

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.**

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 amount of a schedule I controlled substance, except for

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.

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);

10 (b) DRIVING WHEN THE DRIVER'S BLOOD OR SALIVA CONTAINS ANY
11 AMOUNT OF:

12 (I) A SCHEDULE I CONTROLLED SUBSTANCE, AS DESCRIBED IN
13 SECTION 18-18-203, C.R.S., EXCEPT FOR TETRAHYDROCANNABINOLS;

14 (II) SALVIA DIVINORUM, AS DEFINED IN SECTION 18-18-102 (33.5),
15 C.R.S.; OR

16 (III) SYNTHETIC CANNABINOIDS, AS DEFINED IN SECTION
17 18-18-102 (34.5), C.R.S.; OR

18 (c) DRIVING WHEN THE DRIVER'S BLOOD CONTAINS FIVE
19 NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL PER

1 MILLILITER IN WHOLE BLOOD.

2 (d) USE OF THE TERM "DUI PER SE", AS DESCRIBED BY PARAGRAPH
3 (b) OR (c) OF THIS SUBSECTION (27.5) SHALL INCORPORATE BY REFERENCE
4 THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (2) (a.3).

5 **SECTION 2.** In Colorado Revised Statutes, 42-4-1301, **amend**
6 (1) (d), (2) (b), (2) (c), (4), (6) (a) introductory portion, (6) (b), and (6)
7 (e); **repeal** (1) (c); and **add** (2) (a.3), (6) (a) (IV), and (6) (a) (V) as
8 follows:

9 **42-4-1301. Driving under the influence - driving while**
10 **impaired - driving with excessive alcoholic content - definitions -**
11 **penalties.** (1) (c) ~~It is a misdemeanor for any person who is an habitual~~
12 ~~user of any controlled substance defined in section 12-22-303 (7), C.R.S.,~~
13 ~~to drive a motor vehicle, vehicle, or low-power scooter in this state.~~

14 (d) ~~For the purposes of this subsection (1), AS USED IN THIS~~
15 ~~SECTION, "one or more drugs" shall mean all substances defined as a~~
16 ~~MEANS ANY drug, AS DEFINED in section 12-22-303 (13), C.R.S., and all~~
17 ~~controlled substances ANY CONTROLLED SUBSTANCE, AS defined in~~
18 ~~section 12-22-303 (7), C.R.S. SECTION 18-18-102 (5), C.R.S., and~~
19 ~~glue-sniffing, aerosol inhalation, and the inhalation of any INHALED GLUE,~~
20 ~~AEROSOL, OR other toxic vapor or vapors, AS DEFINED IN SECTION~~
21 ~~18-18-412, C.R.S.~~

22 (2) (a.3) (I) IT IS A MISDEMEANOR FOR ANY PERSON TO DRIVE A
23 MOTOR VEHICLE OR VEHICLE IF, AT THE TIME OF DRIVING OR WITHIN TWO
24 HOURS AFTER DRIVING, THE PERSON'S BLOOD OR SALIVA CONTAINS ANY
25 AMOUNT OF:

26 (A) A SCHEDULE I CONTROLLED SUBSTANCE, AS DESCRIBED IN
27 SECTION 18-18-203, C.R.S.; EXCEPT FOR TETRAHYDROCANNABINOLS;

1 (B) SALVIA DIVINORUM, AS DEFINED IN SECTION 18-18-102(33.5),
2 C.R.S.; OR

3 (C) SYNTHETIC CANNABINOIDS, AS DEFINED IN SECTION 18-18-102
4 (34.5), C.R.S.

5 (II) IT IS A MISDEMEANOR FOR ANY PERSON TO DRIVE A MOTOR
6 VEHICLE OR VEHICLE IF, AT THE TIME OF DRIVING OR WITHIN TWO HOURS
7 AFTER DRIVING, THE PERSON'S BLOOD CONTAINS FIVE NANOGRAMS OR
8 MORE OF DELTA 9-TETRAHYDROCANNABINOL PER MILLILITER IN WHOLE
9 BLOOD.

