

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 12-0685.01 Richard Sweetman x4333

SENATE BILL 12-117

SENATE SPONSORSHIP

King S.,

HOUSE SPONSORSHIP

(None),

Senate Committees
State, Veterans & Military Affairs
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PENALTIES FOR PERSONS WHO DRIVE WHILE UNDER**
102 **THE INFLUENCE OF ALCOHOL OR DRUGS, AND, IN CONNECTION**
103 **THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

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

In any prosecution for a driving under the influence (DUI), driving while ability impaired (DWAI), vehicular assault, or vehicular homicide, if at the time of the commission of the alleged offense, or within two hours thereafter, the defendant's blood, urine, or saliva contains any

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
May 1, 2012

amount of a schedule I controlled substance, except for tetrahydrocannabinols; a schedule II controlled substance; salvia divinorum; or synthetic cannabinoids, or the defendant's blood contains 5 nanograms or more of delta 9-tetrahydrocannabinol per milliliter in whole blood, such fact gives rise to the permissible inference that the defendant was under the influence of drugs.

The bill expands the existing definition of "DUI per se" to include driving when the driver's blood, urine, or saliva contains any amount of a schedule I controlled substance, except for tetrahydrocannabinols; salvia divinorum; or synthetic cannabinoids, and driving when the defendant's blood contains 5 nanograms or more of delta 9-tetrahydrocannabinol per milliliter in whole blood.

The bill removes statutory instances of the term "habitual user".

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

2 **SECTION 1.** In Colorado Revised Statutes, 42-1-102, **amend**
3 (27.5) as follows:

4 **42-1-102. Definitions.** As used in articles 1 to 4 of this title,
5 unless the context otherwise requires:

6 (27.5) "DUI per se" means:

7 (a) Driving with a BAC of 0.08 or more, ~~and~~ IN WHICH CASE use
8 of the term shall incorporate by reference the offense described in section
9 42-4-1301 (2) (a); OR

10

11 (b) DRIVING WHEN THE DRIVER'S BLOOD CONTAINS FIVE
12 NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL PER
13 MILLILITER IN WHOLE BLOOD, IN WHICH CASE USE OF THE TERM SHALL
14 INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION
15 42-4-1301 (2) (a.3).

16 **SECTION 2.** In Colorado Revised Statutes, 42-4-1301, **amend**
17 (1) (d), (2) (b), (2) (c), (4), and (6) (e); repeal (1) (c); and add (2) (a.3)
18 as follows:

1 **42-4-1301. Driving under the influence - driving while**
2 **impaired - driving with excessive alcoholic content - definitions -**
3 **penalties.** (1) (c) ~~It is a misdemeanor for any person who is an habitual~~
4 ~~user of any controlled substance defined in section 12-22-303 (7), C.R.S.,~~
5 ~~to drive a motor vehicle, vehicle, or low-power scooter in this state.~~

6 (d) ~~For the purposes of this subsection (1), AS USED IN THIS~~
7 ~~SECTION, "one or more drugs" shall mean all substances defined as a~~
8 ~~MEANS ANY drug, AS DEFINED in section 12-22-303 (13), C.R.S., and all~~
9 ~~controlled substances ANY CONTROLLED SUBSTANCE, AS defined in~~
10 ~~section 12-22-303 (7), C.R.S. SECTION 18-18-102 (5), C.R.S., and~~
11 ~~glue-sniffing, aerosol inhalation, and the inhalation of any INHALED GLUE,~~
12 ~~AEROSOL, OR other toxic vapor or vapors, AS DEFINED IN SECTION~~
13 ~~18-18-412, C.R.S.~~

14 ==
15 (2) (a.3) IT IS A MISDEMEANOR FOR ANY PERSON TO DRIVE A
16 MOTOR VEHICLE OR VEHICLE WHEN THE PERSON'S BLOOD CONTAINS FIVE
17 NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL AT THE
18 TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING. DURING A TRIAL,
19 IF THE STATE'S EVIDENCE RAISES THE ISSUE, OR IF A DEFENDANT PRESENTS
20 SOME CREDIBLE EVIDENCE, THAT THE DEFENDANT CONSUMED A
21 SUBSTANCE CONTAINING DELTA 9-TETRAHYDROCANNABINOL BETWEEN
22 THE TIME THAT THE DEFENDANT STOPPED DRIVING AND THE TIME THAT
23 TESTING OCCURRED, SUCH ISSUE IS AN AFFIRMATIVE DEFENSE, AND THE
24 PROSECUTION MUST ESTABLISH BEYOND A REASONABLE DOUBT THAT THE
25 MINIMUM FIVE NANOGRAMS OF DELTA 9-TETRAHYDROCANNABINOL
26 REQUIRED IN THIS PARAGRAPH (a.3) WAS REACHED AS A RESULT OF
27 CONSUMPTION BY THE DEFENDANT BEFORE THE DEFENDANT STOPPED

