a)(II)	1	0	1	2
18-18-406(5)(b)(I)	119	29	241	389
18-18-406(5)(b)(II)	29	0	44	73
18-18-406(5)(c)	12	0	10	22
<b>Marijuana Possession</b>	<b>880</b>	<b>164</b>	<b>1,450</b>	<b>2,494</b>

Most serious filing statute	Charges Dismissed/ Not Guilty	Charges Dismissed (Had Other Cases)	Convicted	Total
18-18-406(4)(a)	9	3	87	99
18-18-406(4)(a)(I)	12	2	30	44
18-18-406(4)(b)	44	9	116	169
18-18-406(4)(c)	28	6	98	132
18-18-406(5)(a)(I)	783	142	1,117	2,042
18-18-406.5(1)	4	2	2	8
<b>Other</b>	<b>77</b>	<b>59</b>	<b>427</b>	<b>563</b>
18-18-411(1)	1	0	1	2
18-18-411(2)(b)	0	0	1	1
18-18-412	31	30	104	165
18-18-412.5	1	0	17	18
18-18-412.7	0	0	1	1
18-18-413	8	2	10	20
18-18-414(1)(k)	1	0	1	2
18-18-414(1)(n)	1	0	1	2
18-18-414(1)(r)	0	0	1	1
18-18-415(1)(a)	22	22	191	235
18-18-415(1)(c)	2	1	1	4
18-18-415(1)(d)	0	0	5	5
18-18-415(1)(e)	10	4	89	103
18-18-416	0	0	3	3
18-18-422(3)	0	0	1	1
<b>Possession</b>	<b>1,006</b>	<b>1,031</b>	<b>14,262</b>	<b>16,299</b>
18-18-403.5(1),(2)(a)	891	981	13,749	15,621
18-18-403.5(1),(2)(a)(II)	0	0	1	1
18-18-403.5(1),(2)(c)	115	50	512	677
<b>Special Offender</b>	<b>54</b>	<b>45</b>	<b>841</b>	<b>940</b>
18-18-407(1)(a)	0	0	6	6
18-18-407(1)(b)	0	0	8	8
18-18-407(1)(c)	2	2	30	34
18-18-407(1)(d)(I)	11	9	218	238
18-18-407(1)(d)(II)	34	26	477	537
18-18-407(1)(e)	1	0	4	5
18-18-407(1)(g)	6	8	98	112
<b>Synthetics Distribution</b>	<b>2</b>	<b>2</b>	<b>34</b>	<b>38</b>
18-18-406.2(1)(a)	2	2	31	35
18-18-406.2(1)(b)	0	0	2	2
18-18-406.2(1)(c)	0	0	1	1



Most serious filing statute	Charges Dismissed/ Not Guilty	Charges Dismissed (Had Other Cases)	Convicted	Total
<b>Synthetics Possession</b>	<b>40</b>	<b>10</b>	<b>99</b>	<b>149</b>
18-18-406.1	40	10	99	149
<b>Use</b>	<b>47</b>	<b>34</b>	<b>213</b>	<b>294</b>
18-18-404(1)	47	34	211	292
18-18-404(1)(a)	0	0	1	1
18-18-404(1)(b)	0	0	1	1
<b>Total</b>	<b>3,701</b>	<b>1,995</b>	<b>25,150</b>	<b>30,846</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

**\*Filing Outcome Notes:**

**Charges dismissed/not guilty:** all charges were dismissed or found not guilty at trial

**Charges dismissed (had other cases):** all charges were dismissed but other cases were mentioned, possibly indicating a plea agreement to dismiss the case.

**Convicted:** convicted of one or more charges

Table 8-5. Outcomes for cases with drug offense as most serious conviction charge post-S.B.13-250, by statute\*

Most serious conviction statute	Convicted as Charged	Convicted of Attempt	Convicted Other Drugs	Total
<b>Distribution Schedules I to V</b>	<b>1,167</b>	<b>159</b>	<b>1,812</b>	<b>3,138</b>
18-18-405(1),(2)(a)(I)(A)	31	1	4	36
18-18-405(1),(2)(a)(I)(B)	87	3	11	101
18-18-405(1),(2)(a)(I)(C)	1	0	0	1
18-18-405(1),(2)(b)(I)(A)	100	29	142	271
18-18-405(1),(2)(b)(I)(B)	190	25	221	436
18-18-405(1),(2)(c)(I)	444	82	710	1,236
18-18-405(1),(2)(c)(I)(A)	16	0	2	18
18-18-405(1),(2)(c)(I)(B)	4	0	0	4
18-18-405(1),(2)(c)(II)	227	19	287	533
18-18-405(1),(2)(c)(III)	4	0	4	8
18-18-405(1),(2)(c)(IV)	5	0	20	25
18-18-405(1),(2)(d)(I)	19	0	259	278
18-18-405(1),(2)(d)(II)	4	0	85	89
18-18-405(1),(2)(e)(I)	2	0	59	61
18-18-405(1),(2)(e)(II)	5	0	5	10
18-18-422(1)(a)	28	0	3	31

Most serious conviction statute	Convicted as Charged	Convicted of Attempt	Convicted Other Drugs	Total
<b>Distribution to Minor</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>4</b>
18-18-405(1),(2)(a)(II)	2	0	0	2
18-18-405(1),(2)(b)(II)		0	2	2
<b>Drug Paraphernalia</b>	<b>1,655</b>	<b>2</b>	<b>762</b>	<b>2,419</b>
18-18-428(1)	1,654	2	758	2,414
18-18-429	1	0	4	5
<b>Marijuana Cultivation</b>	<b>30</b>	<b>2</b>	<b>60</b>	<b>92</b>
18-18-406(3)(a)	4	0	3	7
18-18-406(3)(a)(I)	18	2	34	54
18-18-406(3)(a)(II)	1	0	8	9
18-18-406(3)(a)(III)	3	0	12	15
18-18-406(3)(b)	3	0	1	4
18-18-406(3)(c)	1	0	2	3
<b>Marijuana Distribution</b>	<b>250</b>	<b>2</b>	<b>258</b>	<b>510</b>
18-18-406(2)(a)(I)	7	2	15	24
18-18-406(2)(b)(I),(III)(A)	4	0	0	4
18-18-406(2)(b)(I),(III)(B)	29	0	29	58
18-18-406(2)(b)(I),(III)(C)	48	0	93	141
18-18-406(2)(b)(I),(III)(D)	22	0	49	71
18-18-406(2)(b)(I),(III)(E)	140	0	72	212
<b>Marijuana Distribution to Minor</b>	<b>9</b>	<b>0</b>	<b>24</b>	<b>33</b>
18-18-406(1)(c)	2	0	3	5
18-18-406(1)(d)	7	0	21	28
<b>Marijuana Other</b>	<b>193</b>		<b>48</b>	<b>240</b>
18-18-406(5)(b)(I)	178	0	40	218
18-18-406(5)(b)(II)	8	0	4	12
18-18-406(5)(c)	7	0	3	10
<b>Marijuana Possession</b>	<b>611</b>	<b>2</b>	<b>552</b>	<b>1,165</b>
18-18-406(4)(a)	17	0	104	121
18-18-406(4)(a)(I)	2	0	4	6
18-18-406(4)(b)	46	2	216	264
18-18-406(4)(c)	35	0	94	129
18-18-406(5)(a)(I)	510	0	129	639
18-18-406.5(1)	1	0	5	6
<b>Other</b>	<b>206</b>	<b>9</b>	<b>147</b>	<b>362</b>
18-18-411(1)	1	0	1	2
18-18-411(2)(a)	0	0	1	1