10 (III) DURING A TRIAL, IF THE STATE'S EVIDENCE RAISES THE ISSUE,
11 OR IF A DEFENDANT PRESENTS SOME CREDIBLE EVIDENCE, THAT THE
12 DEFENDANT CONSUMED ONE OR MORE DRUGS BETWEEN THE TIME THAT
13 THE DEFENDANT STOPPED DRIVING AND THE TIME THAT TESTING
14 OCCURRED, SUCH ISSUE SHALL BE AN AFFIRMATIVE DEFENSE, AND THE
15 PROSECUTION MUST ESTABLISH BEYOND A REASONABLE DOUBT THAT THE
16 DRUG TEST RESULT DESCRIBED IN THIS PARAGRAPH (a.3) WAS REACHED AS
17 A RESULT OF ONE OR MORE DRUGS CONSUMED BY THE DEFENDANT BEFORE
18 THE DEFENDANT STOPPED DRIVING.

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

27 (c) Pursuant to section 16-2-106, C.R.S., in charging the offense

1 of DUI per se, it shall be sufficient to describe the offense charged as
2 "drove a vehicle with excessive alcohol content" OR "DROVE A VEHICLE
3 WITH EXCESSIVE DRUG CONTENT".

4 (4) No court shall accept a plea of guilty to a non-alcohol-related
5 or non-drug-related traffic offense or guilty to the offense of UDD from
6 a person charged with DUI OR DUI per se; ~~or habitual user~~; except that
7 the court may accept a plea of guilty to a non-alcohol-related or
8 non-drug-related traffic offense or to UDD upon a good faith
9 representation by the prosecuting attorney that the attorney could not
10 establish a prima facie case if the defendant were brought to trial on the
11 original alcohol-related or drug-related offense.

12 (6) (a) In any prosecution for DUI or DWAI, the defendant's
13 BAC, OR THE PRESENCE OF ONE OR MORE DRUGS IN THE DEFENDANT'S
14 BLOOD OR SALIVA, AT THE TIME OF THE COMMISSION OF THE ALLEGED
15 OFFENSE OR WITHIN a reasonable time thereafter gives rise to the
16 following presumptions or inferences:

17 (IV) IF AT SUCH TIME THE DEFENDANT'S BLOOD OR SALIVA
18 CONTAINS ANY AMOUNT OF A SCHEDULE I CONTROLLED SUBSTANCE, AS
19 DESCRIBED IN SECTION 18-18-203, C.R.S., EXCEPT FOR
20 TETRAHYDROCANNABINOLS; OR ANY AMOUNT OF A SCHEDULE II
21 CONTROLLED SUBSTANCE, AS DESCRIBED IN SECTION 18-18-204, C.R.S.;
22 OR ANY AMOUNT OF SALVIA DIVINORUM, AS DEFINED IN SECTION
23 18-18-102 (33.5), C.R.S.; OR ANY AMOUNT OF SYNTHETIC CANNABINOIDS,
24 AS DEFINED IN SECTION 18-18-102 (34.5), C.R.S., SUCH FACT GIVES RISE
25 TO THE PERMISSIBLE INFERENCE THAT THE DEFENDANT WAS UNDER THE
26 INFLUENCE OF DRUGS.

27 (V) IF AT SUCH TIME THE DEFENDANT'S BLOOD CONTAINS FIVE

1 NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL PER
2 MILLILITER IN WHOLE BLOOD, SUCH FACT GIVES RISE TO THE PERMISSIBLE
3 INFERENCE THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF DRUGS.

4 (b) The limitations of this subsection (6) shall not be construed as
5 limiting the introduction, reception, or consideration of any other
6 competent evidence bearing upon the question of whether ~~or not~~ the
7 defendant was under the influence of alcohol, ONE OR MORE DRUGS, OR
8 A COMBINATION THEREOF, or whether ~~or not~~ the defendant's ability to
9 operate a motor vehicle or vehicle was impaired by the consumption of
10 alcohol, ONE OR MORE DRUGS, OR A COMBINATION THEREOF.