1 DRIVING.

2 (b) In any prosecution for the offense of DUI per se, the defendant
3 shall be entitled to offer direct and circumstantial evidence to show that
4 there is a disparity between what ~~the~~ ANY tests show and other facts so
5 that the trier of fact could infer that the tests were in some way defective
6 or inaccurate. Such evidence may include testimony of nonexpert
7 witnesses relating to the absence of any or all of the common symptoms
8 or signs of intoxication for the purpose of impeachment of the accuracy
9 of the analysis of the person's blood or breath.

10 (c) Pursuant to section 16-2-106, C.R.S., in charging the offense
11 of DUI per se, it shall be sufficient to describe the offense charged as
12 "drove a vehicle with excessive alcohol content" OR "DROVE A VEHICLE
13 WITH EXCESSIVE THC CONTENT".

14 (4) No court shall accept a plea of guilty to a non-alcohol-related
15 or non-drug-related traffic offense or guilty to the offense of UDD from
16 a person charged with DUI OR DUI per se; ~~or habitual user~~; except that
17 the court may accept a plea of guilty to a non-alcohol-related or
18 non-drug-related traffic offense or to UDD upon a good faith
19 representation by the prosecuting attorney that the attorney could not
20 establish a prima facie case if the defendant were brought to trial on the
21 original alcohol-related or drug-related offense.

22 == ==

23 (6)(e) Involuntary blood test - admissibility. Evidence acquired
24 through an involuntary blood test pursuant to section 42-4-1301.1 (3)
25 shall be admissible in any prosecution for DUI, DUI per se, DWAI,
26 ~~habitual user~~, or UDD, and in any prosecution for criminally negligent
27 homicide pursuant to section 18-3-105, C.R.S., vehicular homicide

1 pursuant to section 18-3-106 (1) (b), C.R.S., assault in the third degree
2 pursuant to section 18-3-204, C.R.S., or vehicular assault pursuant to
3 section 18-3-205 (1) (b), C.R.S.

4 **SECTION 3.** In Colorado Revised Statutes, 18-3-106, **amend** (1)
5 (b) (II), (2) introductory portion, and (2)(c) as follows:

6 **18-3-106. Vehicular homicide.** (1) (b) (II) For the purposes of
7 this subsection (1), "one or more drugs" ~~shall mean all substances defined~~
8 ~~as a~~ MEANS ANY drug, AS DEFINED in section 12-22-303 (13), C.R.S.; ~~and~~
9 ~~all controlled substances defined in section 12-22-303 (7), C.R.S.~~ ANY
10 CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 18-18-102 (5); and
11 ~~glue-sniffing, aerosol inhalation, or the inhalation of any INHALED GLUE,~~
12 AEROSOL, OR other toxic vapor or vapors, as defined in section 18-18-412.

13 (2) In any prosecution for a violation of subsection (1) of this
14 section, the amount of alcohol in the defendant's blood or breath at the
15 time of the commission of the alleged offense, or within a reasonable time
16 thereafter, as shown by analysis of the defendant's blood or breath, ~~shall~~
17 ~~give~~ GIVES rise to the following presumptions:

18 (c) If there was at such time 0.08 or more grams of alcohol per
19 one hundred milliliters of blood, or if there was at such time 0.08 or more
20 grams of alcohol per two hundred ten liters of breath, ~~it shall be presumed~~
21 SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE that the defendant
22 was under the influence of alcohol.

23 == ==

24 **SECTION 4.** In Colorado Revised Statutes, 18-3-205, **amend** (1)
25 (b) (II), (2) introductory portion, and (2)(c) as follows:

26 **18-3-205. Vehicular assault.** (1) (b) (II) For the purposes of this
27 subsection (1), "one or more drugs" ~~shall mean all substances defined as~~

1 a MEANS ANY drug, AS DEFINED in section 12-22-303 (13), C.R.S., ~~and all~~
2 ~~controlled substances defined in section 12-22-303 (7), C.R.S.~~ ANY
3 CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 18-18-102 (5), and
4 ~~glue-sniffing, aerosol inhalation, or the inhalation of any INHALED GLUE,~~
5 AEROSOL, OR other toxic vapor or vapors, as defined in section 18-18-412.