Most serious conviction statute	Convicted as Charged	Convicted of Attempt	Convicted Other Drugs	Total
18-18-411(2)(b)	0	0	1	1
18-18-412	77	0	74	151
18-18-412.5	4	2	1	7
18-18-412.7	1	0	1	2
18-18-413	3	0	15	18
18-18-414(1)(e)	0	0	3	3
18-18-414(1)(m)	0	0	1	1
18-18-414(1)(n)	0	0	1	1
18-18-414(1)(o)	0	0	1	1
18-18-414(1)(r)	1	0	0	1
18-18-415(1)(a)	86	4	29	119
18-18-415(1)(c)	1	0	2	3
18-18-415(1)(d)	3	0	0	3
18-18-415(1)(e)	28	3	11	42
18-18-416	1	0	0	1
18-18-422(3)	0	0	4	4
18-18-423(2)	0	0	1	1
<b>Possession Schedule I to V</b>	<b>4,753</b>	<b>74</b>	<b>11,212</b>	<b>16,039</b>
18-18-403.5(1),(2)(a)	4,540	56	2,726	7,322
18-18-403.5(1),(2)(a)(II)	0	1	1	2
18-18-403.5(1),(2)(c)	213	17	8,485	8,715
<b>Special Offender</b>	<b>25</b>	<b>0</b>	<b>4</b>	<b>29</b>
18-18-407(1)(d)(I)	8	0	1	9
18-18-407(1)(d)(II)	15	0	2	17
18-18-407(1)(e)	0	0	1	1
18-18-407(1)(g)	2	0	0	2
<b>Synthetics Distribution</b>	<b>12</b>	<b>2</b>	<b>11</b>	<b>25</b>
18-18-406.2(1)(a)	10	2	7	19
18-18-406.2(1)(b)	1	0	4	5
18-18-406.2(1)(c)	1	0	0	1
<b>Synthetics Distribution to Minor</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>
18-18-406.2(1)(a),(3)	0	0	1	1
<b>Synthetics Possession</b>	<b>37</b>	<b>0</b>	<b>52</b>	<b>89</b>
18-18-406.1	37	0	52	89
<b>Use</b>	<b>121</b>	<b>0</b>	<b>993</b>	<b>1,114</b>
18-18-404(1)	121	0	992	1,113
18-18-404(1)(a)	0	0	1	1

Most serious conviction statute	Convicted as Charged	Convicted of Attempt	Convicted Other Drugs	Total
<b>Total</b>	<b>9,071</b>	<b>252</b>	<b>15,937</b>	<b>25,260</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

**\*Conviction Outcome Notes**

Cases may not have had drugs as the most serious filing charge

**Convicted as charged:** conviction charge was the most serious filing charge

**Convicted of attempt:** convicted of attempt of the most serious filing charge

**Convicted other drugs:** convicted of drug offense that was not the most serious filed drug charge

Table 8-6. Initial sentence for cases with drugs as most serious conviction charge post-S.B.13-250, by statute\*

Conviction Statute	Com Cor	Deferred	DOC	Diver-sion	DYC	Jail	JVDT	Other	PROB	YOS	Total
<b>Distribution</b>	<b>332</b>	<b>215</b>	<b>1,099</b>	<b>18</b>	<b>8</b>	<b>24</b>	<b>1</b>	<b>13</b>	<b>1,254</b>		<b>2,964</b>
18-18-405(1),(2)(a)(I)(A)	1	0	30	0	0	1	0	0	1	0	33
18-18-405(1),(2)(a)(I)(B)	0	1	91	0	0	0	0	0	0	0	92
18-18-405(1),(2)(a)(I)(C)	0	0	0	0	0	0	0	1	0	0	1
18-18-405(1),(2)(b)(I)(A)	25	22	130	0	0	0	0	2	81	0	260
18-18-405(1),(2)(b)(I)(B)	56	13	257	1	3	1	0	0	75	0	406
18-18-405(1),(2)(c)(I)	159	102	341	10	1	3	0	5	552	0	1,173
18-18-405(1),(2)(c)(I)(A)	2	4	4	0		0	0	0	8	0	18
18-18-405(1),(2)(c)(I)(B)	0	1	0	0	0	0	0	0	3	0	4
18-18-405(1),(2)(c)(II)	71	36	172	0	3	0	0	2	215	0	499
18-18-405(1),(2)(c)(III)	2	0	3	0	0	0	0	0	3	0	8
18-18-405(1),(2)(c)(IV)	4	4	5	1	0	0	0	1	10	0	25
18-18-405(1),(2)(d)(I)	9	13	55	2	0	6	1	1	172	0	259
18-18-405(1),(2)(d)(II)	3	4	3	1	0	1	0	0	76	0	88
18-18-405(1),(2)(e)(I)	0	4	0	0	0	11	0	1	43	0	59
18-18-405(1),(2)(e)(II)	0	5	0	2	0	1	0	0	2	0	10
18-18-422(1)(a)	0	6	8	1	1	0	0	0	13	0	29
<b>Distribution to Minor</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>3</b>
18-18-405(1),(2)(a)(II)	0	0	1	0	0	0	0	0	0	0	1
18-18-405(1),(2)(b)(II)	0	0	1	0	0	0	0	0	1	0	2
<b>Drug Paraphernalia</b>	<b>0</b>	<b>187</b>	<b>0</b>	<b>38</b>	<b>0</b>	<b>62</b>	<b>0</b>	<b>1,960</b>	<b>97</b>	<b>0</b>	<b>2,344</b>
18-18-428(1)	0	187	0	38	0	62	0	1,956	96	0	2,339
18-18-429	0	0	0	0	0	0	0	4	1	0	5
<b>Marijuana Cultivation</b>	<b>1</b>	<b>39</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>5</b>	<b>33</b>	<b>0</b>	<b>84</b>
18-18-406(3)(a)	0	1	0	0	0	1	0	2	2	0	6