11 (e) **Involuntary blood test - admissibility.** Evidence acquired
12 through an involuntary blood test pursuant to section 42-4-1301.1 (3)
13 shall be admissible in any prosecution for DUI, DUI per se, DWAI,
14 ~~habitual user~~, or UDD, and in any prosecution for criminally negligent
15 homicide pursuant to section 18-3-105, C.R.S., vehicular homicide
16 pursuant to section 18-3-106 (1) (b), C.R.S., assault in the third degree
17 pursuant to section 18-3-204, C.R.S., or vehicular assault pursuant to
18 section 18-3-205 (1) (b), C.R.S.

19 **SECTION 3.** In Colorado Revised Statutes, 18-3-106, **amend** (1)
20 (b) (II), (2) introductory portion, and (2) (c); and **add** (2.5) as follows:

21 **18-3-106. Vehicular homicide.** (1) (b) (II) For the purposes of
22 this subsection (1), "one or more drugs" ~~shall mean all substances defined~~
23 ~~as a~~ MEANS ANY drug, AS DEFINED in section 12-22-303 (13), C.R.S.; ~~and~~
24 ~~all controlled substances defined in section 12-22-303 (7), C.R.S.~~ ANY
25 CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 18-18-102 (5); and
26 ~~glue-sniffing, aerosol inhalation, or the inhalation of any INHALED GLUE,~~
27 AEROSOL, OR other toxic vapor or vapors, as defined in section 18-18-412.

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

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

11 (2.5) (a) IN ANY PROSECUTION FOR A VIOLATION OF SUBSECTION
12 (1) OF THIS SECTION, IF AT THE TIME OF THE COMMISSION OF THE ALLEGED
13 OFFENSE, OR WITHIN TWO HOURS THEREAFTER, AS SHOWN BY AN ANALYSIS
14 OF THE DEFENDANT'S BLOOD OR SALIVA, THE DEFENDANT'S BLOOD ___ OR
15 SALIVA CONTAINS ANY AMOUNT OF A SCHEDULE I CONTROLLED
16 SUBSTANCE, AS DESCRIBED IN SECTION 18-18-203, EXCEPT FOR
17 TETRAHYDROCANNABINOLS; OR ANY AMOUNT OF A SCHEDULE II
18 CONTROLLED SUBSTANCE, AS DESCRIBED IN SECTION 18-18-204; OR ANY
19 AMOUNT OF SALVIA DIVINORUM, AS DEFINED IN SECTION 18-18-102 (33.5);
20 OR ANY AMOUNT OF SYNTHETIC CANNABINOIDS, AS DEFINED IN SECTION
21 18-18-102 (34.5), SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE
22 THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF DRUGS.

23 (b) IN ANY PROSECUTION FOR A VIOLATION OF SUBSECTION (1) OF
24 THIS SECTION, IF AT THE TIME OF THE COMMISSION OF THE ALLEGED
25 OFFENSE, OR WITHIN TWO HOURS THEREAFTER, AS SHOWN BY AN ANALYSIS
26 OF THE DEFENDANT'S BLOOD, THE DEFENDANT'S BLOOD CONTAINS FIVE
27 NANOGRAMS OR MORE _____ OF DELTA 9-TETRAHYDROCANNABINOL PER

1 MILLILITER IN WHOLE BLOOD, SUCH FACT GIVES RISE TO THE PERMISSIBLE
2 INFERENCE THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF DRUGS.

3 **SECTION 4.** In Colorado Revised Statutes, 18-3-205, **amend** (1)
4 (b) (II), (2) introductory portion, and (2) (c); and **add** (2.5) as follows:

5 **18-3-205. Vehicular assault.** (1) (b) (II) For the purposes of this
6 subsection (1), "one or more drugs" ~~shall mean all substances defined as~~
7 ~~a MEANS ANY drug, AS DEFINED in section 12-22-303 (13), C.R.S., and all~~
8 ~~controlled substances defined in section 12-22-303 (7), C.R.S.~~ ANY
9 CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 18-18-102 (5), and
10 ~~glue-sniffing, aerosol inhalation, or the inhalation of any INHALED GLUE,~~
11 AEROSOL, OR other toxic vapor or vapors, as defined in section 18-18-412.