6 (2) In any prosecution for a violation of subsection (1) of this
7 section, the amount of alcohol in the defendant's blood or breath at the
8 time of the commission of the alleged offense, or within a reasonable time
9 thereafter, as shown by analysis of the defendant's blood or breath, ~~shall~~
10 ~~give~~ GIVES rise to the following presumptions:

11 (c) If there was at such time 0.08 or more grams of alcohol per
12 one hundred milliliters of blood, or if there was at such time 0.08 or more
13 grams of alcohol per two hundred ten liters of breath, ~~it shall be presumed~~
14 SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE that the defendant
15 was under the influence of alcohol.

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17 **SECTION 5.** In Colorado Revised Statutes, **repeal** 42-1-102
18 (41.7).

19 **SECTION 6.** In Colorado Revised Statutes, 42-2-121, **amend** (2)
20 (b) and (5) (a) (III) as follows:

21 **42-2-121. Records to be kept by department - admission of**
22 **records in court.** (2) (b) The department shall also keep a separate file
23 of all abstracts of court records of dismissals of DUI, DUI per se, DWAI,
24 ~~habitual user,~~ and UDD charges and all abstracts of records in cases
25 where the original charges were for DUI, DUI per se, DWAI, ~~habitual~~
26 ~~user,~~ and UDD and the convictions were for nonalcohol- or
27 nondrug-related traffic offenses. This file shall be made available only to

1 criminal justice agencies, as defined in section 24-72-302 (3), C.R.S.

2 (5) (a) Upon application by a person, the department shall
3 expunge all records concerning a conviction of a person for UDD with a
4 BAC of at least 0.02 but not more than 0.05 and any records concerning
5 an administrative determination resulting in a revocation under section
6 42-2-126 (3) (b) or (3) (e) if:

7 (III) The person has not been convicted for any other DUI, DUI
8 per se, DWAI, ~~habitual user~~, or UDD offense that was committed while
9 such person was under twenty-one years of age and is not subject to any
10 other administrative determination resulting in a revocation under section
11 42-2-126 for any other occurrence while such person was under
12 twenty-one years of age;

13 **SECTION 7.** In Colorado Revised Statutes, **amend** 42-2-129 as
14 follows:

15 **42-2-129. Mandatory surrender of license or permit for**
16 **driving under the influence or with excessive alcoholic content.** Upon
17 a plea of guilty or nolo contendere, or a verdict of guilty by the court or
18 a jury, to DUI OR DUI per se, ~~or habitual user~~, or, for a person under
19 twenty-one years of age, to DUI, DUI per se, DWAI, ~~habitual user~~, or
20 UDD, the court shall require the offender to immediately surrender the
21 offender's driver's, minor driver's, or temporary driver's license or
22 instruction permit to the court. The court shall forward to the department
23 a notice of plea or verdict, on the form prescribed by the department,
24 together with the offender's license or permit, not later than ten days after
25 the surrender of the license or permit. Any person who does not
26 immediately surrender the license or permit to the court, except for good
27 cause shown, commits a class 2 misdemeanor traffic offense.

1 **SECTION 8.** In Colorado Revised Statutes, 42-2-125, **amend** (1)
2 (b), (1) (g) (I), (1) (g) (II), and (1) (i) as follows:

3 **42-2-125. Mandatory revocation of license and permit.** (1) The
4 department shall immediately revoke the license or permit of any driver
5 or minor driver upon receiving a record showing that such driver has:

6 (b) Been convicted of driving a motor vehicle while under the
7 influence of a controlled substance, as defined in section 12-22-303 (7),
8 C.R.S.; ~~or while an habitual user of such a controlled substance;~~

9 (g) (I) Been twice convicted of any combination of DUI, DUI per
10 se, OR DWAI, ~~or habitual user~~ for acts committed within a period of five
11 years;

12 (II) In the case of a minor driver, been convicted of DUI, DUI per
13 se, OR DWAI ~~or habitual user~~ committed while such driver was under
14 twenty-one years of age;

15 (i) Been convicted of DUI, DUI per se, OR DWAI ~~or habitual user~~
16 and has two previous convictions of any of such offenses. The license of
17 any driver shall be revoked for an indefinite period and shall only be
18 reissued upon proof to the department that said driver has completed a
19 level II alcohol and drug education and treatment program certified by the
20 unit in the department of human services that administers behavioral
21 health programs and services, including those related to mental health and
22 substance abuse, pursuant to section 42-4-1301.3 and that said driver has
23 demonstrated knowledge of the laws and driving ability through the
24 regular motor vehicle testing process. In no event shall such license be
25 reissued in less than two years.