Conviction Statute	Com Cor	Deferred	DOC	Diver-sion	DYC	Jail	JVDT	Other	PROB	YOS	Total
18-18-406(3)(a)(I)	0	25	2	1	0	0	0	0	20	0	48
18-18-406(3)(a)(II)	0	6	0	0	1	0	0	0	1	0	8
18-18-406(3)(a)(III)	0	4	0	0	0	0	0	2	9	0	15
18-18-406(3)(b)	1	2	0	1	0	0	0	0	0	0	4
18-18-406(3)(c)	0	1	0	0	0	0	0	1	1	0	3
<b>Marijuana Distribution</b>	<b>12</b>	<b>169</b>	<b>25</b>	<b>13</b>	<b>6</b>	<b>12</b>	<b>1</b>	<b>12</b>	<b>233</b>		<b>483</b>
18-18-406(2)(a)(I)	0	12	0	0	0	0	0	1	9	0	22
18-18-406(2)(b)(I),(III)(A)	0	2	2	0	0	0	0	0	0	0	4
18-18-406(2)(b)(I),(III)(B)	0	17	7	1	0	0	0	0	24	0	49
18-18-406(2)(b)(I),(III)(C)	10	47	11	0	0	0	0	1	69	0	138
18-18-406(2)(b)(I),(III)(D)	2	16	5	2	2	0	0	0	38	0	65
18-18-406(2)(b)(I),(III)(E)	0	75	0	10	4	12	1	10	93	0	205
<b>Marijuana Distribution to Minor</b>	<b>0</b>	<b>10</b>	<b>4</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>15</b>	<b>0</b>	<b>33</b>
18-18-406(1)(c)	0	0	2	0	0	0	0	0	3	0	5
18-18-406(1)(d)	0	10	2	3	0	0	0	1	12	0	28
<b>Marijuana Other</b>	<b>0</b>	<b>27</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>191</b>	<b>7</b>		<b>235</b>
18-18-406(5)(b)(I)	0	21	0	4	0	4	0	179	6	0	214
18-18-406(5)(b)(II)	0	3	0	0	0	1	0	7	1	0	12
18-18-406(5)(c)	0	3	0	0	0	1	0	5	0	0	9
<b>Marijuana Possession</b>	<b>1</b>	<b>199</b>	<b>3</b>	<b>50</b>	<b>1</b>	<b>45</b>	<b>3</b>	<b>406</b>	<b>377</b>	<b>0</b>	<b>1,085</b>
18-18-406(4)(a)	0	16	2	0	0	2	0	1	96	0	117
18-18-406(4)(a)(I)	0	0	0	0	0	1	0	1	4	0	6
18-18-406(4)(b)	1	19	1	8	0	25	1	35	167	0	257
18-18-406(4)(c)	0	23	0	2	0	11	0	33	59	0	128
18-18-406(5)(a)(I)	0	141	0	40	1	3	2	333	51	0	571
18-18-406.5(1)	0	0	0	0	0	3	0	3	0	0	6
<b>Other</b>	<b>3</b>	<b>61</b>	<b>19</b>	<b>8</b>	<b>1</b>	<b>27</b>	<b>0</b>	<b>46</b>	<b>182</b>		<b>347</b>
18-18-411(1)	0	0	0	0	0	0	0	0	2	0	2
18-18-411(2)(a)	0	0	0	0	0	0	0	0	1	0	1
18-18-412	0	4	0	3	1	20	0	32	83	0	143
18-18-412.5	0	0	4	0	0	0	0	0	2	0	6
18-18-412.7	0	1	1	0	0	0	0	0	0	0	2
18-18-413	0	0	0	0	0	2	0	13	2	0	17
18-18-414(1)(e)	0	0	0	0	0	1	0	0	2	0	3
18-18-414(1)(m)	0	0	0	0	0	1	0	0	0	0	1
18-18-414(1)(n)	0	0	0	0	0	0	0	1	0	0	1
18-18-414(1)(o)	0	0	1	0	0	0	0	0	0	0	1

Conviction Statute	Com Cor	Deferred	DOC	Diver-sion	DYC	Jail	JVDT	Other	PROB	YOS	Total
18-18-414(1)(r)	0	1	0	0	0	0	0	0	0	0	1
18-18-415(1)(a)	2	42	7	3	0	0	0	0	63	0	117
18-18-415(1)(c)	0	0	0	0	0	0	0	0	3	0	3
18-18-415(1)(d)	0	2	0	0	0	0	0	0	1	0	3
18-18-415(1)(e)	1	11	6	2	0	2	0	0	18	0	40
18-18-416	0	0	0	0	0	0	0	0	1	0	1
18-18-422(3)	0	0	0	0	0	1	0	0	3	0	4
18-18-423(2)	0	0	0	0	0	0	0	0	1	0	1
<b>Possession Schedule I to V</b>	<b>547</b>	<b>1,168</b>	<b>976</b>	<b>99</b>	<b>30</b>	<b>1,346</b>	<b>4</b>	<b>303</b>	<b>10,983</b>	<b>1</b>	<b>15,457</b>
18-18-403.5(1),(2)(a)	526	975	966	85	19	50	0	28	4,372	1	7,022
18-18-403.5(1),(2)(a)(II)	1	0	0	0	0	0	0	0	1	0	2
18-18-403.5(1),(2)(c)	20	193	10	14	11	1,296	4	275	6,610		8,433
<b>Special Offender</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>13</b>
18-18-407(1)(d)(I)	0	0	3	0	0	0	0	0	0	0	3
18-18-407(1)(d)(II)	0	0	7	1	0	0	0	1	1	0	10
<b>Synthetics Distribution</b>	<b>1</b>	<b>9</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>10</b>	<b>0</b>	<b>23</b>
18-18-406.2(1)(a)	1	7	0	0	0	0	0	2	7	0	17
18-18-406.2(1)(b)	0	1	1	0	0	0	0	0	3	0	5
18-18-406.2(1)(c)	0	1	0	0	0	0	0	0	0	0	1
<b>Synthetics Distribution to Minor</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
18-18-406.2(1)(a),(3)	0	1	0	0	0	0	0	0	0	0	1
<b>Synthetics Possession</b>	<b>0</b>	<b>9</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>28</b>	<b>0</b>	<b>15</b>	<b>31</b>	<b>0</b>	<b>87</b>
18-18-406.1	0	9	0	3	1	28	0	15	31	0	87
<b>Use</b>	<b>0</b>	<b>101</b>	<b>2</b>	<b>6</b>	<b>1</b>	<b>229</b>	<b>0</b>	<b>79</b>	<b>665</b>	<b>0</b>	<b>1,083</b>
18-18-404(1)	0	101	1	6	1	229	0	79	665	0	1,082
18-18-404(1)(a)	0	0	1	0	0	0	0	0	0	0	1
<b>Total</b>	<b>897</b>	<b>2,195</b>	<b>2,143</b>	<b>245</b>	<b>49</b>	<b>1,780</b>	<b>9</b>	<b>3,034</b>	<b>13,889</b>	<b>1</b>	<b>24,242</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

**\*Sentencing Notes**

There were 1,019 convicted cases with no sentence found.