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

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

22 (2.5) (a) IN ANY PROSECUTION FOR A VIOLATION OF SUBSECTION
23 (1) OF THIS SECTION, IF AT THE TIME OF THE COMMISSION OF THE ALLEGED
24 OFFENSE, OR WITHIN TWO HOURS THEREAFTER, AS SHOWN BY AN ANALYSIS
25 OF THE DEFENDANT'S BLOOD OR SALIVA, THE DEFENDANT'S BLOOD OR
26 SALIVA CONTAINS ANY AMOUNT OF A SCHEDULE I CONTROLLED
27 SUBSTANCE, AS DESCRIBED IN SECTION 18-18-203, EXCEPT FOR

1 TETRAHYDROCANNABINOLS; OR ANY AMOUNT OF A SCHEDULE II
2 CONTROLLED SUBSTANCE, AS DESCRIBED IN SECTION 18-18-204; OR ANY
3 AMOUNT OF SALVIA DIVINORUM, AS DEFINED IN SECTION 18-18-102 (33.5);
4 OR ANY AMOUNT OF SYNTHETIC CANNABINOIDS, AS DEFINED IN SECTION
5 18-18-102 (34.5), SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE
6 THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF DRUGS.

7 (b) IN ANY PROSECUTION FOR A VIOLATION OF SUBSECTION (1) OF
8 THIS SECTION, IF AT THE TIME OF THE COMMISSION OF THE ALLEGED
9 OFFENSE, OR WITHIN TWO HOURS THEREAFTER, AS SHOWN BY AN ANALYSIS
10 OF THE DEFENDANT'S BLOOD, THE DEFENDANT'S BLOOD CONTAINS FIVE
11 NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL PER
12 MILLILITER IN WHOLE BLOOD, SUCH FACT GIVES RISE TO THE PERMISSIBLE
13 INFERENCE THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF DRUGS.

14 **SECTION 5.** In Colorado Revised Statutes, **repeal** 42-1-102
15 (41.7).

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

18 **42-2-121. Records to be kept by department - admission of**
19 **records in court.** (2) (b) The department shall also keep a separate file
20 of all abstracts of court records of dismissals of DUI, DUI per se, DWAI,
21 ~~habitual user~~, and UDD charges and all abstracts of records in cases
22 where the original charges were for DUI, DUI per se, DWAI, ~~habitual~~
23 ~~user~~, and UDD and the convictions were for nonalcohol- or
24 nondrug-related traffic offenses. This file shall be made available only to
25 criminal justice agencies, as defined in section 24-72-302 (3), C.R.S.

26 (5) (a) Upon application by a person, the department shall
27 expunge all records concerning a conviction of a person for UDD with a

1 BAC of at least 0.02 but not more than 0.05 and any records concerning
2 an administrative determination resulting in a revocation under section
3 42-2-126 (3) (b) or (3) (e) if:

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

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

12 **42-2-129. Mandatory surrender of license or permit for**
13 **driving under the influence or with excessive alcoholic content.** Upon
14 a plea of guilty or nolo contendere, or a verdict of guilty by the court or
15 a jury, to DUI OR DUI per se, ~~or habitual user~~, or, for a person under
16 twenty-one years of age, to DUI, DUI per se, DWAI, ~~habitual user~~, or
17 UDD, the court shall require the offender to immediately surrender the
18 offender's driver's, minor driver's, or temporary driver's license or
19 instruction permit to the court. The court shall forward to the department
20 a notice of plea or verdict, on the form prescribed by the department,
21 together with the offender's license or permit, not later than ten days after
22 the surrender of the license or permit. Any person who does not
23 immediately surrender the license or permit to the court, except for good
24 cause shown, commits a class 2 misdemeanor traffic offense.

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

27 **42-2-125. Mandatory revocation of license and permit.** (1) The

1 department shall immediately revoke the license or permit of any driver
2 or minor driver upon receiving a record showing that such driver has:

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

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

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

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

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

25 **42-2-127. Authority to suspend license - to deny license - type**
26 **of conviction - points.** (1) (a) Except as provided in paragraph (b) of
27 subsection (8) of this section, the department has the authority to suspend

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

1 (5) Point system schedule:

2 Type of conviction	Points
3 (b) (II) Habitual user	12

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

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

14 **42-2-132. Period of suspension or revocation.** (2) (a) (III) In the
15 case of a minor driver whose license has been revoked as a result of one
16 conviction for DUI, DUI per se, DWAI, ~~habitual user~~, or UDD, the minor
17 driver, unless otherwise required after an evaluation made pursuant to
18 section 42-4-1301.3, must complete a level I alcohol and drug education
19 program certified by the unit in the department of human services that
20 administers behavioral health programs and services, including those
21 related to mental health and substance abuse.