26 **SECTION 9.** In Colorado Revised Statutes, 42-2-127, **amend** (1)
27 (a) and (6) (b); and **repeal** (5) (b) (II) as follows:

1 **42-2-127. Authority to suspend license - to deny license - type**
2 **of conviction - points.** (1) (a) Except as provided in paragraph (b) of
3 subsection (8) of this section, the department has the authority to suspend
4 the license of any driver who, in accordance with the schedule of points
5 set forth in this section, has been convicted of traffic violations resulting
6 in the accumulation of twelve points or more within any twelve
7 consecutive months or eighteen points or more within any twenty-four
8 consecutive months, or, in the case of a minor driver eighteen years of age
9 or older, who has accumulated nine points or more within any twelve
10 consecutive months, or twelve points or more within any twenty-four
11 consecutive months, or fourteen points or more for violations occurring
12 after reaching the age of eighteen years, or, in the case of a minor driver
13 under the age of eighteen years, who has accumulated more than five
14 points within any twelve consecutive months or more than six points for
15 violations occurring prior to reaching the age of eighteen years; except
16 that the accumulation of points causing the subjection to suspension of
17 the license of a chauffeur who, in the course of employment, has as a
18 principal duty the operation of a motor vehicle shall be sixteen points in
19 one year, twenty-four points in two years, or twenty-eight points in four
20 years, if all the points are accumulated while said chauffeur is in the
21 course of employment. Any provision of this section to the contrary
22 notwithstanding, the license of a chauffeur who is convicted of DUI, DUI
23 per se, DWAI, ~~habitual user~~, UDD, or leaving the scene of an accident
24 shall be suspended in the same manner as if the offense occurred outside
25 the course of employment. Whenever a minor driver under the age of
26 eighteen years receives a summons for a traffic violation, the minor's
27 parent or legal guardian or, if the minor is without parents or guardian,

1 the person who signed the minor driver's application for a license shall
2 immediately be notified by the court from which the summons was
3 issued.

4 (5) Point system schedule:

| 5 Type of conviction | Points |
|-------------------------------------|--------|
| 6 (b) (II) Habitual user | 12 |

7 (6) (b) For the purposes of this article, a plea of no contest
8 accepted by the court or the forfeiture of any bail or collateral deposited
9 to secure a defendant's appearance in court or the failure to appear in
10 court by a defendant charged with DUI, DUI per se, ~~habitual user~~, or
11 UDD who has been issued a summons and notice to appear pursuant to
12 section 42-4-1707 as evidenced by records forwarded to the department
13 in accordance with the provisions of section 42-2-124 shall be considered
14 as a conviction.

15 **SECTION 10.** In Colorado Revised Statutes, 42-2-132, **amend**
16 (2) (a) (III) and (2) (a) (IV) as follows:

17 **42-2-132. Period of suspension or revocation.** (2) (a) (III) In the
18 case of a minor driver whose license has been revoked as a result of one
19 conviction for DUI, DUI per se, DWAI, ~~habitual user~~, or UDD, the minor
20 driver, unless otherwise required after an evaluation made pursuant to
21 section 42-4-1301.3, must complete a level I alcohol and drug education
22 program certified by the unit in the department of human services that
23 administers behavioral health programs and services, including those
24 related to mental health and substance abuse.

25 (IV) Any person whose license or privilege to drive a motor
26 vehicle on the public highways has been revoked under section 42-2-125
27 (1) (g) (I) or (1) (i) or 42-2-203 where the revocation was due in part to

1 a DUI, DUI per se, OR DWAI or ~~habitual user~~ conviction shall be
2 required to present an affidavit stating that the person has obtained at the
3 person's own expense a signed lease agreement for the installation and
4 use of an approved ignition interlock device, as defined in section
5 42-2-132.5 (7), in each motor vehicle on which the person's name appears
6 on the registration and any other vehicle that the person may drive during
7 the period of the restricted license and a copy of each signed lease
8 agreement.