**ComCor:** Community Corrections

**Deferred:** Deferred Judgment

**DOC:** Department of Corrections

**Diversion:** Post-filing Diversion

**DYC:** Division of Youth Corrections

**Jail:** Jail or work release

**JVDT:** Juvenile Detention

**Other:** Fines, community service, time served

**PROB:** Supervised or unsupervised probation, electronic surveillance

**YOS:** Youthful Offender System

Table 8-7. Cases with DOC sentence and drugs as most serious conviction charge post-S.B.13-250 by statute and trial held

<b>Statute</b>	<b>No Trial</b>	<b>Completed Trial</b>	<b>Total</b>
<b>Distribution</b>	<b>1,072</b>	<b>27</b>	<b>1,099</b>
18-18-405(1),(2)(a)(I)(A)	30	0	30
18-18-405(1),(2)(a)(I)(B)	82	9	91
18-18-405(1),(2)(b)(I)(A)	126	4	130
18-18-405(1),(2)(b)(I)(B)	253	4	257
18-18-405(1),(2)(c)(I)	334	7	341
18-18-405(1),(2)(c)(I)(A)	4	0	4
18-18-405(1),(2)(c)(II)	170	2	172
18-18-405(1),(2)(c)(III)	3	0	3
18-18-405(1),(2)(c)(IV)	5	0	5
18-18-405(1),(2)(d)(I)	55	0	55
18-18-405(1),(2)(d)(II)	2	1	3
18-18-422(1)(a)	8	0	8
<b>Distribution to Minor</b>	<b>2</b>	<b>0</b>	<b>2</b>
18-18-405(1),(2)(a)(II)	1	0	1
18-18-405(1),(2)(b)(II)	1	0	1
<b>Marijuana Cultivation</b>	<b>2</b>	<b>0</b>	<b>2</b>
18-18-406(3)(a)(I)	2	0	2
<b>Marijuana Distribution</b>	<b>24</b>	<b>1</b>	<b>25</b>
18-18-406(2)(b)(I),(III)(A)	1	1	2
18-18-406(2)(b)(I),(III)(B)	7	0	7
18-18-406(2)(b)(I),(III)(C)	11	0	11
18-18-406(2)(b)(I),(III)(D)	5	0	5
<b>Marijuana Distribution to Minor</b>	<b>4</b>	<b>0</b>	<b>4</b>
18-18-406(1)(c)	2	0	2
18-18-406(1)(d)	2	0	2
<b>Marijuana Possession</b>	<b>3</b>	<b>0</b>	<b>3</b>
18-18-406(4)(a)	2	0	2
18-18-406(4)(b)	1	0	1
<b>Other</b>	<b>19</b>	<b>0</b>	<b>19</b>

Statute	No Trial	Completed Trial	Total
18-18-412.5	4	0	4
18-18-412.7	1	0	1
18-18-414(1)(o)	1	0	1
18-18-415(1)(a)	7	0	7
18-18-415(1)(e)	6	0	6
<b>Possession Schedule I to V</b>	<b>965</b>	<b>11</b>	<b>976</b>
18-18-403.5(1),(2)(a)	955	11	966
18-18-403.5(1),(2)(c)	10	0	10
<b>Special Offender</b>	<b>10</b>	<b>0</b>	<b>10</b>
18-18-407(1)(d)(I)	3	0	3
18-18-407(1)(d)(II)	7	0	7
<b>Synthetics Distribution</b>	<b>1</b>	<b>0</b>	<b>1</b>
18-18-406.2(1)(b)	1	0	1
<b>Use</b>	<b>2</b>	<b>0</b>	<b>2</b>
18-18-404(1)	1	0	1
18-18-404(1)(a)	1	0	1
<b>Total</b>	<b>2,104</b>	<b>39</b>	<b>2,143</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

Table 8-8. Sentences to DOC for cases with drugs as most serious conviction charge post-S.B.13-250, by concurrent cases and statute\*

Most serious conviction statute	No concurrent cases	Had concurrent cases	Total
<b>Distribution</b>	<b>599</b>	<b>500</b>	<b>1,099</b>
18-18-405(1),(2)(a)(I)(A)	24	6	30
18-18-405(1),(2)(a)(I)(B)	66	25	91
18-18-405(1),(2)(b)(I)(A)	81	49	130
18-18-405(1),(2)(b)(I)(B)	137	120	257
18-18-405(1),(2)(c)(I)	174	167	341
18-18-405(1),(2)(c)(I)(A)	3	1	4
18-18-405(1),(2)(c)(II)	77	95	172
18-18-405(1),(2)(c)(III)	1	2	3
18-18-405(1),(2)(c)(IV)	1	4	5
18-18-405(1),(2)(d)(I)	33	22	55
18-18-405(1),(2)(d)(II)		3	3
18-18-422(1)(a)	2	6	8



Most serious conviction statute	No concurrent cases	Had concurrent cases	Total
<b>Distribution to Minor</b>	<b>2</b>	<b>0</b>	<b>2</b>
18-18-405(1),(2)(a)(II)	1	0	1
18-18-405(1),(2)(b)(II)	1	0	1
<b>Marijuana Cultivation</b>	<b>2</b>	<b>0</b>	<b>2</b>
18-18-406(3)(a)(I)	2	0	2
<b>Marijuana Distribution</b>	<b>21</b>	<b>4</b>	<b>25</b>
18-18-406(2)(b)(I),(III)(A)	2	0	2
18-18-406(2)(b)(I),(III)(B)	7	0	7
18-18-406(2)(b)(I),(III)(C)	10	1	11
18-18-406(2)(b)(I),(III)(D)	2	3	5
<b>Marijuana Distribution to Minor</b>	<b>4</b>		<b>4</b>
18-18-406(1)(c)	2	0	2
18-18-406(1)(d)	2	0	2
<b>Marijuana Possession</b>	<b>1</b>	<b>2</b>	<b>3</b>
18-18-406(4)(a)	1	1	2
18-18-406(4)(b)	0	1	1
<b>Other</b>	<b>4</b>	<b>15</b>	<b>19</b>
18-18-412.5	0	4	4
18-18-412.7	1	0	1
18-18-414(1)(o)	1	0	1
18-18-415(1)(a)	2	5	7
18-18-415(1)(e)	0	6	6
<b>Possession Schedule I to V</b>	<b>344</b>	<b>632</b>	<b>976</b>
18-18-403.5(1),(2)(a)	342	624	966
18-18-403.5(1),(2)(c)	2	8	10
<b>Special Offender</b>	<b>1</b>	<b>9</b>	<b>10</b>
18-18-407(1)(d)(I)	0	3	3
18-18-407(1)(d)(II)	1	6	7
<b>Synthetics Distribution</b>	<b>1</b>	<b>0</b>	<b>1</b>
18-18-406.2(1)(b)	1	0	1
<b>Use</b>	<b>2</b>	<b>0</b>	<b>2</b>
18-18-404(1)	1	0	1
18-18-404(1)(a)	1	0	1
<b>Total</b>	<b>981</b>	<b>1,162</b>	<b>2,143</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