22 (IV) Any person whose license or privilege to drive a motor
23 vehicle on the public highways has been revoked under section 42-2-125
24 (1) (g) (I) or (1) (i) or 42-2-203 where the revocation was due in part to
25 a DUI, DUI per se, OR DWAI or ~~habitual user~~ conviction shall be
26 required to present an affidavit stating that the person has obtained at the
27 person's own expense a signed lease agreement for the installation and

1 use of an approved ignition interlock device, as defined in section
2 42-2-132.5 (7), in each motor vehicle on which the person's name appears
3 on the registration and any other vehicle that the person may drive during
4 the period of the restricted license and a copy of each signed lease
5 agreement.

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

8 **42-2-132.5. Mandatory and voluntary restricted licenses**
9 **following alcohol convictions - rules.** (1) The following persons shall
10 be required to hold a restricted license pursuant to this section for at least
11 one year prior to being eligible to obtain any other driver's license issued
12 under this article:

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

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

19 **42-2-138. Driving under restraint - penalty.** (1) (a) Any person
20 who drives a motor vehicle or off-highway vehicle upon any highway of
21 this state with knowledge that the person's license or privilege to drive,
22 either as a resident or a nonresident, is under restraint for any reason other
23 than conviction of DUI, DUI per se, DWAI, ~~habitual user~~, or UDD is
24 guilty of a misdemeanor. A court may sentence a person convicted of this
25 misdemeanor to imprisonment in the county jail for a period of not more
26 than six months and may impose a fine of not more than five hundred
27 dollars.

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

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

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

17 **42-2-202. Habitual offenders - frequency and type of**
18 **violations.** (2) (a) An habitual offender is a person having three or more
19 convictions of any of the following separate and distinct offenses arising
20 out of separate acts committed within a period of seven years:

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

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

24 **42-2-405. Driver's license disciplinary actions - grounds for**
25 **denial - suspension - revocation - disqualification.** (3) For purposes of
26 the imposition of restraints and sanctions against commercial driving
27 privileges:

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

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

8 **42-4-1301.1. Expressed consent for the taking of blood, breath,**
9 **urine, or saliva sample - testing.** (2) (a) (I) A person who drives a
10 motor vehicle upon the streets and highways and elsewhere throughout
11 this state shall be required to take and complete, and to cooperate in the
12 taking and completing of, any test or tests of the person's breath or blood
13 for the purpose of determining the alcoholic content of the person's blood
14 or breath when so requested and directed by a law enforcement officer
15 having probable cause to believe that the person was driving a motor
16 vehicle in violation of the prohibitions against DUI, DUI per se, DWAI,
17 ~~habitual user,~~ or UDD. Except as otherwise provided in this section, if a
18 person who is twenty-one years of age or older requests that the test be a
19 blood test, then the test shall be of his or her blood; but, if the person
20 requests that a specimen of his or her blood not be drawn, then a
21 specimen of the person's breath shall be obtained and tested. A person
22 who is under twenty-one years of age shall be entitled to request a blood
23 test unless the alleged violation is UDD, in which case a specimen of the
24 person's breath shall be obtained and tested, except as provided in
25 subparagraph (II) of this paragraph (a).

26 (b) (I) Any person who drives any motor vehicle upon the streets
27 and highways and elsewhere throughout this state shall be required to

1 submit to and to complete, and to cooperate in the completing of, a test
2 or tests of such person's blood, saliva, and urine for the purpose of
3 determining the drug content within the person's system when so
4 requested and directed by a law enforcement officer having probable
5 cause to believe that the person was driving a motor vehicle in violation
6 of the prohibitions against DUI OR DWAI ~~or habitual user~~ and when it is
7 reasonable to require such testing of blood, saliva, and urine to determine
8 whether such person was under the influence of, or impaired by, one or
9 more drugs, or one or more controlled substances, or a combination of
10 both alcohol and one or more drugs, or a combination of both alcohol and
11 one or more controlled substances.