9 **SECTION 11.** In Colorado Revised Statutes, 42-2-132.5, **amend**
10 (1) (c) as follows:

11 **42-2-132.5. Mandatory and voluntary restricted licenses**
12 **following alcohol convictions - rules.** (1) The following persons shall
13 be required to hold a restricted license pursuant to this section for at least
14 one year prior to being eligible to obtain any other driver's license issued
15 under this article:

16 (c) Any person whose privilege to drive was revoked under
17 section 42-2-203 where the revocation was due in part to a DUI, DUI per
18 se, OR DWAI or ~~habitual user~~ conviction and one of the offenses giving
19 rise to the revocation occurred on or after July 1, 2000; or

20 **SECTION 12.** In Colorado Revised Statutes, 42-2-138, **amend**
21 (1) (a), (1) (d) (I), and (1) (d) (II) as follows:

22 **42-2-138. Driving under restraint - penalty.** (1) (a) Any person
23 who drives a motor vehicle or off-highway vehicle upon any highway of
24 this state with knowledge that the person's license or privilege to drive,
25 either as a resident or a nonresident, is under restraint for any reason other
26 than conviction of DUI, DUI per se, DWAI, ~~habitual user~~, or UDD is
27 guilty of a misdemeanor. A court may sentence a person convicted of this

1 misdemeanor to imprisonment in the county jail for a period of not more
2 than six months and may impose a fine of not more than five hundred
3 dollars.

4 (d) (I) A person who drives a motor vehicle or off-highway
5 vehicle upon any highway of this state with knowledge that the person's
6 license or privilege to drive, either as a resident or nonresident, is
7 restrained under section 42-2-126 (3), is restrained solely or partially
8 because of a conviction of DUI, DUI per se, DWAI, ~~habitual user~~, or
9 UDD, or is restrained in another state solely or partially because of an
10 alcohol-related driving offense is guilty of a misdemeanor and, upon
11 conviction thereof, shall be punished by imprisonment in the county jail
12 for not less than thirty days nor more than one year and, in the discretion
13 of the court, by a fine of not less than five hundred dollars nor more than
14 one thousand dollars. Upon a second or subsequent conviction, the person
15 shall be punished by imprisonment in the county jail for not less than
16 ninety days nor more than two years and, in the discretion of the court, by
17 a fine of not less than five hundred dollars nor more than three thousand
18 dollars. The minimum county jail sentence imposed by this subparagraph
19 (I) shall be mandatory, and the court shall not grant probation or a
20 suspended sentence thereof; but, in a case where the defendant is
21 convicted although the defendant established that he or she had to drive
22 the motor vehicle in violation of this subparagraph (I) because of an
23 emergency, the mandatory jail sentence, if any, shall not apply, and, for
24 a first conviction, the court may impose a sentence of imprisonment in the
25 county jail for a period of not more than one year and, in the discretion of
26 the court, a fine of not more than one thousand dollars, and, for a second
27 or subsequent conviction, the court may impose a sentence of

1 imprisonment in the county jail for a period of not more than two years
2 and, in the discretion of the court, a fine of not more than three thousand
3 dollars.

4 (II) In any trial for a violation of subparagraph (I) of this
5 paragraph (d), a duly authenticated copy of the record of the defendant's
6 former convictions and judgments for DUI, DUI per se, DWAI, ~~habitual~~
7 ~~user~~, or UDD or an alcohol-related offense committed in another state
8 from any court of record or a certified copy of the record of any denial or
9 revocation of the defendant's driving privilege under section 42-2-126 (3)
10 from the department shall be prima facie evidence of the convictions,
11 judgments, denials, or revocations and may be used in evidence against
12 the defendant. Identification photographs and fingerprints that are part of
13 the record of the former convictions, judgments, denials, or revocations
14 and the defendant's incarceration after sentencing for any of the former
15 convictions, judgments, denials, or revocations shall be prima facie
16 evidence of the identity of the defendant and may be used in evidence
17 against the defendant.

18 **SECTION 13.** In Colorado Revised Statutes, 42-2-202, **amend**
19 (2) (a) (I) as follows:

20 **42-2-202. Habitual offenders - frequency and type of**
21 **violations.** (2) (a) An habitual offender is a person having three or more
22 convictions of any of the following separate and distinct offenses arising
23 out of separate acts committed within a period of seven years:

24 (I) DUI, DUI per se, OR DWAI; ~~or habitual user~~;

25 **SECTION 14.** In Colorado Revised Statutes, 42-2-405, **amend**
26 (3) (a) as follows:

27 **42-2-405. Driver's license disciplinary actions - grounds for**

1 **denial - suspension - revocation - disqualification.** (3) For purposes of
2 the imposition of restraints and sanctions against commercial driving
3 privileges:

4 (a) A conviction for DUI, DUI per se, OR DWAI, ~~or habitual user,~~
5 or a substantially similar law of any other state pertaining to drinking and
6 driving, or an administrative determination of a violation of section
7 42-2-126 (3) (a) or (3) (b) shall be deemed driving under the influence;
8 and