**\*Sentences to DOC Notes**

“Concurrent cases” were cases mentioned in the minute orders. Docket numbers, which conform to a specific pattern, were used to identify concurrent cases. Docket numbers may have been missed if they were entered using a non-standard notation.

Table 8-9. Probation and deferred judgment revocations for cases with drugs as most serious conviction charge post-S.B.13-250, by statute\*

Most serious conviction statute	Not revoked	Revoked	Total
<b>Distribution</b>	<b>1,099</b>	<b>370</b>	<b>1,469</b>
18-18-405(1),(2)(a)(I)(A)	1	0	1
18-18-405(1),(2)(a)(I)(B)	1	0	1
18-18-405(1),(2)(b)(I)(A)	86	17	103
18-18-405(1),(2)(b)(I)(B)	71	17	88
18-18-405(1),(2)(c)(I)	494	160	654
18-18-405(1),(2)(c)(I)(A)	3	9	12
18-18-405(1),(2)(c)(I)(B)	4	0	4
18-18-405(1),(2)(c)(II)	189	62	251
18-18-405(1),(2)(c)(III)	1	2	3
18-18-405(1),(2)(c)(IV)	11	3	14
18-18-405(1),(2)(d)(I)	123	62	185
18-18-405(1),(2)(d)(II)	66	14	80
18-18-405(1),(2)(e)(I)	34	13	47
18-18-405(1),(2)(e)(II)	6	1	7
18-18-422(1)(a)	9	10	19
<b>Distribution to Minor</b>	<b>0</b>	<b>1</b>	<b>1</b>
18-18-405(1),(2)(b)(II)	0	1	1
<b>Drug Paraphernalia</b>	<b>227</b>	<b>57</b>	<b>284</b>
18-18-428(1)	226	57	283
18-18-429	1	0	1
<b>Marijuana Cultivation</b>	<b>69</b>	<b>3</b>	<b>72</b>
18-18-406(3)(a)	3	0	3
18-18-406(3)(a)(I)	44	1	45
18-18-406(3)(a)(II)	6	1	7
18-18-406(3)(a)(III)	12	1	13
18-18-406(3)(b)	2	0	2
18-18-406(3)(c)	2	0	2
<b>Marijuana Distribution</b>	<b>340</b>	<b>62</b>	<b>402</b>
18-18-406(2)(a)(I)	19	2	21
18-18-406(2)(b)(I),(III)(A)	2	0	2
18-18-406(2)(b)(I),(III)(B)	38	3	41
18-18-406(2)(b)(I),(III)(C)	104	12	116

Most serious conviction statute	Not revoked	Revoked	Total
18-18-406(2)(b)(I),(III)(D)	46	8	54
18-18-406(2)(b)(I),(III)(E)	131	37	168
<b>Marijuana Distribution to Minor</b>	<b>18</b>	<b>7</b>	<b>25</b>
18-18-406(1)(c)	1	2	3
18-18-406(1)(d)	17	5	22
<b>Marijuana Other</b>	<b>29</b>	<b>5</b>	<b>34</b>
18-18-406(5)(b)(I)	24	3	27
18-18-406(5)(b)(II)	3	1	4
18-18-406(5)(c)	2	1	3
<b>Marijuana Possession</b>	<b>463</b>	<b>113</b>	<b>576</b>
18-18-406(4)(a)	91	21	112
18-18-406(4)(a)(I)	3	1	4
18-18-406(4)(b)	145	41	186
18-18-406(4)(c)	66	16	82
18-18-406(5)(a)(I)	158	34	192
<b>Other</b>	<b>188</b>	<b>55</b>	<b>243</b>
18-18-411(1)	2	0	2
18-18-411(2)(a)	1	0	1
18-18-412	67	20	87
18-18-412.5	1	1	2
18-18-412.7	1	0	1
18-18-413	1	1	2
18-18-414(1)(e)	2	0	2
18-18-414(1)(r)	1	0	1
18-18-415(1)(a)	86	19	105
18-18-415(1)(c)	2	1	3
18-18-415(1)(d)	3	0	3
18-18-415(1)(e)	18	11	29
18-18-416	0	1	1
18-18-422(3)	2	1	3
18-18-423(2)	1	0	1
<b>Possession Schedule I to V</b>	<b>7,652</b>	<b>4,499</b>	<b>12,151</b>
18-18-403.5(1),(2)(a)	3,342	2,005	5,347
18-18-403.5(1),(2)(a)(II)	1	0	1
18-18-403.5(1),(2)(c)	4,309	2,494	6,803
<b>Special Offender</b>	<b>1</b>	<b>0</b>	<b>1</b>
18-18-407(1)(d)(II)	1	0	1
<b>Synthetics Distribution</b>	<b>17</b>	<b>2</b>	<b>19</b>
18-18-406.2(1)(a)	12	2	14

Most serious conviction statute	Not revoked	Revoked	Total
18-18-406.2(1)(b)	4	0	4
18-18-406.2(1)(c)	1	0	1
<b>Synthetics Distribution to Minor</b>	<b>1</b>	<b>0</b>	<b>1</b>
18-18-406.2(1)(a),(3)	1	0	1
<b>Synthetics Possession</b>	<b>30</b>	<b>10</b>	<b>40</b>
18-18-406.1	30	10	40
<b>Use</b>	<b>521</b>	<b>245</b>	<b>766</b>
18-18-404(1)	521	245	766
<b>Total</b>	<b>10,655</b>	<b>5,429</b>	<b>16,084</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

### Revocation Notes

Revocations include revocation followed by reinstatement, revocations to DOC, or revocation with jail or other sentences.