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

16 **42-4-1307. Penalties for traffic offenses involving alcohol and**
17 **drugs - repeal.** (3) **First offenses - DUI and DUI per se.** (a) Except as
18 otherwise provided in subsections (5) and (6) of this section, a person
19 who is convicted of DUI OR DUI per se ~~or habitual user~~ shall be punished
20 by:

21 (5) **Second offenses.** (a) Except as otherwise provided in
22 subsection (6) of this section, a person who is convicted of DUI, DUI per
23 se, OR DWAI ~~or habitual user~~ who, at the time of sentencing, has a prior
24 conviction of DUI, DUI per se, DWAI, ~~habitual user~~, vehicular homicide
25 pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to
26 section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked
27 license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or

1 driving while the person's driver's license was under restraint pursuant to
2 section 42-2-138 (1) (d), shall be punished by:

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

18 (6) **Third and subsequent offenses.** (a) A person who is
19 convicted of DUI, DUI per se, OR DWAI ~~or habitual user~~ AND who, at the
20 time of sentencing, has two or more prior convictions of DUI, DUI per se,
21 DWAI, ~~habitual user~~, vehicular homicide pursuant to section 18-3-106 (1)
22 (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S.,
23 aggravated driving with a revoked license pursuant to section 42-2-206
24 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's
25 license was under restraint pursuant to section 42-2-138 (1) (d) shall be
26 punished by:

27 (9) **Previous convictions.** (a) For the purposes of subsections (5)

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

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

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

21 (b) Persons convicted of DUI, DUI per se, AND DWAI ~~and~~
22 ~~habitual user~~ are subject to a surcharge of at least one hundred dollars but
23 no more than five hundred dollars to fund programs to reduce the number
24 of persistent drunk drivers. The surcharge shall be mandatory, and the
25 court shall not have discretion to suspend or waive the surcharge; except
26 that the court may suspend or waive the surcharge if the court determines
27 that a person is indigent. Moneys collected for the surcharge shall be

1 transmitted to the state treasurer, who shall credit the amount collected to
2 the persistent drunk driver cash fund created in section 42-3-303.

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

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

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

23 (13) **Alcohol and drug evaluation and supervision costs.** In
24 addition to any fines, fees, or costs levied against a person convicted of
25 DUI, DUI per se, DWAI, ~~habitual user~~, or UDD, the judge shall assess
26 each such person for the cost of the presentence or postsentence alcohol
27 and drug evaluation and supervision services.

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

3 **42-4-1702. Alcohol- or drug-related traffic offenses - collateral**
4 **attack.** (1) Except as otherwise provided in paragraph (b) of this
5 subsection (1), no person against whom a judgment has been entered for
6 DUI, DUI per se, DWAI, ~~habitual user~~, or UDD shall collaterally attack
7 the validity of that judgment unless such attack is commenced within six
8 months after the date of entry of the judgment.

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

11 **42-4-1705. Person arrested to be taken before the proper**
12 **court.** (1) Whenever a person is arrested for any violation of this article
13 punishable as a misdemeanor, the arrested person shall be taken without
14 unnecessary delay before a county judge who has jurisdiction of such
15 offense as provided by law, in any of the following cases:

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

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

20 **42-4-1715. Convictions, judgments, and charges recorded -**
21 **public inspection.** (1) (b) (II) Upon receiving a request for
22 expungement, the court may delay consideration of such request until
23 sufficient time has elapsed to ensure that the person is not convicted for
24 any additional offense of DUI, DUI per se, DWAI, ~~habitual user~~, or UDD
25 committed while the person was under twenty-one years of age.

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

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

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

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

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

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

21 **40-10.1-110. Criminal history record check.** (3) An individual
22 whose criminal history record is checked pursuant to this section is
23 disqualified and prohibited from driving motor vehicles for the motor
24 carrier described in subsection (1) of this section if the criminal history
25 record check reflects that:

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

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

7 **SECTION 22. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.