9 **SECTION 15.** In Colorado Revised Statutes, 42-4-1301.1,
10 **amend** (2) (a) (I) and (2) (b) (I) as follows:

11 **42-4-1301.1. Expressed consent for the taking of blood, breath,**
12 **urine, or saliva sample - testing.** (2) (a) (I) A person who drives a
13 motor vehicle upon the streets and highways and elsewhere throughout
14 this state shall be required to take and complete, and to cooperate in the
15 taking and completing of, any test or tests of the person's breath or blood
16 for the purpose of determining the alcoholic content of the person's blood
17 or breath when so requested and directed by a law enforcement officer
18 having probable cause to believe that the person was driving a motor
19 vehicle in violation of the prohibitions against DUI, DUI per se, DWAI,
20 ~~habitual user,~~ or UDD. Except as otherwise provided in this section, if a
21 person who is twenty-one years of age or older requests that the test be a
22 blood test, then the test shall be of his or her blood; but, if the person
23 requests that a specimen of his or her blood not be drawn, then a
24 specimen of the person's breath shall be obtained and tested. A person
25 who is under twenty-one years of age shall be entitled to request a blood
26 test unless the alleged violation is UDD, in which case a specimen of the
27 person's breath shall be obtained and tested, except as provided in

1 subparagraph (II) of this paragraph (a).

2 (b) (I) Any person who drives any motor vehicle upon the streets
3 and highways and elsewhere throughout this state shall be required to
4 submit to and to complete, and to cooperate in the completing of, a test
5 or tests of such person's blood, saliva, and urine for the purpose of
6 determining the drug content within the person's system when so
7 requested and directed by a law enforcement officer having probable
8 cause to believe that the person was driving a motor vehicle in violation
9 of the prohibitions against DUI OR DWAI ~~or habitual user~~ and when it is
10 reasonable to require such testing of blood, saliva, and urine to determine
11 whether such person was under the influence of, or impaired by, one or
12 more drugs, or one or more controlled substances, or a combination of
13 both alcohol and one or more drugs, or a combination of both alcohol and
14 one or more controlled substances.

15 **SECTION 16.** In Colorado Revised Statutes, 42-4-1307, **amend**
16 (3) (a) introductory portion, (5) (a) introductory portion, (5) (b)
17 introductory portion, (6) (a) introductory portion, (9) (a), (10) (a), (10)
18 (b), (10) (c), (10) (d) (I), (12), and (13) as follows:

19 **42-4-1307. Penalties for traffic offenses involving alcohol and**
20 **drugs - repeal.** (3) **First offenses - DUI and DUI per se.** (a) Except as
21 otherwise provided in subsections (5) and (6) of this section, a person
22 who is convicted of DUI OR DUI per se ~~or habitual user~~ shall be punished
23 by:

24 (5) **Second offenses.** (a) Except as otherwise provided in
25 subsection (6) of this section, a person who is convicted of DUI, DUI per
26 se, OR DWAI ~~or habitual user~~ who, at the time of sentencing, has a prior
27 conviction of DUI, DUI per se, DWAI, ~~habitual user~~, vehicular homicide

1 pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to
2 section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked
3 license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or
4 driving while the person's driver's license was under restraint pursuant to
5 section 42-2-138 (1) (d), shall be punished by:

6 (b) If a person is convicted of DUI, DUI per se, OR DWAI ~~or~~
7 ~~habitual user~~ and the violation occurred less than five years after the date
8 of a previous violation for which the person was convicted of DUI, DUI
9 per se, DWAI, ~~habitual user~~, vehicular homicide pursuant to section
10 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205
11 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to
12 section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the
13 person's driver's license was under restraint pursuant to section 42-2-138
14 (1) (d), the court shall not have discretion to employ any sentencing
15 alternatives described in section 18-1.3-106, C.R.S., during the minimum
16 period of imprisonment described in subparagraph (I) of paragraph (a) of
17 this subsection (5); except that a court may allow the person to participate
18 in a program pursuant to section 18-1.3-106 (1) (a) (II), (1) (a) (IV), or (1)
19 (a) (V), C.R.S., only if the program is available through the county in
20 which the person is imprisoned and only for the purpose of:

21 (6) **Third and subsequent offenses.** (a) A person who is
22 convicted of DUI, DUI per se, OR DWAI ~~or habitual user~~ AND who, at the
23 time of sentencing, has two or more prior convictions of DUI, DUI per se,
24 DWAI, ~~habitual user~~, vehicular homicide pursuant to section 18-3-106 (1)
25 (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S.,
26 aggravated driving with a revoked license pursuant to section 42-2-206
27 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's