Table 8-10. Revocation outcomes for cases with drugs as most serious conviction and revoked from probation or deferred judgment post-S.B.13-250, by statute\*

Most serious conviction statute	ComCor	DOC	Jail	Other	Reinstated	Unknown	Total
<b>Distribution</b>	<b>47</b>	<b>65</b>	<b>19</b>	<b>32</b>	<b>198</b>	<b>9</b>	<b>370</b>
18-18-405(1),(2)(b)(I)(A)	3	5	1	2	4	2	17
18-18-405(1),(2)(b)(I)(B)	1	6	0	3	7	0	17
18-18-405(1),(2)(c)(I)	28	29	3	15	82	3	160
18-18-405(1),(2)(c)(I)(A)	1	2	1	1	3	1	9
18-18-405(1),(2)(c)(II)	6	11	5	6	33	1	62
18-18-405(1),(2)(c)(III)	0	0	0	0	2	0	2
18-18-405(1),(2)(c)(IV)	0	0	0	0	3	0	3
18-18-405(1),(2)(d)(I)	8	11	5	3	35	0	62
18-18-405(1),(2)(d)(II)	0	0	1	0	12	1	14
18-18-405(1),(2)(e)(I)	0	0	3	0	9	1	13
18-18-405(1),(2)(e)(II)	0	0	0	0	1	0	1
18-18-422(1)(a)	0	1	0	2	7	0	10
<b>Distribution to Minor</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
18-18-405(1),(2)(b)(II)	1	0	0	0	0	0	1

Most serious conviction statute	ComCor	DOC	Jail	Other	Reinstated	Unknown	Total
<b>Drug Paraphernalia</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>21</b>	<b>11</b>	<b>20</b>	<b>57</b>
18-18-428(1)	0	0	5	21	11	20	57
<b>Marijuana Cultivation</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>
18-18-406(3)(a)(I)	0	0	0	0	1	0	1
18-18-406(3)(a)(II)	0	0	0	1	0	0	1
18-18-406(3)(a)(III)	0	0	0	0	0	1	1
<b>Marijuana Distribution</b>	<b>3</b>	<b>1</b>	<b>13</b>	<b>14</b>	<b>24</b>	<b>7</b>	<b>62</b>
18-18-406(2)(a)(I)	0	0	1	0	0	1	2
18-18-406(2)(b)(I),(III)(B)	1	0	1	0	1	0	3
18-18-406(2)(b)(I),(III)(C)	1	0	1	3	5	2	12
18-18-406(2)(b)(I),(III)(D)	1	1	1	3	2	0	8
18-18-406(2)(b)(I),(III)(E)	0	0	9	8	16	4	37
<b>Marijuana Distribution to Minor</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>7</b>
18-18-406(1)(c)	0	0	0	0	2	0	2
18-18-406(1)(d)	0	2		1	2	0	5
<b>Marijuana Other</b>			<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>5</b>
18-18-406(5)(b)(I)	0	0	1		2	0	3
18-18-406(5)(b)(II)	0	0	0	0	0	1	1
18-18-406(5)(c)	0	0		1	0	0	1
<b>Marijuana Possession</b>	<b>2</b>	<b>4</b>	<b>11</b>	<b>26</b>	<b>60</b>	<b>10</b>	<b>113</b>
18-18-406(4)(a)	2	4		3	11	1	21
18-18-406(4)(a)(I)	0	0	1	0	0	0	1
18-18-406(4)(b)	0	0	4	4	31	2	41
18-18-406(4)(c)	0	0	2	4	8	2	16
18-18-406(5)(a)(I)	0	0	4	15	10	5	34
<b>Other</b>	<b>6</b>	<b>2</b>	<b>5</b>	<b>7</b>	<b>28</b>	<b>7</b>	<b>55</b>
18-18-412	0	0	3	1	9	7	20
18-18-412.5	0	0	0	1	0	0	1
18-18-413	0	0	0	0	1	0	1
18-18-415(1)(a)	3		1	3	12	0	19
18-18-415(1)(c)	1	0		0	0	0	1
18-18-415(1)(e)	2	1	0	2	6	0	11
18-18-416	0	1	0		0	0	1
18-18-422(3)	0	0	1	0	0	0	1
<b>Possession Schedule I to V</b>	<b>298</b>	<b>230</b>	<b>569</b>	<b>155</b>	<b>2,940</b>	<b>307</b>	<b>4,499</b>
18-18-403.5(1),(2)(a)	288	229	104	131	1,172	81	2,005
18-18-403.5(1),(2)(c)	10	1	465	24	1,768	226	2,494

Most serious conviction statute	ComCor	DOC	Jail	Other	Reinstated	Unknown	Total
<b>Synthetics Distribution</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>2</b>
18-18-406.2(1)(a)	0	0	0	0	2	0	2
<b>Synthetics Possession</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>7</b>	<b>1</b>	<b>10</b>
18-18-406.1	0	0	1	1	7	1	10
<b>Use</b>	<b>0</b>	<b>0</b>	<b>63</b>	<b>15</b>	<b>136</b>	<b>31</b>	<b>245</b>
18-18-404(1)	0	0	63	15	136	31	245
<b>Total</b>	<b>357</b>	<b>304</b>	<b>687</b>	<b>274</b>	<b>3,413</b>	<b>394</b>	<b>5,429</b>

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

**\*Revocation Outcome Notes**

**ComCor:** Community Corrections

**DOC:** Department of Corrections

**Jail:** Jail or work release

**Other:** Community service, fines. Also includes Probation, for example when a Deferred Judgment was revoked and a Probation sentence imposed.

**Reinstated:** Probation continued or Deferred Judgment continued

**Unknown:** Indicates that no sentence followed the revoked sentence. Therefore it was unknown what the outcome was.

Table 8-11. Deferred judgment outcomes for cases with drugs as most serious conviction post-S.B.13-250, by statute\*

Most serious conviction statute	Successful	Not successful	Total
<b>Distribution</b>	<b>34</b>	<b>181</b>	<b>215</b>
18-18-405(1),(2)(a)(I)(B)	1	0	1
18-18-405(1),(2)(b)(I)(A)	2	20	22
18-18-405(1),(2)(b)(I)(B)	2	11	13
18-18-405(1),(2)(c)(I)	14	88	102
18-18-405(1),(2)(c)(I)(A)	1	3	4
18-18-405(1),(2)(c)(I)(B)	0	1	1
18-18-405(1),(2)(c)(II)	2	34	36
18-18-405(1),(2)(c)(IV)	1	3	4
18-18-405(1),(2)(d)(I)	3	10	13
18-18-405(1),(2)(d)(II)	1	3	4
18-18-405(1),(2)(e)(I)	2	2	4

Most serious conviction statute	Successful	Not successful	Total
18-18-405(1),(2)(e)(II)	2	3	5
18-18-422(1)(a)	3	3	6
<b>Drug Paraphernalia</b>	<b>112</b>	<b>76</b>	<b>188</b>
18-18-428(1)	112	76	188
<b>Marijuana Cultivation</b>	<b>4</b>	<b>35</b>	<b>39</b>
18-18-406(3)(a)	0	1	1
18-18-406(3)(a)(I)	3	22	25
18-18-406(3)(a)(II)	0	6	6
18-18-406(3)(a)(III)	0	4	4
18-18-406(3)(b)	1	1	2
18-18-406(3)(c)	0	1	1
<b>Marijuana Distribution</b>	<b>48</b>	<b>121</b>	<b>169</b>
18-18-406(2)(a)(I)	1	11	12
18-18-406(2)(b)(I),(III)(A)	0	2	2
18-18-406(2)(b)(I),(III)(B)	3	14	17
18-18-406(2)(b)(I),(III)(C)	7	40	47
18-18-406(2)(b)(I),(III)(D)	4	12	16
18-18-406(2)(b)(I),(III)(E)	33	42	75
<b>Marijuana Distribution to Minor</b>	<b>1</b>	<b>9</b>	<b>10</b>
18-18-406(1)(d)	1	9	10
<b>Marijuana Other</b>	<b>13</b>	<b>14</b>	<b>27</b>
18-18-406(5)(b)(I)	9	12	21
18-18-406(5)(b)(II)	2	1	3
18-18-406(5)(c)	2	1	3
<b>Marijuana Possession</b>	<b>106</b>	<b>93</b>	<b>199</b>
18-18-406(4)(a)	3	13	16
18-18-406(4)(b)	5	14	19
18-18-406(4)(c)	7	16	23
18-18-406(5)(a)(I)	91	50	141
<b>Other</b>	<b>14</b>	<b>47</b>	<b>61</b>
18-18-412	3	1	4
18-18-412.7	0	1	1
18-18-414(1)(r)	1	0	1
18-18-415(1)(a)	6	36	42
18-18-415(1)(d)	0	2	2
18-18-415(1)(e)	4	7	11
<b>Possession</b>	<b>146</b>	<b>1,022</b>	<b>1,168</b>
18-18-403.5(1),(2)(a)	103	872	975

Most serious conviction statute	Successful	Not successful	Total
18-18-403.5(1),(2)(c)	43	150	193
<b>Synthetics Distribution</b>	<b>5</b>	<b>4</b>	<b>9</b>
18-18-406.2(1)(a)	4	3	7
18-18-406.2(1)(b)	1	0	1
18-18-406.2(1)(c)	0	1	1
<b>Synthetics Distribution to Minor</b>	<b>0</b>	<b>1</b>	<b>1</b>
18-18-406.2(1)(a),(3)	0	1	1
<b>Synthetics Possession</b>	<b>2</b>	<b>7</b>	<b>9</b>
18-18-406.1	2	7	9
<b>Use</b>	<b>31</b>	<b>70</b>	<b>101</b>
18-18-404(1)	31	70	101
<b>Total</b>	<b>516</b>	<b>1,679</b>	<b>2,195</b>

Data source: Court records were extracted from Judicial Branch’s Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County Court.

**\*Deferred Judgment Notes**

Probation outcomes are not recorded in ICON and are therefore not reported.

The category “Not successful” includes those who were revoked and were reinstated and therefore may be successful at a later date.



## Appendix A - Summary of S.B.13-250

**Section 1.** The bill creates a sentencing option for offenders convicted of certain drug felonies that allows the court to vacate the felony conviction and enter a misdemeanor conviction in its place if the offender successfully completes a community-based sentence.

**Section 2.** For level 4 drug felonies, the bill creates an exhaustion of remedies requirement prior to the court sentencing the defendant to prison.

**Section 3.** If an offender who is convicted of a level 4 drug felony is terminated from a community corrections sentence, the court shall hold a resentencing hearing or make written findings regarding the sentence.

**Sections 4 and 5.** The bill creates new felony and misdemeanor drug sentencing grids.

**Sections 6 and 7.** The bill amends the drug sentencing article short title and legislative declaration.

**Sections 8 through 31.** The bill assigns each of the drug crimes a new drug penalty based on the new felony and misdemeanor drug sentencing grids.

**Section 32.** The bill prohibits a plea agreement that requires the defendant to waive his or her right to petition to have the conviction record sealed.

**Section 33.** When a defendant is sentenced to probation for a drug misdemeanor, the court may impose residential drug treatment as a condition of probation.

**Section 34.** Residential drug treatment at a community corrections program not subject to the escape statute.

**Section 35.** The bill amends the intensive supervision probation program to allow defendants convicted of a misdemeanor to participate if they are assessed as higher risk.

**Section 36.** The bill adds all drug felonies to the habitual sentencing schemes.

**Sections 37 through 56.** The bill makes conforming amendments.

**Section 57 and 63.** Under current law, drug offenders convicted after July 1, 2011, have the opportunity to have their conviction sealed. The bill conforms those provisions to the new drug offense classifications.

**Section 58.** The bill requires the division of criminal justice in the department of public safety to collect data on drug cases and issue a report by December 31, 2016.

**Sections 59 through 62.** The bill makes conforming amendments.

**Section 64.** Allows the court to reinstate Deferred Judgment upon failure.

**Sections 65 through 68.** The bill makes conforming amendments.

**Section 69.** The bill authorizes the statewide organization representing district attorneys the ability to receive, manage, and expend state funds in the manner prescribed by the general assembly on behalf of the district attorneys who are members of the organization.

## Appendix B - Sentence Categories

<b>Community Corrections</b>
<b>Deferred Judgment</b>
Deferred Adjudication
Deferred Prosecution
Deferred Sentence
<b>Dept of Corrections</b>
<b>Diversion</b>
<b>Division of Youth Corrections</b>
<b>Jail</b>
Jail
Work Release
<b>Juvenile Detention</b>
<b>Other</b>
Community Service
Credit for Time Served
Fines
<b>Probation</b>
Electronic Surveillance
Intensive Supervision
Juvenile Intensive Supervision
Probation
Sex Offender Intensive Supervision
Unsupervised Probation
<b>Youthful Offender System</b>

## Appendix C - Wobbler-Comparable Statutes (DF4)

Post-S.B.13-250	Matching Pre-S.B.13-250 Statute	Exact Match	Description	Prior Class
<b>Possession of any quantity Schedule I or II</b>		<b>No*</b>		
18-81-403.5(1),(2)(a)	18-18-403.5(1),(2)(a)(I)		Possession < 4gm	F6
	18-18-403.5(1),(2)(b)(I)		Possession meth < 2gm	F6
<b>Distribution of &lt;4gm Schedule I or II with contemporaneous consumption</b>		<b>No</b>		
18-18-405(1),(2)(d)(II)	18-18-405(1),(2)(a)(I)(A)		Distribution of schedule I or II <25gm	F3
<b>Marijuana Possession &gt; 12oz</b>		<b>Yes</b>		
18-18-406(4)(a)	18-18-406(4)(c)		Possession > 12 oz	F6
<b>Fraud and Deceit</b>		<b>Yes</b>		
18-18-415 (All)	18-18-415 (All)		Obtain controlled substance by fraud or deceit	F6

\*The wobbler provision limits possession to 4gm Schedule I or II drug and Flunitrazepam or <2gm Methamphetamine, Heroin, Ketamine, or Cathinone.