1 license was under restraint pursuant to section 42-2-138 (1) (d) shall be
2 punished by:

3 (9) **Previous convictions.** (a) For the purposes of subsections (5)
4 and (6) of this section, a person shall be deemed to have a previous
5 conviction for DUI, DUI per se, DWAI, ~~habitual user~~, vehicular homicide
6 pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to
7 section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked
8 license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or
9 driving while the person's driver's license was under restraint pursuant to
10 section 42-2-138 (1) (d), if the person has been convicted under the laws
11 of this state or under the laws of any other state, the United States, or any
12 territory subject to the jurisdiction of the United States, of an act that, if
13 committed within this state, would constitute the offense of DUI, DUI per
14 se, DWAI, ~~habitual user~~, vehicular homicide pursuant to section 18-3-106
15 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b),
16 C.R.S., aggravated driving with a revoked license pursuant to section
17 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's
18 driver's license was under restraint pursuant to section 42-2-138 (1) (d).

19 (10) **Additional costs and surcharges.** In addition to the
20 penalties prescribed in this section:

21 (a) Persons convicted of DUI, DUI per se, DWAI, ~~habitual user~~,
22 and UDD are subject to the costs imposed by section 24-4.1-119 (1) (c),
23 C.R.S., relating to the crime victim compensation fund;

24 (b) Persons convicted of DUI, DUI per se, AND DWAI ~~and~~
25 ~~habitual user~~ are subject to a surcharge of at least one hundred dollars but
26 no more than five hundred dollars to fund programs to reduce the number
27 of persistent drunk drivers. The surcharge shall be mandatory, and the

1 court shall not have discretion to suspend or waive the surcharge; except
2 that the court may suspend or waive the surcharge if the court determines
3 that a person is indigent. Moneys collected for the surcharge shall be
4 transmitted to the state treasurer, who shall credit the amount collected to
5 the persistent drunk driver cash fund created in section 42-3-303.

6 (c) Persons convicted of DUI, DUI per se, DWAI, ~~habitual user~~,
7 and UDD are subject to a surcharge of twenty dollars to be transmitted to
8 the state treasurer who shall deposit moneys collected for the surcharge
9 in the Colorado traumatic brain injury trust fund created pursuant to
10 section 26-1-309, C.R.S.;

11 (d) (I) Persons convicted of DUI, DUI per se, AND DWAI, ~~and~~
12 ~~habitual user~~ are subject to a surcharge of at least one dollar but no more
13 than ten dollars for programs to fund efforts to address alcohol and
14 substance abuse problems among persons in rural areas. The surcharge
15 shall be mandatory, and the court shall not have discretion to suspend or
16 waive the surcharge; except that the court may suspend or waive the
17 surcharge if the court determines that a person is indigent. Any moneys
18 collected for the surcharge shall be transmitted to the state treasurer, who
19 shall credit the same to the rural alcohol and substance abuse cash fund
20 created in section 27-80-117 (3), C.R.S.

21 (12) **Victim impact panels.** In addition to any other penalty
22 provided by law, the court may sentence a person convicted of DUI, DUI
23 per se, DWAI, ~~habitual user~~, or UDD to attend and pay for one
24 appearance at a victim impact panel approved by the court, for which the
25 fee assessed to the person shall not exceed twenty-five dollars.

26 (13) **Alcohol and drug evaluation and supervision costs.** In
27 addition to any fines, fees, or costs levied against a person convicted of

1 DUI, DUI per se, DWAI, ~~habitual user~~, or UDD, the judge shall assess
2 each such person for the cost of the presentence or postsentence alcohol
3 and drug evaluation and supervision services.

4 **SECTION 17.** In Colorado Revised Statutes, 42-4-1702, **amend**
5 (1) as follows:

6 **42-4-1702. Alcohol- or drug-related traffic offenses - collateral**
7 **attack.** (1) Except as otherwise provided in paragraph (b) of this
8 subsection (1), no person against whom a judgment has been entered for
9 DUI, DUI per se, DWAI, ~~habitual user~~, or UDD shall collaterally attack
10 the validity of that judgment unless such attack is commenced within six
11 months after the date of entry of the judgment.

12 **SECTION 18.** In Colorado Revised Statutes, 42-4-1705, **amend**
13 (1) (c) as follows:

14 **42-4-1705. Person arrested to be taken before the proper**
15 **court.** (1) Whenever a person is arrested for any violation of this article
16 punishable as a misdemeanor, the arrested person shall be taken without
17 unnecessary delay before a county judge who has jurisdiction of such
18 offense as provided by law, in any of the following cases:

19 (c) When the person is arrested and charged with DUI, DUI per
20 se, ~~habitual user~~, or UDD;

21 **SECTION 19.** In Colorado Revised Statutes, 42-4-1715, **amend**
22 (1) (b) (II) and (4) (a) (II) as follows:

23 **42-4-1715. Convictions, judgments, and charges recorded -**
24 **public inspection.** (1) (b) (II) Upon receiving a request for
25 expungement, the court may delay consideration of such request until
26 sufficient time has elapsed to ensure that the person is not convicted for
27 any additional offense of DUI, DUI per se, DWAI, ~~habitual user~~, or UDD

1 committed while the person was under twenty-one years of age.

2 (4) (a) Every court of record shall also forward a like report to the
3 department:

4 (II) Upon the dismissal of a charge for DUI, DUI per se, DWAI,
5 ~~habitual user~~, or UDD or if the original charge was for DUI, DUI per se,
6 DWAI, ~~habitual user~~, or UDD and the conviction was for a nonalcohol-
7 or nondrug-related traffic offense.

8 **SECTION 20.** In Colorado Revised Statutes, 42-7-408, **amend**
9 (1) (c) (I) as follows:

10 **42-7-408. Proof of financial responsibility - methods of giving**
11 **proof - duration - exception.** (1) (c) Notwithstanding the three-year
12 requirement in paragraph (b) of this subsection (1):

13 (I) If an insured has been found guilty of DUI, DUI per se, OR
14 DWAI or ~~habitual user~~ or if the insured's license has been revoked
15 pursuant to section 42-2-126, other than a revocation under section
16 42-2-126 (3) (b) or (3) (e), only one time and no accident was involved
17 in such offense, proof of financial responsibility for the future shall be
18 required to be maintained only for as long as the insured's driving
19 privilege is ordered to be under restraint, up to a maximum of three years.
20 The time period for maintaining the future proof of liability insurance
21 shall begin at the time the driver reinstates his or her driving privilege.

22 **SECTION 21.** In Colorado Revised Statutes, 40-10.1-110,
23 **amend** (3) (c) (I) as follows:

24 **40-10.1-110. Criminal history record check.** (3) An individual
25 whose criminal history record is checked pursuant to this section is
26 disqualified and prohibited from driving motor vehicles for the motor
27 carrier described in subsection (1) of this section if the criminal history

1 record check reflects that:

2 (c) Within the two years immediately preceding the date the
3 criminal history record check is completed, the individual was:

4 (I) Convicted in this state of driving under the influence, as
5 defined in section 42-4-1301 (1) (f), C.R.S.; driving with excessive
6 alcoholic content, as described in section 42-4-1301 (2) (a), C.R.S.; OR
7 driving while ability impaired, as defined in section 42-4-1301 (1) (g),
8 C.R.S.; or ~~driving while an habitual user of a controlled substance, as~~
9 ~~described in section 42-4-1301 (1) (c), C.R.S.; or~~

10 **SECTION 22. Appropriation.** (1) In addition to any other
11 appropriation, there is hereby appropriated, out of any moneys in the
12 general fund not otherwise appropriated, to the judicial department, for
13 the fiscal year beginning July 1, 2012, the sum of \$12,000 so much
14 thereof as may be necessary, for allocation to the office of the state public
15 defender for mandated costs related to the implementation of this act.

16 (2) In addition to any other appropriation, there is hereby
17 appropriated, out of any moneys in the licensing services cash fund
18 created in section 42-2-114.5 (1), Colorado Revised Statutes, not
19 otherwise appropriated, to the department of revenue, for the fiscal year
20 beginning July 1, 2012, the sum of \$16,280, or so much thereof as may
21 be necessary, to be allocated to the information technology division for
22 the purchase of computer center services related to the implementation of
23 this act.

24 (3) In addition to any other appropriation, there is hereby
25 appropriated to the governor - lieutenant governor - state planning and
26 budgeting, for the fiscal year beginning July 1, 2012, the sum of \$16,280,
27 or so much thereof as may be necessary, for allocation to the office of

1 information technology, for the provision of computer center services for
2 the department of revenue related to the implementation of this act. Said
3 sum is from reappropriated funds received from the department of
4 revenue out of the appropriation made in subsection (2) of this section.

5 **SECTION 23. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.