## Appendix D - DF4-comparable statutes

Post-S.B.13-250	Matching Pre-S.B.13-250 Statute	Exact Match	Description	Prior Class
<b>Possession of any quantity Schedule I or II</b>		<b>Yes</b>		
18-81-403.5(1),(2)(a)	18-18-403.5(1)(2)(a)(I)		Possession < 4gm	F6
	18-18-403.5(1)(2)(b)(I)		Possession meth < 2gm	F6
	18-18-403.5(1)(2)(a)(II)		Possession > 4gm	F4
	18-18-403.5(1)(2)(b)(II)		Possession meth > 2gm	F4
<b>Distribution &lt; 4gm Schedule III or IV</b>		<b>No</b>		
18-18-405(1),(2)(d)(I)	18-18-405(1),(2)(a)(II)(A)		Distribution any Schedule III	F4
	18-18-405(1),(2)(a)(II)(B)		Distribution any Schedule III with priors	F3
	18-18-405(1),(2)(a)(III)(A)		Distribution any Schedule IV	F5
	18-18-405(1),(2)(a)(III)(B)		Distribution any Schedule IV with priors	F4
<b>Distribution of &lt;4gm Schedule I or II with contemporaneous consumption</b>		<b>No</b>		
18-18-405(1),(2)(d)(II)	18-18-405(1),(2)(a)(I)(A)		Distribution of schedule I or II < 25gm	F3
<b>Marijuana Possession &gt; 12oz</b>		<b>Yes</b>		
18-18-406(4)(a)	18-18-406(4)(c)		Possession > 12oz	F6
<b>Marijuana Distribution &gt;4oz &lt;12oz</b>		<b>No</b>		
18-18-406(2)(b)(I),(III)(D)	18-18-406(6)(b)(I),(III)(A)		Distribution < 5lbs	F5
<b>Marijuana Cultivation 7 to 30 plants</b>		<b>Yes</b>		
18-18-406(3)(a)(II)	18-18-406(7.5)(b)		Cultivation 7 to 30 plants	F5
<b>Marijuana Distribution &lt; 1oz to minor</b>		<b>No</b>		
18-18-406(1)(d)	No comparable statute			
<b>Fraud and Deceit</b>		<b>Yes</b>		
18-18-415 (All)	18-18-415 (All)		Obtain controlled substance by fraud or deceit	F6

Post-S.B.13-250	Matching Pre-S.B.13-250 Statute	Exact Match	Description	Prior Class
<b>Imitation Controlled Substances (manufacture, distribute or possess with intent to distribute)</b>		<b>Yes</b>		
18-18-422(1)(a)	18-18-422(1)(a)		Manufacture, distribute or possess with intent to distribute	F5
	18-18-422(1)(a),(b)(II)		Manufacture, distribute or possess with intent to distribute with subsequent conviction	F4

## Appendix E – DCJ Reporting Requirement

**18-18-606. Drug case data collection.** (1) THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY SHALL COLLECT THE DATA SPECIFIED IN SUBSECTION (2) OF THIS SECTION FOR THE PERIOD BETWEEN OCTOBER 1, 2013, AND SEPTEMBER 30, 2016, AND ISSUE A REPORT BY DECEMBER 31, 2016, ON THE IMPACT OF SENATE BILL 13-250, ENACTED IN 2013.

(2) THE DATA MUST INCLUDE, BUT IS NOT LIMITED TO:

- (a) THE TOTAL NUMBER OF DRUG CASES DIVERTED FROM PROSECUTION PRIOR TO FILING THROUGH REFERRAL TO LAW ENFORCEMENT OR DISTRICT ATTORNEY DIVERSION PROGRAMS;
- (b) THE TOTAL NUMBER OF DRUG CASES FILED STATEWIDE BY JURISDICTION;
- (c) ALL DEMOGRAPHIC INFORMATION AND RELEVANT BACKGROUND INFORMATION ON THE DEFENDANTS FOR WHICH A DRUG CASE HAS BEEN FILED OR DIVERTED INCLUDING PRIOR CRIMINAL HISTORY; AND
- (d) FOR ALL CASES FILED, THE NATURE OF THE CHARGES BY STATUTORY CITATION AND THE OUTCOME OR DISPOSITION INFORMATION ON ALL THE CASES FILED WHICH SHALL INCLUDE BUT NOT BE LIMITED TO:
  - (I) DISMISSAL WITHOUT PROSECUTION;
  - (II) DISMISSAL AS A RESULT OF A PLEA BARGAIN;
  - (III) DEFERRED JUDGMENT TO THE ORIGINAL CHARGE OR A LESSER CHARGE;
  - (IV) ANY PLEA BARGAIN THAT REDUCES THE ORIGINAL CHARGE OR CHARGES FILED;
  - (V) ANY SENTENCE BARGAIN INCLUDING, BUT NOT LIMITED TO, A STIPULATION TO A CERTAIN SENTENCE OR A LIMIT ON THE AMOUNT OF JAIL OR DEPARTMENT OF CORRECTIONS IMPOSED;
  - (VI) ANY PLEA BARGAIN THAT INVOLVES MULTIPLE CASES;
  - (VII) ANY SENTENCE BARGAIN THAT INVOLVES CONCURRENT OR CONSECUTIVE TIME IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS;
  - (VIII) ANY PROBATION OR DEFERRED JUDGMENT REVOCATION FILED AND THE RESULT OF ANY REVOCATION;
  - (IX) ANY SUCCESSFUL COMPLETION OF PROBATION OR A DEFERRED JUDGMENT; AND
  - (X) ANY SUCCESSFUL COMPLETION OF SUPERVISION RESULTING IN CONVERSION OF THE FELONY TO A MISDEMEANOR PURSUANT TO THE PROVISIONS OF 18-1.3-103.5 (2).